

*Headwaters Groundwater  
Conservation District*

*District Rules*

*Revised January 10, 2018*

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**Headwaters Groundwater Conservation District is a groundwater conservation district in Kerr County Texas created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution. The District is created to serve a public use and benefit. The District's powers and duties are detailed primarily under Chapter 36 of the Texas Water Code and under the District's enabling legislation, which is codified at:**

SPECIAL DISTRICT LOCAL LAWS CODE

TITLE 6. WATER AND WASTEWATER

SUBTITLE H. DISTRICTS GOVERNING GROUNDWATER

CHAPTER 8842. HEADWATERS GROUNDWATER CONSERVATION DISTRICT

**These rules are promulgated in accordance with the Texas Water Code, Chapter 36.**

**Preamble**

**The purpose of this District is to provide for the conservation, preservation, protection, recharging and prevention of waste of the groundwater within its jurisdiction, and of groundwater reservoirs or their subdivisions within the defined boundary of the District. To carry out this purpose, these rules and regulations are passed, adopted and will be enforced to: (1) minimize, as far as practicable, depletion of the groundwater reservoirs and aquifers; (2) prevent waste of groundwater, pollution of groundwater or harmful alteration of the character of the groundwater; (3) promote conservation to extend the longevity of groundwater resources; and (4) manage the groundwater effectively based upon factors unique to the aquifers within the Headwaters Groundwater Conservation District.**

## **Ownership of Groundwater**

*These rules recognize the ownership of and rights associated with groundwater as described in Texas Water Code Section 36.002.*

## **District Policies**

*Appendix A*

## **Acronyms**

*ASR-Aquifer Storage and Recovery Well*

*CCN-Certificate of Convenience and Necessity*

*GMA-Groundwater Management Area*

*DFC-Desired Future Condition*

*GPS-Global Positioning System*

*MAG-Modeled Available Groundwater*

*OSSF-On Site Sewage Facility*

*PWPG-Plateau Water Planning Group (Region J)*

*TAC-Texas Administrative Code*

*TCEQ-Texas Commission on Environmental Quality*

*TDLR-Texas Department of Licensing and Regulation*

*TDS-Total Dissolved Solids*

*TWDB-Texas Water Development Board*

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## **Rule 1: Definitions**

The following terms shall have the meanings defined in Rule 1 below when used in these Rules.

Note that when used as defined below, defined terms are capitalized within these Rules.

- A. **“Abandoned Well”** shall mean a Well that is not in use. A Well is considered to be in use if it is a non-Deteriorated Well, which contains the casing, pump, and pump column in good condition, or a non-Deteriorated Well that has been capped.
- B. **“Agent”** shall mean any Person that has provided the District with a power of attorney or similar proof of authorization to act on behalf of an Owner or Operator.
- C. **“Agriculture”** shall mean irrigation or any of the activities described in Texas Water Code Section 36.001(19).
- D. **“Agricultural Use”** shall mean any use or activity involving Agriculture, including irrigation, but does not include irrigation usage that falls within the category of Domestic Use.
- E. **“Alluvial Well”** shall mean a Well that is supplied or charged by Surface Water.
- F. **“Alter”** or **“Altering”** or **“Altered”** shall mean to increase a Well’s production capability to more than its authorized permitted production level.
- G. **“Annular Space”** shall mean the space between the casing and the Borehole wall.
- H. **“Applicant”** shall mean a Person who is an Owner, Operator or Agent registering an Exempt Well or who is applying for a Permit or Permit Amendment.
- I. **“Application”** shall mean;
  - 1) Application to drill, Alter, and equip a Permitted Well.
  - 2) Application for a Production/Operating Permit.
  - 3) Application for a conditional Permit
  - 4) Application for renewal of a Permit
  - 5) Application for a Permit Amendment
  - 6) Application to transport Groundwater
  - 7) Application for a closed loop geothermal Well
- J. **“Aquifer”** shall mean a formation or group of geologic formations capable of storing and yielding Groundwater in usable quantities.
- K. **“Beneficial Purpose”** shall mean use of Groundwater for:
  - 1) Agriculture, gardening, Domestic Use, stock raising, municipal use, mining, manufacturing, industrial use, commercial use, recreational use, or pleasure purpose;

- 2) Exploring for, producing, handling, or treating oil, gas, Sulphur, or other minerals; or
  - 3) Any other purpose that is useful and beneficial to the user. Tex. Water Code Sec. 36.001(9).
- L. **“Best Available Science”** means conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.
- M. **“Board”** shall mean the District Board of Directors.
- N. **“Borehole”** shall mean an artificial excavation of earth drilled to a depth sufficient to penetrate an Aquifer.
- O. **“CCN”** shall mean a “Certificate of Convenience and Necessity,” a permit issued by the TCEQ, which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer utility service to a specified geographic area. 30 Tex. Admin. Code Sec. 291.3(10).
- P. **“Commingling”** shall mean to blend Groundwater from more than one Aquifer in the same borehole or Well.
- Q. **“Conjunctive Use”** shall mean the combined use of Groundwater and Surface Water sources that optimizes the beneficial characteristics of each source, such as water banking, aquifer storage and recovery, enhanced recharge, and joint management.
- R. **“Days”** shall mean, for the purposes of these rules unless otherwise stated, calendar days *not* excepting holidays and weekends unless the period ends on one. In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not to be included. 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 that is not a weekend day or holiday.
- S. **“Deteriorated Well”** shall mean a Well or Borehole, the condition of which is causing or is likely to cause Pollution of Groundwater.
- T. **“District”** shall mean the Headwaters Groundwater Conservation District.
- U. **“Domestic Use”** shall mean the use of Groundwater only for personal (non-commercial) household use, including Groundwater for: use inside the home; irrigation of lawns and trees; irrigation of family gardens/orchards; watering domestic animals; and filling swimming pools.

V. **“Exempt Well”** means:

- 1) A Groundwater Well used solely for Domestic Use or for providing Groundwater for livestock or poultry if the Groundwater Well is:
  - a) located or to be located on a tract of land five (5) acres or larger that is divided or platted after the effective date of these rules; and
  - b) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of Groundwater a day;
- 2) a Groundwater Well used solely to supply Groundwater 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 provided that the Person holding the Railroad Commission permit is responsible for drilling and operating the Groundwater Well and the Groundwater Well is located on the same lease or field associated with the drilling rig; or
- 3) a Groundwater Well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the Well to the extent the withdrawals are required for mining activities regardless of any subsequent use of the Groundwater.

W. **“General Manager”** shall mean the general manager of the Headwaters Groundwater Conservation District.

X. **“Groundwater”** shall mean water percolating below the surface of the earth.

Y. **“Groundwater Rights”** as applied to these rules shall mean as stated in Texas Water Code Chapter 36.002, that a landowner owns the groundwater below the surface of the landowner’s land as real property, and/or any Groundwater Rights purchased or leased from another landowner, documented and recorded in the real property records of Kerr County.

Z. **“Historic Use”** shall ordinarily mean the recorded annual gallons pumped per year in the five years immediately preceding the Application for renewal of a Production/Operating Permit. But, at the discretion of the General Manager, other evidence may be considered when the record for the previous consecutive five years is incomplete or other relevant circumstances exist. Relevant circumstances shall include, but not be limited to, use for a Beneficial Purpose without Waste, or a reduction in Groundwater pumping and use due to conservation measures taken during drought or periods of higher than normal rainfall.

- AA. **“Metered Use”** shall mean Groundwater usage measured by a calibrated, commercial meter installed on a Permitted Well.
- BB. **“Monitoring Device”** shall mean an approved meter installed on a Permitted Well.
- CC. **“Monitoring Well”** shall mean an artificial excavation constructed to measure or monitor the quality and/or quantity or movement of water, substances, elements, chemicals, or fluids, beneath the surface of the ground.
- DD. **“Operator”** shall mean a Person, who is not an Owner, but who has the legal rights or responsibilities of an Owner with respect to drilling, or operating and maintaining a Well.
- EE. **“Owner”** shall mean and include any Person who has sufficient legal interest in the land upon which the proposed or existing Well is located to drill, operate and maintain the Well.
- FF. **“Permit”** shall mean an approval issued by the District for an Owner or Operator to take specified action with regard to a proposed or existing Permitted Well.
- GG. **“Permit Amendment”** means altering an existing Permitted Well/System from the original ownership, use, or production amount.
- HH. **“Permit Acreage”** shall mean contiguous surface acreage in which a Person has Groundwater Rights, which serve to support a Production/Operating Permit. Permit Acreage may be non-contiguous only if the tracts making up the Permit Acreage are no more than 1320 feet apart.
- II. **“Permitted Well”** shall mean a non-Exempt Well for which the District has issued a Permit or for which a Permit is required by the District.
- JJ. **“Person”** shall include an individual, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.
- KK. **“Pollution”** shall mean a change in any Groundwater that renders the Groundwater harmful, detrimental, or injurious to humans, animals and vegetation.
- LL. **“Production/Operating Permit”** shall mean any type of Permit issued by the District that relates to the operation of or production from a Groundwater Well and that states the total gallons per year that may be pumped for the Permit Acreage listed on the Permit, for a certain number of years, and for a specified use or uses.
- MM. **“Public Water Supply System”** shall mean a system for the provision to the public of Groundwater for human consumption through pipes or other constructed conveyances, which includes all uses described in the definition of “Drinking Water” at 30 Tex. Admin.

Code Section 290.38(22). “Public Water Supply Systems” shall include “Community Water Systems,” “Non-community Water Systems,” “Non-transient Non-Community Water Systems,” and “Transient Non-Community Water Systems,” as each of them is defined in 30 Tex. Admin. Code Section 290.38.

NN. “**Pump Test**” shall mean a test involving the withdrawal, at a constant discharge rate, of measured quantities of Groundwater from a Well and the measurement of resulting changes in Groundwater level in an Aquifer both during and after the period of discharge, for the purpose of determining the characteristics of an Aquifer.

OO. “**Registration Form**” shall mean an administratively complete Exempt Water Well Registration form, including the payment of any required fee.

PP. “**State Well Log**” shall mean a detailed description by the driller of activities involved in the drilling of a Groundwater Well, including lithologic description, Borehole size and depth, cementing and grouting information, and static Groundwater level and yield, as required by applicable state regulations.

QQ. “**Surface Water**” shall mean, as defined in the Texas Water Code, the water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state, and water imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state.

RR. “**Test Well**” shall mean an artificial excavation created from drilling, boring or coring for the purpose of securing geological, hydrological or other information that may be obtained by penetrating the earth.

SS. “**Waste**” shall mean, as defined in Section 36.001(8) of the Texas Water Code, any one or more of the following:

- 1) 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 Groundwater unsuitable for agricultural, gardening, domestic, or stock raising purposes;
- 2) The flowing or producing of Wells from a Groundwater reservoir if the Groundwater produced is not used for a Beneficial Purpose;
- 3) Escape of Groundwater from a Groundwater reservoir to any other reservoir or

geologic strata that does not contain Groundwater;

- 4) 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;
- 5) 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 TCEQ under Water Code Chapter 26; or
- 6) Groundwater pumped for irrigation that escapes as irrigation tail water onto land other than that of the Owner of the Well unless the occupant of the land receiving the discharge has granted permission.

TT. “**Well**” shall mean, depending on the context in which the term is used, one or more of the following types of wells that falls within the jurisdiction of the District: Groundwater well, injection well, ASR Well, dewatering well, Test Well, Closed-Loop Geothermal Well, or Monitoring Well.

### **Rule 2: Waste**

Groundwater shall not be produced or used within the District in such a manner or under such conditions so as to constitute Waste.

### **Rule 3: Administrative Fees**

The District shall set the amount of fees and initiate refund policies from time to time.

Administrative fees (*e.g.*, for processing forms and records) or other fees required by the District shall accompany Applications and Registration Forms.

### **Rule 4: Exempt Wells**

#### **A. Registration**

No less than ten (10) days before the date on which an Owner or Operator desires to begin drilling an Exempt Well, the Owner or Operator shall complete a Registration Form including fee, plat or survey, and proof of ownership of the land on which the Exempt Well is to be located or proof of possession of legal rights of an Owner with respect to drilling, operating and maintaining an Exempt Well on such land. All Wells within the District except environmental sampling wells, environmental monitoring wells, environmental soil borings geotechnical wells,

and geologic exploration wells shall be registered with the District. Based on the registration information, certain well Applicants shall be required to obtain Operating Permits.

**B. Equipping**

Exempt Wells must be equipped to conform to the District's rules requiring installation of casing, pipe, and fittings to prevent the escape of Groundwater from a Groundwater reservoir to any reservoir not containing Groundwater and to prevent the Pollution of any Groundwater Aquifer.

**C. Construction**

Exempt Wells must comply with Rule 13 regarding drilling and Well construction, including Rule 13.D regarding Groundwater analysis.

**D. Location**

Improper spacing or construction of an Exempt Well in violation of District rules may result in the Owner or Operator being required to correct the violation up to and including properly plugging the Well.

**E. Alluvial Wells**

Alluvial Wells are not under the jurisdiction of the District. No drilling or Production /Operating Permit is required for the drilling or operation of an Alluvial Well. However, the District may require proof that a Groundwater Well is an Alluvial Well in order to determine the District's jurisdiction. Rule 17 contains additional requirements regarding such jurisdictional determinations.

**F. Tract Size**

- 1) **Drilling** - Only one Exempt Well may be drilled on each five (5) acre or less tract. The drilling of Exempt Wells on tracts of land divided or subdivided (including the Family Partition tracts divided under the Kerr County Subdivision Rules platting exemption 1.03.B) after the effective date of these rules requires a minimum of five (5) contiguous acres. Drilling a Well in a subdivision or area that has access to or can be provided Groundwater by a Public or Community Water Supply System requires ten (10) or more contiguous acres.
- 2) **Sharing** - Sharing of Exempt Wells on tracts of land divided or subdivided (including the Family Partition tracts divided under the Kerr County Subdivision Rules platting exemption 1.03.B) after the effective date of these rules requires a

minimum of five (5) contiguous acres for each individual lot involved in the Well-Sharing area.

- 3) **Existing Exempt Wells** - When subdividing or making an existing tract on which any Exempt Well exists smaller, the Owner must subdivide in a manner that maintains at least five (5) acres associated with each Exempt Well (including Family Partition tracts divided under the Kerr County Subdivision Rules platting exemption 1.03.B). To subdivide existing tracts of less than five acres on which existing Exempt Wells are located, a Community or Public Water Supply System is likely to be required to serve the new smaller tracts, and the existing Exempt Well must be plugged according to the Texas Department of Licensing and Regulation (TDLR) plugging standards.
- 4) **Well Spacing** - Exempt Wells, except for Exempt Wells authorized by a permit issued by the Railroad Commission of Texas under Texas Natural Resources Code Chapter 134, must comply with the District's rules for Groundwater Well spacing.
  - a) A tract on which a new Exempt Well is to be drilled must be at least five acres in size, and only one new Exempt Well may be drilled on each such five-acre tract.
  - b) A new Exempt Well must be located at least 75 feet from any property line of the tract on which it is to be drilled.
  - c) Additional Kerr County Subdivision Rules may apply for Exempt Wells drilled outside the City of Kerrville City Limit.
  - d) Additional City of Kerrville Subdivision Ordinances may apply for Exempt Wells drilled inside the City of Kerrville City Limit.
  - e) Exempt Wells must meet the Texas Administrative Code (TAC) Chapter 285 standards relating to on-site septic systems, and the Texas Department of Licensing and Regulation (TDLR) Section 76.100 Technical Requirements- Location and Standards of Completion for Wells.
  - f) Setback rules stated above shall be maintained when possible, unless otherwise approved by the District Staff, but at a minimum, Exempt Well spacing must meet TDLR Section 76.100 spacing rules and 30 TAC Chapter 285 setback rules for an On-Site Sewage Facility (OSSF). When a 75-foot property line setback cannot be met, maximum distance between neighboring Wells should be achieved.

G. **Monitoring Device** - No Monitoring Device or metering of production is required for Exempt Wells.

**Rule 5: Permitted Wells**

- A. The Texas Water Code provides that “Except as provided by Section 36.117 and 36.454, a district shall require a permit for the drilling, equipping, operating, or completing of wells or for substantially altering the size of wells or well pumps.”
- B. Any existing and new Permitted Well from which Groundwater is produced requires a Production/Operating Permit and must meet all operating requirements. No Person shall operate a Permitted Well without having first submitted the appropriate Administratively Complete Application to the District and received a Production/Operating Permit.
- C. As further described in Rule 6, no Person shall begin to drill a new Permitted Well without having first submitted the appropriate Application to the District and having received authorization.
- D. Any Person submitting an Application on behalf of an Owner, such as an Agent, shall submit written evidence of authority in a form acceptable to the District.
- E. Permitted Wells are not allowed in the Edwards Group of the Edwards-Trinity (Plateau) Aquifer.
- F. Drilling a Well in a subdivision or area that has access to or can be provided Groundwater by a Public or Community Water Supply System requires ten (10) or more contiguous acres.
- G. Permitted Wells are to be located on a tract of land that is at least five (5) acres in size. A Permitted Well, which may be a Public Water Supply System, is allowed on a subdivision well lot when the area within the CCN Boundary that encompasses the well lot is the same as the acreage associated with the Permit.
- H. Additional Kerr County Subdivision Rules may apply for Permitted Wells drilled outside the City of Kerrville City Limit.
- I. Additional City of Kerrville Subdivision Ordinances may apply for Permitted Wells drilled inside the City of Kerrville City Limit.
- J. All Wells must meet the Texas Administrative Code (TAC) Chapter 285 standards relating to on-site septic facilities (OSSF), and the Texas Department of Licensing and Regulation (TDLR) Section 76.100 Technical Requirements-Location and Standards of Completion for Wells.

- K. The request for a proposed exception to spacing requirements for Permitted Wells will be considered in a regular District Board meeting. The Applicant will be required to notify any adjacent landowner by certified mail, return receipt requested, at least 20 Days before the meeting at which the proposed exception is to be considered. The District may elect to issue additional notices.
- L. The following table defines the minimum distance from the property line or CCN boundary for Permitted Wells.

<b>Well Capacity (gpm)</b>	<b>Minimum Distance from Property Line (ft.)</b>		<b>Well Capacity (gpm)</b>	<b>Minimum Distance from Property Line (ft.)</b>
<b>18</b>	<b>75</b>		<b>400</b>	<b>1140</b>
<b>20</b>	<b>75</b>		<b>450</b>	<b>1180</b>
<b>25</b>	<b>80</b>		<b>500</b>	<b>1220</b>
<b>30</b>	<b>90</b>		<b>600</b>	<b>1370</b>
<b>40</b>	<b>150</b>		<b>700</b>	<b>1430</b>
<b>50</b>	<b>240</b>		<b>800</b>	<b>1490</b>
<b>60</b>	<b>320</b>		<b>900</b>	<b>1550</b>
<b>80</b>	<b>460</b>		<b>1000</b>	<b>1600</b>
<b>100</b>	<b>530</b>		<b>1100</b>	<b>1660</b>
<b>150</b>	<b>680</b>		<b>1200</b>	<b>1710</b>
<b>200</b>	<b>810</b>		<b>1300</b>	<b>1760</b>
<b>250</b>	<b>920</b>		<b>1400</b>	<b>1810</b>
<b>300</b>	<b>1020</b>		<b>1500</b>	<b>1860</b>
<b>350</b>	<b>1100</b>			

## **Rule 6: Drilling Permits and Production/Operating Permits**

- A. Permits and Permit Amendments are subject to the rules promulgated by the District and are subject to terms and provisions with reference to drilling, equipping, completion, operation of Wells, and production of Groundwater. In general, the spacing of the Wells and size of Well pumps should minimize, as far as practicable, the drawdown of the water table and lessen Well interference.
- B. A Production/Operating Permit issued by the District to an Applicant under Water Code Sections 36.113 - 36.116 shall state the terms and provisions prescribed by the District for operating the Permitted Well.
- C. Based on the Modeled Available Groundwater (MAG) number resulting from GAM Run 16-023, the District, to the extent possible, will issue Permits up to the point that the total volume of exempt and permitted production will achieve the Desired Future Condition adopted by Groundwater Management Area (GMA) 9. The District will evaluate annually the volume of water permitted by the District and the exempt pumping estimates provided by the Texas Water Development Board, and compare the total volume to the MAG, as stated in Report GAM Run 16-023 MAG.
- D. The General Manager will act on an Application if the Applicant does not request a Production/Operating Permit production amount in excess of the applicable production cap, described in Rule 8, and the Application is not for a conditional Permit. If the Applicant requests a Production/Operating Permit production limit in excess of the applicable production cap, or if the Application is for a conditional Permit, the District Board shall act on the Application at a regularly scheduled District Board meeting as defined by Section 551.001 of the Texas Government Code.
- E. Within 30 Days after the District receives an Application the District shall either: issue a Permit, deny the Application, or set the specific date for District Board action on the Application.
- F. Permit decisions by the District Board in a regularly scheduled District Board meeting are administrative decisions. A Person with a legally defined interest in Groundwater who wishes to appeal an action of the District Board may request a hearing as described in Rule 20.
- G. A drilling Permit shall remain valid if the work authorized is completed within one-hundred-

eighty (180) Days from the date the Permit is issued. The District, for good cause, may extend the life of such Permits, if requested, up to an additional one-hundred-eighty (180) Days and may grant such time as is reasonably necessary to complete the project.

- H. Production/Operating Permits are granted for a maximum five (5) year period and are subject to renewal at the end of the term. Permit renewals are subject to production caps that are applicable at the time such Applications are filed. The District Board may add special operating provisions to a Permit to meet special or unique circumstances. Violations of a Permit's terms, conditions, requirements, or special provisions, are punishable by civil penalties as provided by Section 36.102 of the Texas Water Code. Purposeful reduction of Groundwater consumption for any reason shall be considered when evaluating Historic Use for a Permit renewal and shall not necessarily result in a decrease in Permit production quantity.
- I. All Wells requiring a Production/Operating Permit must place a Monitoring Device on the Well or Well system to monitor the annual production. The District may require a picture of the Monitoring Device after installation to verify that an approved meter has been installed. Owners must report the amount of Groundwater produced from Permitted Wells to the District for the prior year in the month of January. Annual production amounts are considered on a five-year average; however, Well Owners or Operators will be notified of annual overproduction. In cases of continued overproduction, the District will request a conference to discuss the circumstances. Production reports are available and may be submitted online at <http://hgcd.org/forms/>.
- J. Permitted Wells requiring Production/Operating Permits shall be subject to a production cap established by the District Board. The production cap shall be stated as the maximum amount of Groundwater that may be produced per acre associated with the Permitted Well, stated in gallons per year.
- K. The District may issue Permits that limit production to quantities of Groundwater that can reasonably be used for a Beneficial Purpose at a specific location.
- L. Conditional Permit applications may be made to the District for a detailing a proposed project and specifying the intended use of Groundwater, the amount of Groundwater needed and a timeline for completion of the project. A Permit will be issued pending the completion of the project. A Conditional Permit requires Board approval.

## **Rule 7: Requirements for Administrative Completeness.** Ch. 36.113, 114

This rule applies to all District applications including:

- Application to drill, Alter, and equip a Permitted Well (see Rule 6);
- Application for a Production/Operating Permit (see Rule 6);
- Application for a Conditional Permit (see Rule 6);
- Application for renewing a Permit (see Rule 6);
- Application for a Permit Amendment (see Rule 9);
- Application to Transport Groundwater (see Rule 11); and
- Application for a Closed Loop Geothermal Well (see Rule 19)

In order for the District to declare an application Administratively Complete, Applicants must complete the appropriate District forms and provide the District with the following items:

- 1) The name and mailing address of the Applicant and the Owner of the land on which the Well will be located as well as the Well site address (see well site address on form);
- 2) If the Applicant is other than the Owner of the property, documentation establishing the applicable authority to construct and operate a Well for the proposed use;
- 3) A statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose (see the historical production and supportive information form);
- 4) A water conservation plan or a declaration that the Applicant will comply with the District's management plan (see the HGCD Production/Operating Permit form);
- 5) The location of each Well (provided in GPS coordinates) and the estimated rate at which water will be withdrawn (listed in gallons per minute);
- 6) A drought contingency plan or an affidavit stating that the Applicant will comply with the District's Drought Contingency Plan;
- 7) An affidavit attesting:
  - a. To the amount of Permit Acreage proposed to be associated with the requested Production/Operating Permit; and
  - b. that this Permit Acreage is not already being utilized to support a different Permit;

- 8) A copy of a plat showing the location of the Permit Acreage;
- 9) Proof of ownership of or sufficient legal control over and interest in the proposed Permit Acreage:
  - a. Ownership of Permit Acreage may be shown by providing either a copy of a deed or a Kerr County Central Appraisal District Property ID number that indicates the Applicant is also the Owner;
  - b. Sufficient legal control over and interest in proposed Permit Acreage may be shown by providing a legal document (such as a lease) that shows such control or interest and has been recorded in Kerr County real property records;
- 10) Provide the District with information regarding any other Wells located on the Applicant's property and whether the property is currently being served or may be served in the future by a Community or Public Water Supply System;
- 11) On the Application and Authorization form to drill, alter, and equip a Permitted Well, state the designated licensed Water Well Driller and Pump Installer; and
- 12) Submit the appropriate fee as stated on the Permitted Well Application.

## **Rule 8: Production Caps**

### **A. Production Caps for Permitted Wells**

- 1) Permitted Wells completed in all Aquifers except the Edwards Group of the Edwards Trinity Plateau Aquifer, based on Beneficial Purpose, have a production cap of 80,000 gallons per acre of Permit Acreage per year.

### **B. Public Water Supply Systems**

- 1) The annual Production/Operating Permit production amount for a Public Water Supply System shall be determined by Historic Use, Beneficial Purpose, service needs, and service area of an existing Public Water Supply System.
- 2) When no Historic Use information is available, the annual Production/Operating Permit production amount for a Public Water Supply System shall be determined by Beneficial Purpose, service needs, and service area.

### **C. Irrigation, Mining, Golf Courses, Ranching, Business**

- 1) The annual Production/Operating Permit production amount for Agricultural Use, non-exempt mining use, golf courses, non-exempt livestock use, industrial use and commercial use shall be determined by Historic Use and Beneficial Purpose.

- 2) When no Historic Use information is available, the annual Production/Operating Permit production amount for Agricultural Use, non-exempt mining use, golf courses, non-exempt livestock use, industrial use and commercial use shall be determined by Beneficial Purpose.
- 3) Crop acreage may have an annual Production/Operating Permit production amount of up to 1 ½ acre feet of Groundwater per crop acre, provided the total Permit Acreage allows the annual permitted amount to remain at or below the Permitting Cap.

**D. Conjunctive Use**

Persons with access to both Groundwater and Surface Water may choose to use Surface Water as their primary source of water supply. Intent to use Surface Water as a primary source of water supply does not preclude a Person from obtaining a Permitted Well for back-up supply purposes or other purposes. Total combined Groundwater and Surface Water Historic Use or existing use will be considered in issuing Production/Operating Permits to Persons who demonstrate intent to use Surface Water as their primary source of water. A Person's past or intended reliance on Surface Water will not, by itself, serve to limit the quantity of Groundwater for which that Person may receive a Permit.

**E. Enhancing the Appearance of the Landscape**

Owners or Operators of Groundwater Wells used to fill ponds, lakes, or other reservoirs used for the sole purpose of enhancing the appearance of the landscape shall be permitted for a maximum production of one acre-foot (325,851 gallons) per year and are to report the production annually in January.

**F. Adjustment of Production Caps:**

Production caps shall be reviewed by the District in the month of January and may be adjusted at any time by the District Board. In the event that a production cap is adjusted or a new production cap is set, the new production cap shall only apply to Applications for Permitted Wells, including renewal Applications, filed after the date the Board adopts the new production cap; except that if the production cap is increased, an Owner of a Permitted Well subject to an existing Production/Operating Permit may apply to amend the Production/Operating Permit to increase the production limit in accordance with the new or adjusted production cap.

## **Rule 9: Permit Amendments**

- A. An Owner or Operator of a Permitted Well must request and be granted a Permit Amendment before the occurrence of any of the following changes to a Permitted Well:
- 1) Altering a Permitted Well;
  - 2) A change in the total maximum quantity of Groundwater to be produced annually from a Permitted Well;
  - 3) Substantially changing the size of a pump;
  - 4) A change in the authorized purpose(s) of use of the Permitted Well; and
  - 5) A change in the depth of the Permitted Well that results in Groundwater being withdrawn from a different Aquifer.
- B. An Owner or Operator of a Permitted Well must request a Permit Amendment within 30 Days after any of the following changes to a Permitted Well:
- 1) A change in the total contiguous acreage associated with the Permitted Well;
  - 2) A change in the Permit holder's name or contact information; and
  - 3) A change of ownership of the Permitted Well.
- C. If an Owner acquires a Permitted Well or an Operator acquires the right to use Groundwater from a Permitted Well, the Owner or Operator shall submit to the District a completed Change of Ownership form within 30 Days after completion of the transaction. The Owner or Operator shall also provide the District with documentation of the transaction as evidence of the Owner's or Operator's legal interest in the Well.
- D. Failure to comply with this rule may result in the Permit being voided.
- E. No Permit Amendment is required for maintenance or repair of a Well if the maintenance or repair does not increase the production capabilities of the Well to more than its permitted production rate. Tex. Water Code § 36.113(a-1).
- F. Upon receipt of a Permit Amendment Application and the prescribed fee, if any, the General Manager may approve the Application or set the Application for consideration at a meeting of the Board.
- 1) The General Manager cannot grant an Application to produce Groundwater in excess of the District's production cap, as specified in Rule 8, without Board approval and must set such an Application for consideration by the Board at its next regular

meeting.

- 2) An Application for a Permit Amendment shall be automatically granted if the General Manager fails to act on the Application or set it for consideration by the Board within thirty (30) Days of the receipt of the Application and any applicable fees.

G. An Owner or Operator may appeal a decision of the District regarding the Owner or Operator's Application for a Permit Amendment using the procedures provided in Rule 20.

### **Rule 10 Public Water Supply Wells**

#### **A. Logs and Pump Tests**

The Owner or Operator of a Permitted Well that is to be used as a Public Water Supply Well may be required, at the District's expense, to provide some or all of the following: a lithologic log, a gamma log, a resistivity log and a Pump Test with determination of Aquifer parameters or approved equivalent test performed during drilling. Any results of these logging and Pump Test requirements that are paid for by the District shall be the property of the District. All logging and Pump Tests with determinations of Aquifer parameters shall be conducted or supervised by a registered professional engineer or licensed professional geoscientist selected or approved by the District.

#### **B. Well Logs**

- 1) All logs required by this section shall be gathered in an open hole before any casing is inserted into the Borehole, if possible.
- 2) For lithologic logs, samples shall be taken at 10-foot intervals, screened and washed, and placed in well-marked containers.

#### **C. Pump Test Requirements**

- 1) The discharge duration shall be a minimum of eight (8) hours with the maximum not to exceed thirty-six (36) hours.
- 2) Any variation from TCEQ Pump Test duration requirements, as specified under TCEQ rules at 30 Tex. Admin. Code Chapter 290, shall be coordinated with TCEQ and the District.
- 3) Testing shall continue long enough to observe a straight-line trend on a plot of Groundwater level versus the logarithm of time pumped.

- 4) If the pumping rates remain constant for a period of at least four (4) hours and a straight-line trend is observed on a plot of Groundwater level versus the logarithm of time pumped before the thirty-six (36) hour limit has been reached, the District's portion of the Pump Test may be terminated.
- 5) The frequency of Groundwater level measurements during the Pump Test shall be such that adequate definition of the time-draw down curve is made available.
- 6) Groundwater level recovery data shall be obtained to verify the accuracy of the data obtained during the pumping portion of the Pump Test.
- 7) Recovery measurements shall be initiated immediately at the conclusion of the pumping portion of the Pump Test and shall be recorded with the same frequency as those taken during the pumping portion of the Pump Test.
- 8) Pump Tests required by this section shall be performed before any acidizing or other flow-capacity enhancement procedures are applied to the Test Well.

#### **D. Drawdown and Recovery Data**

The time-drawdown and time-recovery data obtained during the Pump Test shall determine Aquifer parameters utilizing the non-equilibrium equations developed by Theis or Cooper-Jacob, or acceptable modifications thereof. The following Aquifer parameters shall be determined:

- 1) Rate of average yield and drawdown;
- 2) Specific capacity;
- 3) Transmissivity;
- 4) Storage coefficient, when an observation well is available; and
- 5) Hydraulic conductivity.

#### **Rule 11: Transport of Groundwater Out of District**

- A. An Owner or Operator of a Permitted Well desiring to transport water out of the geographic area of the District shall file a sworn Application to transport Groundwater. This Application shall contain information as the District shall require.
- B. An Application to transport Groundwater out of the District area will be considered as stated in Texas Water Code Section 36.122.
- C. The District may impose a reasonable fee or surcharge for transport of Groundwater out of the District area using one of the methods described in Texas Water Code Section 36.122.

D. No transport Permit shall be required for an Exempt Well where Groundwater is transported by an Owner or Operator outside the District for use on land owned by the same landowner who owns the land on which the Exempt Well is located within the District's geographic area.

## **Rule 12: Transfer of Groundwater Production Rights**

### **A. Applicability**

Groundwater Rights may be leased or purchased by an Applicant for use as additional Permit Acreage to support a Production/Operating Permit. This additional Permit Acreage is subject to all Permit and Rule 8 Production Cap requirements in these rules. Any Person desiring to utilize the acreage from property not owned by that Person to support an increase in the quantity of Groundwater permitted to be produced from a Permitted Well must comply with this rule.

### **B. Documentation**

The Applicant must provide the District with satisfactory documentation of the conveyance or transfer of Groundwater production rights associated with the additional acreage from another Person (the grantor or lessor) to the Applicant (the grantee or lessee). The documentation must be recorded in the real property records of Kerr County, and include, at a minimum, an unequivocal transfer and relinquishment of Groundwater production rights for that acreage to the Applicant (grantee or lessee), including a written waiver of Groundwater production rights by that Person (grantor or lessor).

### **C. Distance limitations**

Property to be considered for this type of a production rights transfer must lie within ¼ mile (1320 feet) of a property line of the Applicant's property.

## **Rule 13: Well Construction**

### **A. Administrative Rules**

- 1) Each driller and/or pump installer must be licensed as required by the rules of the TDLR and must provide the District with a copy of his or her license. No Person may begin to drill, construct, complete, or Alter a Well on any property in Kerr County unless he/she is licensed by TDLR and has filed a Headwaters Groundwater Conservation District License Certification form with the District. The driller or pump installer shall inform the Owner or Operator that a Permit, Permit Amendment, or Registration Form may be required by the District.

- 2) Before beginning to drill a Groundwater Well, including an Exempt Well, the Well driller shall obtain a monument pin from the District office for marking the Groundwater Well, a copy of the District's Well spacing, equipping, and construction requirements, and for an Exempt Well, a copy of the Registration Form.
- 3) Complete records shall be kept, and reports concerning the drilling, equipping and completion of all Wells drilled or Altered shall be provided to the District. Such records shall include an accurate copy of the State of Texas Well Report, a drilling log, the "Driller and Pump Installer's Certified Statement of Completion" and any additional data or reports concerning the drilling, equipping and completion of the Well.
- 4) These records shall be filed with the District within thirty (30) Days after completing construction of the Well, and within thirty (30) Days of equipping the Well.
- 5) All Wells shall be drilled, completed, equipped and Altered in accordance with the standards and requirements of the District and any Federal or State Agency having jurisdiction over such actions. After a drilling Permit has been issued, the actual location of the drilling may vary from the GPS location indicated on the Application within 30 feet, but shall maintain all property line and Well spacing distances required by District rules. The Well must meet the requirements of 30 Tex. Admin. Code Chapter 285 relating to on-site septic facilities and TDLR technical requirements of 16 Tex. Admin. Code Section 76.100 – Locations and Standards of Completion for Wells.
- 6) Unless waived by the landowner, a licensee shall use a manufacturer's well screen, and select the correct slot size for the screen in the installation of a domestic (household use) or landscape irrigation water well to prevent sand or sediment from entering the Well.
- 7) Each licensee shall use potable water in drilling fluids.
- 8) Each licensed Well driller drilling, deepening, or altering a Well shall keep any drilling fluids, tailings, cuttings or spoils contained in such a manner so as to prevent spillage onto any property not under the jurisdiction or control of the Applicant without the Owner's written consent.

## **B. Notifications**

- 1) The driller shall notify the District of the date and time drilling is expected to begin at least 24 hours in advance to allow the District the opportunity to observe drilling to ensure compliance with District rules. If the date or time drilling is expected to begin changes, the driller shall notify the District of the change as soon as possible.
- 2) The driller shall notify the District prior to cementing the Well.
- 3) The pump installer shall notify the District prior to installation and testing of a Well pump.

## **C. Construction Standards**

Groundwater Well drillers and pump installers shall comply with 16 Tex. Admin. Code Chapter 76 and all the responsibilities therein. Public Water Supply System Wells shall comply with 30 Tex. Admin. Code Chapter 290, subchapter D.

- 1) Casing shall have a minimum inside diameter of four and one-half (4.5) inches. A licensee shall use a manufacturer's well screen and select the correct slot size for the screen in the installation of a Domestic Use or landscape irrigation Groundwater Well.
- 2) The diameter of the Borehole shall be a minimum of three (3) inches larger than the outside diameter of the casing to the depth at which the casing is sealed.
- 3) The Annular Space should be sealed as soon as conditions permit. The Owner or Operator shall have the continuing responsibility of ensuring that a Well does not allow Commingling.
- 4) The Annular Space shall be sealed using a positive displacement technique or tremie method to the land surface. Bentonite grout, using tremie method, with a two (2) foot cement cap may be used in lieu of cementing. The Annular Space shall be sealed with a solid column from a depth of not less than:
  - a) Twenty (20) feet below the land surface to the land surface for Wells completed only in the Edwards Group of the Edwards Trinity (Plateau) Aquifer; or
  - b) The top of the production zone to the land surface for all other Wells; or
  - c) When karst formations or similar voids are encountered resulting in lost circulation or drilling pressure, the Annular Space shall be sealed from the top of

the zone of completion to the lowest void and from the land surface to twenty feet below the land surface.

- 5) Commingling shall not be allowed at any time during the life of a Well. All Wells must be completed to avoid the Commingling of undesirable water with desirable drinking water based upon TDS measurements while drilling with air rigs. All Wells shall be completed so that Aquifers or zones containing waters that differ in chemical quality are not allowed to Commingle through the borehole casing annulus.
- 6) Rig supply Groundwater Wells used in association with oil and gas activities regulated by the Railroad Commission of Texas shall be drilled and completed either in the Lower or Middle Trinity Aquifer. Commingling shall be prevented.
- 7) To prevent Pollution, all Wells shall be completed with a watertight sanitary seal.
- 8) Except in the case of a mud-drilled Well, the driller shall measure and report the depth and amount of total dissolved solids, in milligrams per liter or parts per million, encountered at each Groundwater bearing stratum.
- 9) Upon request by the District, samples of the formation cuttings shall be collected in a mesh prior to the cutting samples hitting the ground and laid out in an undisturbed orderly fashion for observation by District representatives. The samples shall be chronologically ordered in a minimum of ten (10) foot increments.
- 10) The monument pin provided by the District must be placed in the cement within close proximity to the wellhead and must be clearly visible and legible.
- 11) An exception concerning these construction standards may be requested of and granted by the General Manager of the District.

#### **D. Water Quality Analysis**

For all newly completed Wells, including Exempt Wells, the Well Owner shall file a Groundwater quality analysis report with the District within sixty Days after pump installation. At a minimum, the water quality analysis report shall include data regarding the following: E, Coli, Total Coliforms, Chloride, Conductivity, Fluoride, Total Hardness, Iron, Nitrate, PH, and Total Dissolved Solids.

#### **Rule14: Capping and Plugging of Wells**

The District supports the TCEQ Regulatory Guidance “Landowner’s Guide to Plugging Abandoned Water Wells,” publication RG-347, and TDLR rules at 16 Tex. Admin. Code Section

76.104, related to Technical Requirements—Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones.

- A. Every Owner or Operator of any land within the District upon which is located any Abandoned Well is required to cap or plug the Abandoned Well. 16 Tex. Admin. Code Sec. 76.72(e).
- B. Wells shall be plugged or capped as set forth below and in accordance with Chapter 36, Texas Water Code.
  - 1) The Owner or Operator of land on which an Abandoned Well is located shall keep the Abandoned Well permanently plugged or capped with a covering capable of sustaining weight of at least four hundred (400) pounds.
  - 2) If the Owner or Operator fails or refuses to plug or cap the Abandoned Well in compliance with this Rule within ten (10) Days after being requested to do so in writing by the District, a Person employed and designated by the District may go on the land and properly plug or cap the Abandoned Well safely and securely. Owners or Operators may request, and the District may grant, extensions of time for good cause.
  - 3) Any reasonable expenses that are incurred by the District in plugging or capping an Abandoned Well shall constitute a lien on the land on which the Abandoned Well is located.
  - 4) Nothing in this rule affects enforcement under Subchapter A, Chapter 756, Texas Health and Safety Code.
- C. It is the responsibility of the Owner or Operator to see that a Deteriorated Well is plugged to prevent Pollution of the Groundwater and injury to persons.
- D. Deteriorated Wells shall be plugged in accordance with the TDLR standards found in 16 Tex. Admin. Code Section 76.104.
- E. No Deteriorated Well may be used for disposal of trash, garbage, sewage, wastewater or other foreign material.
- F. Any Person who plugs a Well in the District shall, within thirty (30) Days after plugging is complete, submit a copy of the TDLR plugging report to the District.

### **Rule 15: Right to Inspect and Test Wells**

- A. After making reasonable efforts to contact an Owner, Operator or Agent, any authorized officer, employee, agent or representative of the District shall have the right at all reasonable times to enter lands upon which a Well may be located within the District for the purpose of any one or more of the following activities:
- 1) Inspecting a Well;
  - 2) Determining the pumping capacity of a Well;
  - 3) Reading or interpreting any Monitoring Device, meter, weir box, or other instrument for the purpose of measuring production of Groundwater from a Well;
  - 4) Collecting samples to be used in regard to Groundwater quality programs;
  - 5) Testing the pump and the power unit of the Well;
  - 6) Making any other reasonable and necessary inspections and/or tests, including inspection with a wellbore camera, that may be required for the collection or formulation of Groundwater data and information or the enforcement of the District's rules.
- B. District employees or official representatives acting under this authority who enter private property shall cooperate with the Owner or Operator's reasonable rules and regulations concerning, but not limited to, safety, internal security, and fire protection and shall notify the Owner, Operator, occupant or management of their presence and shall exhibit proper credentials. Tex. Water Code § 36.123.
- C. The operation of any Well may be enjoined by the District, at the District's discretion, immediately upon refusal to allow entry to property for the purposes described above.

### **Rule16: Drought Management**

- A. The District hereby adopts the terms and conditions of its Drought Contingency Plan as the rule by which the District shall manage the use of Groundwater during designated periods of drought conditions, as defined by the Plan.
- B. Any Person who violates this rule is subject to prosecution by injunction, mandatory injunction or other appropriate remedy in a court of competent jurisdiction and subject to reasonable civil penalties not to exceed \$5000.00 per day per violation and the District's associated court costs.

**Rule 17: Alluvial Wells**

- A. All Wells drilled will be considered Groundwater Wells unless otherwise specified by the Texas Commission on Environmental Quality.
- B. If a Well is proposed or claimed to be an Alluvial Well, but would otherwise require a Production/Operating Permit under these rules, the Owner or Operator must present to the District adequate proof that the Well meets the definition of an Alluvial Well within 30 Days after the Well is drilled. If the Owner or Operator does not timely provide adequate proof, the Owner or Operator must apply for a Production/Operating Permit for a Permitted Well.
- C. Any Well determined to be an Alluvial Well is not within the jurisdiction of the District.

**Rule 18: Aquifer Storage and Recovery (ASR) Wells**

The District adopts the requirements of Texas Water Code 36 Subchapter N. Sec.36.451 through 36.455 with respect to ASR Projects.

**Rule 19: Geothermal Well Permits**

This rule is intended to cover the drilling of Boreholes to install vertical closed loop geothermal heat pump systems in Kerr County, and to comply with District Rule 13 construction standards and TDLR rules at 16 Tex. Admin. Code Section 76.100, relating to Technical Requirements – Locations and Standards of Completion for Wells.

- A. For purposes of these rules, a “closed loop geothermal well” is a vertical closed system Well used to circulate Groundwater and other fluids or gases through the earth as a heat source or heat sink. 16 Tex. Admin. Code Sec. 76.10(13).
- B. An Application must be submitted to the District before drilling may begin. The District will charge a one-time administrative fee of \$200 for the drilling Application for the Borehole and/or a series of Boreholes. A drilling log shall be filed with the State of Texas and the District. A file will be maintained in the District offices of the drilling and equipping of the Well.
- C. The closed loop geothermal system shall be designed and installed by an accredited installer. The design shall be submitted to the District before a Permit is issued. The installer shall notify the District before installation.
- D. A licensed Well driller registered with the District shall drill the Boreholes. The driller shall notify the District before drilling.

- E. A District representative shall be allowed on the property to inspect the drilling of the Borehole, installation and sealing of the closed loop piping.
- F. The Annular Space of a closed loop geothermal well used to circulate Groundwater or other fluids shall be backfilled to the total depth with impervious bentonite or similar material. 16 Tex. Admin. Code Sec. 76.100(b)(6).
- G. For a closed loop injection well where there is no Groundwater or only one zone of Groundwater is encountered, sand, gravel or drill cuttings may be used to back fill up to ten (10) feet from the surface. The top ten (10) feet shall be filled with impervious bentonite or similar materials and meet the standards pursuant to the rules of the Texas Commission on Environmental Quality at 30 Tex. Admin. Code Chapter 331. 16 Tex. Admin. Code Sec. 76.100(b)(6).
- H. District construction standards contained in Rule 13 (C)(4) apply when drilling through karst formations or similar voids.
- I. Any Borehole shall be located a minimum horizontal distance of fifty (50) feet from any watertight sewage and liquid-waste collection facility, and a minimum horizontal distance of five (5) feet from the nearest property line.

**Rule 20: Hearings**

When the District has developed a proposal involving changes to one or more of the District's rules, the District will decide at which Board meeting the rulemaking proposal will be considered for action. The Board meeting at which the rulemaking proposal is considered shall be considered the public hearing on the proposal and fulfills the requirement, if any, for a public hearing.

- A. Notice required by the Open Meetings Act shall be provided for the meeting at which the rulemaking proposal is considered.
- B. In addition to the notice required by the Open Meetings Act, not later than the 20<sup>th</sup> Day before the date of the rulemaking hearing, Notice shall be provided as follows:
  - 1) Notice shall be posted in a place readily accessible to the public at the District office;
  - 2) Notice shall be provided to the county clerk of Kerr County;
  - 3) Notice shall be published in one or more newspapers of general circulation in Kerr County; and

- 4) Notice shall be provided by mail, facsimile, or electronic mail to any Person who has requested notice of rulemakings in writing. Failure to provide notice under this rule (20.1(B)) does not invalidate an action taken by the District at a rulemaking hearing.
- C. Notice of the hearing on the rulemaking proposal, as required by Texas Water Code Sections 36.101(d) and (e) shall include:
- 1) A statement that the District Board of Directors will consider proposed changes to the District Rules at the Board meeting, which will serve as the public hearing on the matter;
  - 2) The date, time and location of the hearing;
  - 3) The agenda of the hearing, including a brief explanation of the subject of the rulemaking hearing;
  - 4) A statement that the rulemaking proposal is available for review or copying at the District Office prior to the hearing;
  - 5) A statement that the District will accept written comments and the deadline for submitting written comments; and
  - 6) A statement that oral public comment will be taken at the rulemaking hearing.
- D. Not later than the 20<sup>th</sup> Day before the date of the hearing, copies of the rulemaking proposal showing the proposed changes shall be available at the District Office. If proposed changes to the rules can be clearly shown by annotations or "redlines," then an annotated copy of the proposed rules will also be provided.
- E. Anyone interested in the proposal may submit written comments about the proposal to the District at least 5 business days prior to the scheduled meeting at which the Board will consider the rulemaking proposal.
- F. A Person may submit to the District a written request to receive notice of any rulemaking hearings. Such request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a Person must submit a new request.
- G. Anyone interested in the rulemaking proposal may attend the meeting and make oral comments at the time designated for such comments.
- H. The District shall make and keep in its files an audio recording of the rulemaking hearing.

- I. The Board shall issue a written order or resolution reflecting its decision, and the proposal that the Board approves shall be an attachment to that written order or resolution.
- J. The effective date of the written rulemaking order shall be the date on which the president of the District signs the order or resolution. The order or resolution shall include a statement that the rulemaking proposal becomes effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the District are final.
- K. If, in the course of deliberation during the meeting, the Board decides it wants to substantially change the rulemaking proposal, the Board shall "continue" or postpone the matter until a future Board meeting. Prior to consideration of the substantially changed rulemaking proposal, the District shall provide notice and opportunity for comment and hold a hearing on the substantially changed rulemaking proposal under this Rule 20. It is solely within the discretion of the Board what constitutes a substantial change to a rulemaking proposal.

**Rule 20.2: Adoption of Emergency Rules**

- A. The District may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board:
  - 1) Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law requires adoption of a rule on less than 20 Days' notice; and
  - 2) Prepares a written statement of the reasons for this finding.
- B. An emergency rule under this Rule 20.2 must be adopted at a meeting of the Board subject to the requirements of the Open Meetings Act. Notice required by the Open Meetings Act shall be provided.
- C. Except as provided by Rule 20.2.1), a rule adopted under this Rule 20.2 may not be effective for longer than 90 Days.
- D. If notice of a hearing under Rule 20.1 is provided before the emergency rule expires under Rule 20.2.C, the emergency rule shall be effective for an additional 90 Days.

**Rule 20.3: Public Interest Hearings**

A public hearing may be held on any matter within the jurisdiction of the District when the District Board deems a hearing to be in the public interest or necessary to effectively carry out the duties and responsibilities of the District.

**Rule 20.4: Contested Case Hearing Procedures**

If any Applicant wishes to appeal an action of the District, the Applicant may request a contested case hearing before the Board by submitting a written request for a contested case hearing within 10 Days of the District action.

**A. Applicability**

This section applies to the notice and hearing process used by the District for Permit and Permit Amendment Applications for which a hearing is required.

**B. Scheduling of Public Hearing**

- 1) The General Manager or Board may schedule a public hearing on Permit or Permit Amendment Applications received by the District as necessary, as provided by Texas Water Code Section 36.114.
- 2) The General Manager or Board may schedule more than one Application for consideration at a public hearing.
- 3) A public hearing must be held at the District office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location.
- 4) A public hearing may be held in conjunction with a regularly scheduled Board meeting.

**C. Notice**

- 1) If the General Manager or Board schedules a public hearing on an Application for a Permit, Permit Amendment, or a contested case hearing, the General Manager or Board shall give notice of the hearing as provided by this section.
- 2) The notice must include:
  - a) the name of the Applicant;
  - b) the address or approximate location of the Well or proposed Well;
  - c) a brief explanation of the proposed Permit or Permit Amendment, including any requested amount of Groundwater, the purpose of the proposed use, and any change in use;
  - d) the time, date, and location of the hearing; and
  - e) any other information the General Manager or Board considers relevant and appropriate.

- 3) Not later than the 10th day before the date of a hearing, the General Manager or Board shall:
  - a) post notice in a place readily accessible to the public at the District office;
  - b) provide notice to the county clerk of each county in the District; and
  - c) provide notice by:
    - i. regular mail to the Applicant;
    - ii. regular mail, facsimile, or electronic mail to any Person who has requested notice under Subsection (d); and
    - iii. regular mail to any other Person entitled to receive notice under the rules of the District.
- 4) A Person may request notice from the District of a public hearing on a Permit or a Permit Amendment Application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a public hearing in a later year, a Person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the Person in accordance with the information provided by the Person is proof that notice was provided by the District. Failure to provide notice under this section does not invalidate an action taken by the District at the hearing.

**Rule 20.5: Hearing Registration**

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

- A. the person's name;
- B. the person's address; and
- C. whom the person represents, if the person is not there in the person's individual capacity.

**Rule 20.6: Board Action; Contested Case Hearing Requests; Preliminary Hearing**

- A. The Board may take action on any uncontested Application at a properly noticed public meeting held at any time after the public hearing at which the Application is scheduled to be heard. The Board may issue a written order to:
  - 1) grant the Application;
  - 2) grant the Application with special conditions; or

- 3) deny the Application.
- B. The Board shall schedule a preliminary hearing to hear a request for a contested case hearing. The preliminary hearing may be conducted by:
- 1) a quorum of the Board;
  - 2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or
  - 3) the State Office of Administrative Hearings.
- C. Following a preliminary hearing, the Board shall determine whether any Person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the Application has been raised. If the Board determines that no Person who requested a contested case hearing had standing or that no justiciable issues were raised, the Board may take any action authorized under Subsection A.
- D. An Applicant may, not later than the 20th day after the date the Board issues an order granting the Application, demand a contested case hearing if the order:
- 1) includes special conditions that were not part of the Application as finally submitted; or
  - 2) grants a maximum amount of Groundwater production that is less than the amount requested in the Application; or
  - 3) allows the presiding officer, at a preliminary hearing by the District and before a referral of the case to the State Office of Administrative Hearings, to determine a Person's right to participate in a hearing according to Section 36.415(b)(2).

**Rule 20.7: Hearing Procedures**

- A. A hearing must be conducted by:
- 1) a quorum of the Board;
  - 2) an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing; or
  - 3) the State Office of Administrative Hearings under Water Code Section 36.416.
- B. If the hearing is conducted by a quorum of the Board, the Board president or the hearings examiner shall serve as the presiding officer at the hearing.
- 1) If the Board president is not present, the directors conducting the hearing may select a director to serve as the presiding officer.
  - 2) The presiding officer may:

- a) convene the hearing at the time and place specified in the notice;
- b) set any necessary additional hearing dates;
- c) designate the parties regarding a contested application;
- d) establish the order for presentation of evidence;
- e) administer oaths to all persons presenting testimony;
- f) examine persons presenting testimony;
- g) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
- h) prescribe reasonable time limits for testimony and the presentation of evidence;
- i) limit participation in a hearing on a contested Application to Persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within a District's regulatory authority and affected by a Permit or Permit Amendment Application, not including Persons who have an interest common to members of the public; and
- j) determine how to apportion among the parties the costs related to:
  - i. a contract for the services of a presiding officer; and
  - ii. the preparation of the official hearing record.

C. Except as provided by these rules, the District may allow any Person, including the General Manager or a District employee, to provide comments at a hearing on an uncontested Application.

- 1) The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
- 2) If the Board has not acted on the Application, the presiding officer may allow a Person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the 10th Day after the date of the hearing. A Person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the 10th Day after the date of the hearing, to any Person who provided comments on an uncontested Application or any party to a contested

hearing. A Person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the 10th Day after the date the material was received.

- 3) The District may authorize the presiding officer, at the presiding officer's discretion, to issue an order at any time before Board action under these rules that:
  - a) refers parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;
  - b) determines how the costs of the procedure shall be apportioned among the parties; and
  - c) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

**Rule 20.8: Evidence**

- A. The presiding officer shall admit evidence that is relevant to an issue at the hearing.
- B. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

**Rule 20.9: Recording**

- A. Except as provided by Subsection B, the presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to a contested hearing, the presiding officer shall have the hearing transcribed by a court reporter. The presiding officer may assess any court reporter transcription costs against the party that requested the transcription or among the parties to the hearing. Except as provided by this subsection, the presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party.
- B. If a hearing is uncontested, the presiding officer may substitute minutes or the report required under Section 36.410 for a method of recording the hearing provided by Subsection A.

**Rule 20.10: Continuance**

The presiding officer may continue a hearing from time to time and from place to place without providing notice under Rule 4. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.

**Rule 20.11: Proposal for Decision**

- A. Except as provided by Subsection E, the presiding officer shall submit a proposal for decision to the Board not later than the 30th Day after the date the evidentiary hearing is concluded.
- B. The proposal for decision must include:
  - 1) a summary of the subject matter of the hearing;
  - 2) a summary of the evidence or public comments received; and
  - 3) the presiding officer's recommendations for Board action on the subject matter of the hearing.
- C. The presiding officer or General Manager shall provide a copy of the proposal for decision to:
  - 1) the Applicant; and
  - 2) each designated party.
- D. A party may submit to the board written exceptions to the proposal for decision.
- E. If the hearing was conducted by a quorum of the Board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), the presiding officer shall determine whether to prepare and submit a proposal for decision to the Board under this section.
- F. The Board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Section 36.409.

**Rule 20.12: Board Action**

The Board shall act on a Permit or Permit Amendment Application not later than the 60th Day after the date the final hearing on the Application is concluded.

**Rule 20.13: Request for Rehearing or Findings and Conclusions**

- A. An Applicant in a contested or uncontested hearing on an Application or a party to a contested hearing may administratively appeal a decision of the Board on a Permit or Permit Amendment Application by requesting written findings and conclusions not later than the 20th Day after the date of the Board's decision.
- B. On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a Permit or Permit Amendment Application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35th day after the date the Board receives the request. A party to a contested hearing may request a rehearing not later than the 20th Day after the date the Board issues the findings and conclusions.
- C. A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing.
- D. 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.
- E. The failure of the Board to grant or deny a request for rehearing before the 91st Day after the date the request is submitted is a denial of the request.

**Rule 20.14: Decision; When Final**

- A. A decision by the Board on a Permit or Permit Amendment Application is final:
  - 1) if a request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
  - 2) if a request for rehearing is filed on time, on the date:
    - (a) the Board denies the request for rehearing; or
    - (b) the Board renders a written decision after rehearing.
- B. Except as provided by Subsection C, an Applicant or a party to a contested hearing may file a suit against the District under Texas Water Code Section 36.251 to appeal a decision on a Permit or Permit Amendment Application not later than the 60th Day after the date on which the decision becomes final.
- C. An Applicant or a party to a contested hearing may not file suit against the District under Texas Water Code Section 36.251 if a request for rehearing was not filed on time.

**Rule 20.15: Consolidated Hearing on Applications**

- A. Except as provided by Subsection B, a District shall process Applications from a single Applicant under consolidated notice and hearing procedures on written request by the Applicant if the District requires a separate Permit or Permit Amendment Application for:
- 1) drilling, equipping, operating, or completing a Well or substantially altering the size of a Well or Well pump under Texas Water Code Section 36.113;
  - 2) the spacing of Groundwater Wells or the production of Groundwater under Section 36.116; or
  - 3) transferring Groundwater out of the District under Texas Water Code Section 36.122.
- B. The District is not required to use consolidated notice and hearing procedures to process separate Permit or Permit Amendment Applications from a single Applicant if the Board cannot adequately evaluate one Application until it has acted on another Application.

**Rule 20.16: Hearings Conducted by State Office of Administrative Hearings; Rules**

- A. If the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code.
- B. If requested by the Applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct the hearing.
- C. The Applicant or other party must request the hearing before the State Office of Administrative Hearings not later than the 14th Day before the date the evidentiary hearing is scheduled to begin. The hearing must be held in Travis County or at a location described by Texas Water Code Section 36.403(c). The District shall choose the location.
- D. The party requesting the hearing before the State Office of Administrative Hearings shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party. All other costs may be assessed as authorized by this chapter or District rules.
- E. An administrative law judge who conducts a contested case hearing shall consider applicable District rules or policies in conducting the hearing, but the District will not supervise the administrative law judge.

- F. The District shall provide the administrative law judge with a written statement of applicable rules or policies.
- G. The District will not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.

**Rule 20.17: Final Decision; Contested Case Hearings**

- A. In a proceeding for a Permit Application or Amendment in which the District has contracted with the State Office of Administrative Hearings for a contested case hearing, the Board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge.
- B. The Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the Board determines:
  - 1) that the administrative law judge did not properly apply or interpret applicable law, District rules, written policies or prior administrative decisions;
  - 2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or
  - 3) that a technical error in a finding of fact should be changed.
  - 4) The Board shall state in writing the specific reason and legal basis for a change made under this section.

**Rule 20.18: Rules; Alternative Dispute Resolution**

The District encourages the use of alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code.

**Rule 20.19: Rules; Contested Case Hearings; Applicability of Administrative Procedure Act**

- A. The District, acting through its hearing officer, may, in the hearing officer's discretion apply the evidence, witnesses and discovery rules for contested hearings consistent with Subchapter D, Chapter 2001, Government Code, including the authority to issue a subpoena, require a deposition, or order other discovery.
- B. Except as provided by this section and Texas Water Code Sections 36.416 and 36.4165, Chapter 2001, Government Code, does not apply to a hearing under this subchapter.

### **Rule 21: Miscellaneous**

- A. All Applications, notices, or documents required under these rules shall be filed with the District office at 125 Lehmann Drive, Ste. 202, Kerrville, Texas.
- B. If any section, sentence, paragraph, clause, or part of these rules should be held or declared invalid for any reason by a final judgment of the courts of this state or of the United States, such decision or holding shall not affect the validity of the remaining portions of these rules; and the District Board does hereby declare that it would have adopted and promulgated such remaining portions of such rules irrespective of the fact that any other sentence, section, paragraph, clause, or part thereof may be declared invalid.
- C. The District Board shall compile its rules and make them available for use and inspection at the District's office and on its website: [www.hgcd.org](http://www.hgcd.org).

## **Appendix A**

### **HGCD POLICY 2010-2**

#### **Headwaters Groundwater Conservation District (the District)**

Policies to comply with Water Code Chapter 36.061

Subject to the law governing the District, the Board has adopted the following:

1. **A code of ethics for District directors, officers, employees, and persons who are engaged in handling investments for the District;**

In accordance with the District Public Funds Investment Policy, only the Public Funds Investment Officer with approval of the Board is authorized to execute investment transactions. All investment transactions shall require two signatures that of the Public Funds Investment Officer and either the Board Secretary/Treasurer, Board President or the Board Vice President.

2. **A Policy relating to travel expenditures;**

The District pays all actual and necessary expenses for directors or employees who must travel to conduct District business. Reimbursement is on the basis of a properly completed and approved expense account form. Receipts are necessary for all expenses turned in on an expense account. Travel expenditures by District directors or the General Manager shall be approved by the Board president. The General Manager shall approve travel expenditures

for the District staff. Documented personal mileage re-imbursement will be made according to the current IRS mileage rate.

3. **A Policy relating to District investments that ensures that:**

- A. Purchases and sales of investments are initiated by authorized individuals, conform to investment objectives and regulations, and are properly documented and approved; and**

All purchases and sales of investments for the District will be done in accordance with the District Public Funds Investment Policy under the direction of the Public Funds Investment Officer.

- B. Periodic review is made of District investments to evaluate investment performance and security;**

Periodic review is required by the District Public Funds Investment Policy by the Board to evaluate any District investments.

4. **Policies and procedures for selection, monitoring, or review and evaluation of professional services;**

It is the policy of the District to select and employ professional services in accordance with the District By-Laws article IV section 3 and Texas Water Code Chapter 36. Sections 36.056 and 36.057.

5. **Policies that ensure a better use of management information, including:**

- A. Budgets for use in planning and controlling cost;**

The District prepares and approves an annual budget in accordance with Texas Water Code Chapter 36.154.

- B. An audit or finance committee of the Board;**

The District employs an external auditor to provide the District with an “Annual Financial Report”.

The District audit shall be performed according to the generally accepted government auditing standards adopted by the American Institute of Certified Public Accountants.

Financial statements shall be prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants.

Adopted by the Headwaters Groundwater Conservation District Board of Directors

July 14, 2010 -- Revised January 13, 2016