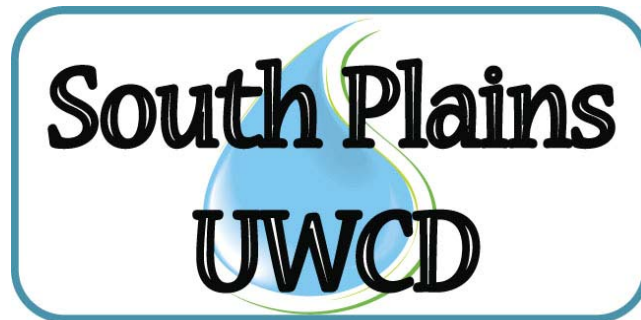


South Plains Underground Water Conservation District Rules



**Amended: September 1, 2009
Effective: October 6, 2009**

PO Box 986
Brownfield, TX 79316

The rules of the South Plains Underground Water Conservation District are hereby published as of the 6th day of October 2009.

In accordance with Section 59 of Article XVI of the Texas Constitution and Acts of April 12, 1991, 72nd Legislature, Regular Session, Chapter 46, 1991 Texas General Laws and Chapter 36 of the Texas Water Code, the following rules are hereby ratified and adopted as the rules of this District by its Board. Each rule as worded herein has been in effect since the date of passage and as may be hereafter amended.

The rules, regulations, and modes of procedure herein contained are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the water laws of the State and the rules of this District. To the end that these objectives are attained, these rules will be so construed.

These rules may be used as guides in the exercise of discretion, where discretion is vested. However, under no circumstances and in no particular case may these rules be construed as a limitation or restriction upon the exercise of powers, duties, and jurisdiction conferred by law. These rules will not limit or restrict the amount and accuracy of data or information that may be required for the proper administration of the law.

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SECTION 1. DEFINITIONS AND CONCEPTS

RULE 1.1 DEFINITIONS:

- (a) **“Abandoned Well”** – shall mean a well that has not been used for six consecutive months. A well is considered to be in use in the following cases: (1) a non-deteriorated well that contains the casing, pump, and pump column in good condition; or (2) a non-deteriorated well that has been capped.
- (b) **“Administratively Complete Application”** – means an application (1) for which all information requested by the District has been fully and accurately provided; (2) that complies with District rules; (3) for which all applicable deposits and/or fees have been paid; (4) that has been reviewed by District staff and (5) that has all necessary field and site visits completed as applicable.
- (c) **“Acre”** – shall mean unit of land measurement equaling 43,560 square feet.
- (d) **“Acre-foot”** – shall mean the volume of water that will cover an area of one acre to a depth of one foot (approx. 325,829 gallons).
- (e) **“Agent”** – shall mean a person authorized by a landowner to sign and execute forms of the district, including well registration and permit applications. Such authorization shall be made by completion of a Power of Attorney form provided by the District.
- (f) **“Applicant”** – shall mean the owner of the land, on which a well(s) or proposed well(s) is/are located, unless the landowner authorizes another person to submit the permit or registration.
- (g) **“Aquifer”** – shall mean a formation or group of saturated geologic units capable of storing and yielding water in usable quantities.
- (h) **“Board”** – shall mean the Board of Directors of the South Plains Underground Water Conservation District.
- (i) **“Casing”** – shall mean a tubular watertight structure installed in an excavated or drilled hole to maintain the well opening.
- (j) **“Commercial Irrigation System”** – shall mean any water distribution device, installed above ground or below ground that applies water to the surface or subsurface of the earth and is used to irrigate land intended for commercial use. Water delivery devices used to water lawns and for non-commercial use are not considered commercial irrigation systems.
- (k) **“Conservation”** – shall mean practices, techniques and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the use of recycled water.

- (l) **“Deteriorated Well”** – shall mean a well, the condition of which will cause, or is likely to cause, pollution of groundwater in the District.
- (m) **“District”** – shall mean the South Plains Underground Water Conservation District.
- (n) **“District Act”** – Acts of April 12, 1991, 72nd Legislature, Regular Session, Chapter 46, 1991, Texas General Laws and the non-conflicting provisions of Chapter 36, Water Code.
- (o) **“Gallons per minute” (gpm)** – shall mean the amount of water in U.S. gallons that a well or wells is/are capable of delivering or is actually delivering per minute.
- (p) **“Groundwater”** – shall mean water percolating below the surface of the earth but does not include water produced with oil in the production of oil and gas.
- (q) **“Grandfathered Well”** – shall mean a well drilled prior to March 9, 1993 that is capable of producing more than 25,000 gallons of groundwater per day and is registered with the District.
- (r) **“Hearing Officer”** – shall mean a person appointed by the Board to conduct a hearing or other proceeding.
- (s) **“Leachate Well”** – shall mean a well used to remove contamination from soil or groundwater.
- (t) **“Monitoring Well”** – shall mean an artificial excavation constructed to measure or monitor the quantity or movement of substances below the surface of the ground. The term does not include any monitoring well used in conjunction with the production of oil, gas, or other minerals.
- (u) **“Open or Uncovered Wells”** – shall mean an excavation at least ten feet in depth dug for the purpose of producing groundwater and is not covered or capped as required by the Texas Water Code.
- (v) **“Owner”** – shall mean without limitation any person, partnership, firm corporation, municipal corporation, governmental or proprietary body, association of such persons or agent of such entity that has the right to produce water from the land, where the water well or proposed water well is located, either by contract, lease, easement or any other estate in the land.
- (w) **“Permitted Well”** – shall mean a well permitted by the District.
- (x) **“Person”** – shall mean any individual, partnership, firm, governmental agency, political subdivision, corporation, or other legal entity.
- (y) **“Pollution”** – shall mean the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the District that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or

property, or to public health, safety or welfare, or impairs the usefulness of the water for any lawful or reasonable purpose.

- (z) **“Registered Well”** – shall mean a well registered with the District in accordance with Section 4 of the District Rules.
- (aa) **“Rules”** – shall mean the rules of the District compiled in this document and as may be supplemented or amended from time to time.
- (bb) **“Texas Open Meetings Law”** – shall mean Chapter 551, Government Code.
- (cc) **“Texas Open Records Law”** – shall mean Chapter 552, Government Code.
- (dd) **“Waste”** – shall mean Chapter 36.001(8), Texas Water Code and Section 14 herein.
- (ee) **“Well”** – shall mean any facility, device, or method used to withdraw groundwater from the groundwater supply within the District.
- (ff) **“Well Owner or Well Operator”** – shall mean the person who owns the land upon which a well is located or is to be located or the person who operates a well or a water distribution system supplied by a well.
- (gg) **“Withdraw”** – shall mean extracting groundwater by pumping or by another method.

RULE 1.2 PURPOSE OF RULES: These rules are adopted to achieve the provisions of the District Act and accomplish its purposes.

RULE 1.3 USE AND EFFECT OF RULES: The District uses these rules as guides in the exercise of the powers conferred by law and in the accomplishment of the purposes of the District Act. They may not be construed as a limitation or restriction of the exercise of any discretion, nor be construed to deprive the District or Board of the exercise of any powers, duties, or jurisdiction conferred by law, nor be construed to limit or restrict the amount and character of data or information for the proper administration of the District Act.

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

RULE 1.6 CONSTRUCTION: 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 THESE RULES: Except as otherwise expressly provided in these rules, any notice or documents required by these rules to be served or

delivered may be delivered to the recipient, or the recipient's authorized representative, in person, by agent, by courier receipted delivery, by certified mail sent to the recipient's last known address, or by telephonic document transfer to the recipient's current telecopy number. Service by mail is complete upon transfer deposit in a post office or other official depository in 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 on the following business day. If service or delivery is by mail, and the recipient has the right, or is required, to do some act within a prescribed time after service, three days will be added to the prescribed period. Where service by one or more methods has been attempted and failed, the service is complete upon notice publication in a generally circulated newspaper in the District.

RULE 1.8 SEVERABILITY: If any one or more of the provisions contained in these rules are 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 rules 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 conserving, preserving, protecting and recharging the groundwater within the District, and to exercise its rights, powers, and duties in a way that will effectively and expeditiously accomplish the purposes of the District Act. The Board's responsibilities include, but are not limited to, the adoption and enforcement of reasonable rules and other orders.

SECTION 3. DISTRICT

RULE 3.1 DISTRICT MANAGEMENT PLAN: The District Management Plan specifies the acts, procedures, performances and avoidance necessary to prevent waste and the extreme decline of the water table, and forms the basis of the District rules in regards to permitting decisions and other requirements imposed by the Board. The Board will review the plan at least every fifth year. 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 the new plan.

SECTION 4. REGISTRATION OF WELLS

RULE 4.1 REGISTRATION OF WELLS:

Registration is required for all existing and proposed wells in the District, and shall be filed with the District on forms supplied by the District.

- (a) Wells exempt from registration include monitoring wells, leachate wells and dewatering wells.
- (b) Wells previously “enrolled” with the District shall be considered registered upon enactment of these rules.
- (c) No person or entity shall drill or operate any well in the District without first registering the well with the District, even though the well may be exempt from permitting.
- (d) Any new well exempt from permitting must be registered by the owner or agent prior to drilling.

RULE 4.2 REGISTERED WELLS EXEMPTED OR EXCLUDED FROM PERMITTING REQUIREMENTS

- (a) Wells exempt from permitting include:
 - (1) a well drilled or equipped such that it is incapable of producing more than 25,000 gallons of groundwater per day;
 - (2) a well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the Railroad Commission permit is responsible for drilling and operating the water well and the well is located on the same lease or field associated with the drilling rig;
 - (3) a water well authorized under a permit issued by the Railroad Commission of Texas under Natural Resources Code Chapter 134, provided the withdrawals are not greater than the amount necessary for mining activities specified in the Railroad Commission permit, regardless of any subsequent use of the water; and
 - (4) leachate wells, extraction wells, injection wells, relief wells, dewatering wells, and monitoring wells.
- (b) A well exempt under Subsection (a)(1) will lose its exempt status and the well owner or well operator must obtain a permit to continue operating the well if the well is subsequently used for a purpose or in a manner that is not exempt under Subsection (a)(1).
- (c) A well owner or well operator of a well exempt under Subsection (a)(3) shall report monthly to the District:
 - (1) the total amount of water withdrawn during the month;
 - (2) the quantity of water necessary for mining activities; and
 - (3) the quantity of water withdrawn for other purposes.
- (d) In order to determine if a well is exempt under Subsection (a)(4), the Board may require the well owner or well operator to submit information verifying the amount of annual production from the well. If the Board determines that there is no reasonable basis for determining the amount of production, the Board may require that a water meter be installed within a specified time period.
- (e) A water well exempt under Subsection (a) shall be:
 - (1) registered in accordance with these Rules; and

- (2) equipped and maintained so as 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 or harmful alteration of the character of the water in any groundwater reservoir.
- (f) The driller of a well exempted under Subsection (a) shall file the drilling log with the District.
 - (g) Groundwater withdrawn from a well exempt from permitting under this section and subsequently exported outside the boundaries of the District requires notice to the District and is subject to any applicable production and export fees.
 - (h) A water well exempt under subsection (a)(2) and (a)(3) must either be plugged or transferred to the owner of the surface estate within 90 days after the exploration or mining operations are complete and well owner or well operator shall provide notice to the District that the plugging or transfer is complete.

SECTION 5. DEPOSITS FOR REGISTRATIONS/PERMITS

- RULE 5.1 DEPOSITS:** Each registration or permit application to drill a new well must be accompanied by a deposit, which will be accepted, receipted and deposited by the District. The amount of said deposit will be established from time to time by Board resolution.
- RULE 5.2 RETURN OF DEPOSITS:** The deposit tendered for each registration or permit application to drill a new well will be returned if:
- (a) in the case of a drilled and completed new well:
 - (1) the registration or permit and the completed State of Texas Water Well Report are returned to the District office within four (4) months after the registration or permit was issued, and
 - (2) when applicable, a water sample is submitted for analysis according to Section 10.2(c) of the District's rules, and
 - (3) upon inspection by District staff, the well is found to be in the proper location, completed and equipped according to appropriate State and District rules, or
 - (b) in the case of an abandoned location:
 - (1) the registration or permit is returned to the District office within four (4) months after the registration or permit was issued, and
 - (2) upon inspection by District staff, the proper abandonment of the well site is confirmed, or
 - (c) in the case of the well not having been drilled:
 - (1) the registration or permit is returned to the District office within four (4) months after the registration or permit was issued, and
 - (2) upon inspection by District staff, no well was found to have been drilled.
 - (d) the application is denied.
- RULE 5.3 FORFEITURE OF DEPOSIT:** The deposit submitted for each registration or permit is forfeited when:
- (a) Drilling begins before a registration or permit is issued;
 - (b) A copy of the State well report is not submitted to the District within four (4) months after the date of application; or
 - (c) The registration or permit is not returned to the District within four (4) months of issuance.

SECTION 6. PRODUCTION LIMITATIONS

RULE 6.1 MAXIMUM ALLOWABLE PRODUCTION:

- (a) Maximum allowable production for permitted/grandfathered wells is 5 gallons per minute per contiguous acre owned. Determination of maximum allowable production will always and only be for the contiguous tract of land where the well or wells will be permitted.
- (b) In no event may a well or wells be operated such that the total annual production exceeds 4 acre-feet of water per contiguous acre owned.
- (c) In the event an existing well or wells is/are located on property where a permit to drill a new well has been applied for, said cumulative production per acre owned or operated shall be computed by District personnel of the existing well or wells. The District shall note on the application the maximum rate at which the new well can be operated if all existing wells are operated at the reported rate. At the discretion of District personnel, the actual rate of water produced will be calculated using a flow meter to measure the gallons per minute the well or wells is/are producing during normal operations.
- (d) In applying this rule in relation to small acreage plots, the Board may hear the party seeking relief and have the power to make exceptions to this rule. The party seeking exception must show clear, convincing evidence to support the granting of the exception and shall show the use of approved conservation methods to be used if the exception is granted. Such exceptions become invalid if the permitted use is discontinued. The Board may hold a hearing before granting an exception in accordance with Section 15 of the District rules.

SECTION 7. WELL SPACING REQUIREMENTS

RULE 7.1 SPACING OF WELLS FROM PROPERTY LINES:

(a) A well permitted subsequent to the date of enactment of this rule shall meet the following distance and production limitations:

Distance From Property Line (feet)	Maximum Rate of Production (gpm)
300-374	265
375-449	390
450-599	560
600-659	1,000
>660	>1,000

(b) In the interest of protecting life, or for the purpose of preventing waste, the Board reserves the right to enter special orders to increase or decrease the distances and/or maximum rates of production provided by this rule.

RULE 7.2 SPACING OF WELLS FROM EXISTING WELLS ON ONE’S OWN PROPERTY:

(a) A well permitted subsequent to the date of enactment of this rule shall meet the following distance and production limitations:

Minimum Distance From Existing Wells on One’s Own Property (feet)	Maximum Rate of Production (gpm)
300	125
600	265
750	390
900	560
1,200	1,000
>1,320	>1,000

(b) In the interest of protecting life, or for the purpose of preventing waste, the Board reserves the right to enter special orders to increase or decrease the distances and/or maximum rates of production provided by this rule.

RULE 7.3 ELEMENTS OF APPLICATION FOR EXCEPTION TO SPACING:

(a) The Board may grant exceptions to spacing Rules 7.1 or 7.2. This rule shall not be construed so as to limit the power of the Board, and the powers stated are cumulative only of all other powers possessed by the Board.

(b) If an exception to spacing rules is desired, application therefore shall be submitted by the applicant in writing to the Board at the District office on forms provided by the District. The application shall:

- (1) Be accompanied by a non-refundable processing fee, the amount of which will be established from time to time by Board resolution, and
- (2) Be accompanied by a map and shall accurately show:
 - (A) the proposed well location,

- (B) the location of all existing wells within the designated distances described in Rules 7.1 and/or 7.2 on all affected properties, and
- (C) the land owner(s) name(s) and address(es), and
- (3) Show, by clear and convincing evidence, why a new well should be allowed to be drilled closer than the spacing required in Rules 7.1 and/or 7.2, and
- (4) State the maximum rate of production (gallons per minute) being requested, and
- (5) State the use of the water to be produced from the proposed well location, and
- (6) Be signed and sworn to by the applicant.

RULE 7.4 EXCEPTION TO SPACING FROM PROPERTY LINES

- (a) An exception may be granted by the Board after notice and hearing in accordance with Section 15 of these rules.
- (b) The Board may grant an exception to spacing request to Rule 7.1 without notice and hearing provided that:
 - (1) The application, information and fee required in Rule 7.3(b) is submitted and
 - (2) The affected adjoining landowner(s) or their legal representative(s) appear in person at the District office and execute a waiver in writing on forms provided by the District. Information to be included on the waiver form shall include:
 - (A) that the affected landowner(s) does not/do not object to the Board's granting of such exception, and
 - (B) the maximum rate of production (gallons per minute) the affected landowner(s) is/are agreeing may be produced, and
 - (C) the proposed location of the excepted well site to which the affected landowner(s) is/are agreeing to, and
 - (3) The waiver is signed and sworn to by the affected landowner(s) or their agent(s).
- (c) If an exception to Rule 7.1 is sought for a tract of land that, due to the location of property lines, it is physically impossible to locate a well site that would not be in conflict with Rule 7.1 and there is no permitted well or permissible well location on the tract for which the exception is being sought, the fee required in Rule 7.3(b)(1) shall be refunded to the applicant upon meeting the requirements of Rule 5.2.
- (d) The Board may set a maximum allowable production rate for any well granted an exception to the spacing under this rule.

RULE 7.5 EXCEPTION TO SPACING FROM EXISTING WELLS

- (a) All applications for exception to spacing Rule 7.2 will be considered by the Board in accordance with the permit hearing provisions in Section 15 of these rules.

SECTION 8. PERMITTING PROCEDURES

RULE 8.1 ISSUANCE OF TEMPORARY WATER WELL PERMITS

- (a) The Board shall issue or cause to be issued sequentially numbered temporary water well permits for the purposes of drilling a water well or changing the operation of an exempt well determined to require said permit in accordance with Section 4 of the District rules.
- (b) An Application for Temporary Water Well Permit (permit) shall be considered filed when properly filled out on District forms, signed, tendered and accompanied by the required deposit at the District office.
- (c) If, based on the applicant's information, it is determined that the proposed well(s) is/are compliant with District rules, then the temporary well permit application may be issued and the applicant may proceed at his own risk to drill the permitted well.
- (d) In drilling a well with a temporary permit prior to approval and issuance of a final permit by the Board, the applicant expressly assumes the risk that the permit application may ultimately be denied or granted only in part with special conditions by the Board, which may result in the well having to be equipped at a lesser capacity or plugged by the applicant or in the applicant having to obtain waivers from adjacent property owners in order to fully comply with the District Rules or such special permit conditions.

RULE 8.2 ELEMENTS OF AN APPLICATION FOR TEMPORARY WATER WELL PERMIT

- (a) An applicant must qualify himself in one of the following ways:
 - (1) If the applicant is an individual, the application shall be signed by the applicant or his duly appointed agent
 - (2) An Agent's authority to represent the applicant is met when the District's Power of Attorney form is completed.
 - (A) Such authority may be granted solely for said permit.
 - (3) If the application is by partnership, the applicant shall be designated by its legal firm name and the application shall be signed by at least one of the general partners who is duly authorized to bind all of the partners.
 - (4) In the case of a corporation, public district, county or municipality, the application shall be signed by a duly authorized official. A copy of the resolution or other authorization to make the application may be required by the officer or agent receiving the application.
 - (5) In the case of an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate.
- (b) Information required on the application is as follows:
 - (1) The name and address of the owner of the land upon which the application is made.
 - (2) The proposed location of the well to be drilled as provided in the application including Block and Section and:
 - (A) the number of feet to each of two closest non-parallel property lines and the number of feet to existing wells on the property, or
 - (B) the location of all existing wells measured in feet from the nearest two non-parallel property lines, and a signed agreement that the well

drilled under the authority of the permit will be located such that it is not in conflict with District Rules 7.1 and 7.2.

- (3) Verification of total contiguous acreage of land owned by landowner on which the well is to be drilled.
 - (4) Existing production of groundwater on the subject property.
 - (5) Estimated yield of proposed well
 - (6) Any additional information as may be required by the Board
- (c) The application must be signed and sworn to. The applicant's signature indicates the applicant:
- (1) Has received a copy of the District's rules and agrees to comply with said rules.
 - (2) Agrees that all information provided by the applicant is correct, true, and in compliance with District rules.
 - (3) Agrees that upon any violation of this agreement, the Board may order that the well may no longer be used until the problem is permanently resolved to the satisfaction of the Board.

RULE 8.3 TIME DURING WHICH PERMIT SHALL REMAIN VALID

Any permit granted hereunder shall be valid if the work permitted shall have been completed within four (4) months from the filing date of the application. It shall thereafter be void. Drilling or operating a well is not allowed under a voided permit. Permittee may continue operating the well under the Temporary Water Well Permit until the application is granted, denied or returned as administratively incomplete.

RULE 8.4 PROOF OF REGISTRATION OR PERMIT REQUIRED

- (a) Any person actively engaged in the drilling of a well must have in their possession, while at the drilling site:
- (1) Either the completed copy of the Water Well Registration or Application for Temporary Water Well Permit or,
 - (2) The official number of the appropriate completed Water Well Registration or Application for Temporary Water Well Permit.
- (b) Any person actively engaged in the drilling of a well must provide proof of 8.4(a)(1) or 8.4(a)(2) if requested by any District director, employee or other legally authorized agent who presents his official credentials.

RULE 8.5 APPROVAL OF WATER WELL PERMITS

- (a) The Board will consider for approval only administratively complete permit applications. If an application is not administratively complete, the District shall request that the applicant complete the application. The permit application will expire if it is not complete within 90 days of the date of the District's request.
- (b) Upon completion of the work, District staff shall inspect the permitted site and recommend the Board either approve or disapprove the permit. The staff recommendation shall be based on a review of whether the permitted site meets the District's permitting rules.
- (c) The applicant shall thereafter be notified of the Board's consideration of the application in accordance with the permit hearing provisions in Section 15 of these rules.

- (d) If after a hearing on the permit application, the Board votes approval, then the permit shall be granted and become final. If the Board votes disapproval, then the application is rejected. The Directors may grant the permit only subject to special conditions.
- (e) If before the Board officially approves a permitted well location, a contest shall arise over the application, then the Board may conduct a hearing in accordance with Section 15 of these rules.

SECTION 9. RECORDS OF DRILLING ACTIVITIES

RULE 9.1 DRILLING LOGS

- (a) Accurate records shall be kept and reports thereof made to the District of all wells drilled.
- (b) No person shall produce water from any well, except that necessary for drilling and testing, until the District has been furnished with a completed driller's log (Form TNRCC-0199 State of Texas Well Report or its successors).

SECTION 10. WELL LOCATION AND COMPLETION/PLUGGING

RULE 10.1 RESPONSIBILITY

- (a) After a Water Well Registration or Application for Temporary Water Well Permit has been issued, the well, if drilled, must be drilled within 30 feet of the location specified on the registration or permit, not closer to property lines or existing wells that would cause the well location to be in violation of Rules 7.1 and/or 7.2, and not elsewhere.
- (b) If a permit was issued under the provisions of Rule 8.2(b)(2)(B), Rule 10.1(a) does not apply except that the person to whom the permit was issued shall clearly mark the location of the well on the permit issued for that site and provide accurate measurements, in feet, to the two closest non-parallel property lines and to existing wells on the property.

RULE 10.2 COMPLETION/PLUGGING OF WELLS

- (a) All water wells drilled within the District shall be completed or plugged in accordance with the Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 76, Water Well Drillers and Pump Installers.
- (b) A violation of the Administrative Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 76, Water Well Drillers and Pump Installers shall be considered a violation of District Rules and disposition of such violations shall be in accordance with Section 15 of the District rules.
- (c) To aid the implementation of 76.1001 Water Well Drillers and Pump Installers Rules, the following procedure shall be used when drilling through formations underlying the Ogallala:
 - (1) A water sample from the Ogallala portion of the boring shall be submitted to the District Office for analysis of total salts.
 - (2) A water sample from any of the underlying formations shall likewise be submitted to the District office for analysis of total salts.

**SECTION 11. REWORKING, REDRILLING OR REPLACING A
PERMITTED/GRANDFATHERED WELL**

RULE 11.1 PROCEDURES FOR REWORKING A PERMITTED/GRANDFATHERED WELL

- (a) A permitted/grandfathered well may be reworked without a permit in a manner that will not change the permitted well's category as described in Section 7 of these rules.
- (b) A permit must be applied for if a party wishes to rework a well in such a way that will change the permitted well's category as described in Section 7 of these rules.

RULE 11.2 PROCEDURES FOR REDRILLING A PERMITTED/GRANDFATHERED WELL

- (a) A permit must be applied for if a party wishes to redrill a permitted/grandfathered well by any method.
- (b) The well being redrilled must conform to the well categories as described in Section 7 of these rules.

**RULE 11.3 QUALIFICATIONS/PROCEDURES FOR REPLACING A
PERMITTED/GRANDFATHERED WELL**

- (a) Qualifications:
 - (1) In order to qualify as a replaceable well;
 - (A) the well must have been permitted by the District after March 9, 1993, or
 - (B) the well must be grandfathered.
- (b) Procedures:
 - (1) To be considered as such, the replacement well must be:
 - (A) drilled within 75 feet of the well being replaced, and
 - (B) be no nearer to adjoining property lines within the spacing limitations in Rule 7.1 of these rules, and
 - (C) may not produce more water (gallons per minute) than the well it is replacing.
 - (2) Wells drilled prior to March 9, 1993, that are not currently in production and have not been in production because the property on which the well is located has not been irrigated during the well's non-productive period, may be replaced if, due to catastrophic circumstances, the well is rendered nonproduceable. In such cases, the maximum rate of production for the replacement well will be restricted to 265 gallons per minute if the replacement well is closer to the property line or existing water wells than allowed in Section 7 of these rules. If however, the applicant can show clear and convincing evidence that the well being replaced had a sustained production capacity greater than 265 gallons per minute at the time production ceased, the Board may allow the applicant to produce the replacement well at a rate greater than 265 gallons per minute.
 - (3) In all cases, the well being replaced must be plugged in accordance with Rule 10.2 of these rules.

SECTION 12. REGISTRATION OF COMMERCIAL IRRIGATION SYSTEMS

RULE 12.1 REGISTRATION REQUIRED/UPDATING

- (a) All commercial irrigation systems as defined in Rule 1(j) must be registered with the District.

RULE 12.2 PROCEDURE FOR REGISTERING COMMERCIAL IRRIGATION SYSTEMS

- (a) Registration of commercial irrigation systems shall be made on forms provided by the District.
- (b) Information required on the registration form shall include but shall not be limited to:
 - (1) Owner's name and address
 - (2) Location of the commercial irrigation system (Block, Section, quarter, or other legal description)
 - (3) Type of commercial irrigation system
 - (4) Delivery rate (gallons per minute) of commercial irrigation system
 - (5) Number of acres being irrigated
 - (6) The date of the registration

SECTION 13. WASTE, WASTE PREVENTION, AND BENEFICIAL USE/PURPOSE

RULE 13.1 WASTE MEANS ANY ONE OR MORE OF THE FOLLOWING:

- (a) Withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or stock raising purposes;
- (b) The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
- (c) Escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
- (d) Pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
- (e) Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, dam, 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 commission under Chapter 26;
- (f) Groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge; or
- (g) For water produced from an artesian well, “waste” has the meaning assigned by Section 11.205.

RULE 13.2 WASTE PREVENTION:

- (a) Groundwater may not be produced within, or used within or without the District, in such a manner as to constitute waste as defined in Rule 13.1 hereof.
- (b) No person shall pollute or harmfully alter the character of the groundwater reservoir of the District by means of salt water or other deleterious matter admitted from some other stratum or strata from the surface of the ground.

RULE 13.3 CATEGORIES OF BENEFICIAL USE OR BENEFICIAL PURPOSE:

- (a) Agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;
- (b) Exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
- (c) Any other purpose the District determines is economically useful and beneficial to the user.

**SECTION 14. REGISTRATION OF PERSONS AUTHORIZED TO
DRILL WELLS AND INSTALL PUMPS**

RULE 14.1 REGISTRATION OF WATER WELL DRILLERS

- (a) It is a violation of District rules for any person to be actively engaged in the drilling of a water well in the District without first having been registered with the District.
- (b) Only persons who are licensed water well drillers, in good standing with the Texas Department of Licensing and Regulation and whose license validity is verified with the District are allowed to drill water wells within the District.
- (c) Registration with the District shall be on forms provided by the District and be in accordance with and contain information called for on the form.

RULE 14.2 REGISTRATION OF WATER WELL PUMP INSTALLERS

- (a) It is a violation of District rules for any person to be actively engaged in the installation of a water well pump in the District without first having been registered with the District.
- (b) Only persons who are licensed water well pump installers, in good standing with the Texas Department of Licensing and Regulation and whose license validity is verified with the District are allowed to install water well pumps within the District.
- (c) Registration shall be on forms provided by the District and shall be in accordance with the information called for on the form.

SECTION 15. HEARINGS

RULE 15.1 TYPES OF HEARINGS: The Board shall conduct public hearings in accordance with established Board public hearing rules. A public hearing may be held on any matter within the jurisdiction of the Board if the Board or General Manager believes a hearing to be in the public interest, or necessary for completing the duties and responsibilities of the District. The Board shall conduct hearings for those matters prescribed by Chapter 36, Texas Water Code, which include, but are not limited to: 1) Rule-making/Management Plan and 2) Permits.

RULE 15.2 NOTICE AND SCHEDULING OF RULEMAKING HEARINGS:

- (a) No later than the 20th calendar day preceding the hearing the General Manager or Board shall:
 - (1) Post notice in a place readily accessible to the public in the District office.
 - (2) Provide notice to the County Clerk of each county in the District.
 - (3) Publish notice in one or more newspapers of general circulation within the District.
 - (4) Provide notice by mail, fax or e-mail to any person who has submitted a written request for notice of a hearing.
 - (5) Make available a copy of all proposed rules at a place accessible to the public during normal business hours and on the District website.
- (b) Hearings may be scheduled during the District's regular business hours, Monday – Friday of each week except District holidays.
- (c) At the Board's discretion, hearings may be held outside the District's regular business hours Monday – Friday to accommodate special circumstances.
- (d) Hearings will be held at the District office unless the Board specifies otherwise in the notice.

RULE 15.3 GENERAL RULES OF PROCEDURES FOR RULEMAKING HEARINGS:

- (a) Nature of Hearing: Hearings will be conducted in such manner as the Board deems most suitable to the particular case. It is the purpose of the Board to obtain information and comments relating to the proposed rule as conveniently and quickly as possible.
- (b) Comments may be submitted orally at the hearing or in writing. The presiding officer may hold the record open for a specified period after the conclusion of the hearing to receive additional written comments.
- (c) The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
- (d) The district may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested persons, or public representatives to advise the district about contemplated rules.
- (e) The district may require each person who participates in a rulemaking hearing to submit a hearing registration form stating: the person's name, address and whom the person represents, if the person is not at the hearing in the person's individual capacity.

RULE 15.4 NOTICE AND SCHEDULING OF PERMIT HEARINGS:

- (a) No later than the 10th calendar day preceding the hearing the general manager or board shall:
 - (1) Post notice in a place readily accessible to the public in the District office.
 - (2) Provide notice to the County Clerk of each county in the District.
 - (3) Provide notice by regular mail to the applicant.
 - (4) Provide notice by mail, fax or e-mail to any person who has submitted a written request for notice of a hearing.
- (b) Hearings may be scheduled during the District’s regular business hours, Monday – Friday of each week except District holidays.
- (c) At the Board’s discretion, hearings may be held outside the District’s regular business hours Monday – Friday to accommodate special circumstances.
- (d) Hearings will be held at the District office unless the Board specifies otherwise in the notice.

RULE 15.5 GENERAL RULES OF PROCEDURES FOR UNCONTESTED PERMIT HEARINGS:

Permit Hearings are designed to protect the due process rights of applicants and anyone who may be affected if a permit is granted.

- (a) Hearings will be conducted by a quorum of the Board, or a person whom the Board has delegated this responsibility, such as a Hearing Officer.
- (b) The Board may allow any person, including the General Manager or a district employee, to provide comments.
- (c) The presiding officer may examine persons presenting testimony, ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party, and prescribe reasonable time limits for testimony and the presentation of evidence.
- (d) Minutes will serve as the method of recording the hearing, unless the presiding officer specifies otherwise.
 - (1) If a report is used instead of minutes, it must be submitted within 30 days after the hearing to the applicant and each person who provided comment.
- (e) The district may require each person who participates in a permit hearing to submit a hearing registration form stating: the person’s name, address and whom the person represents, if the person is not at the hearing in the person’s individual capacity.
- (f) The presiding officer shall admit evidence that is relevant to an issue at the hearing, and may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

RULE 15.6 CONTESTED PERMIT HEARINGS:

- (a) Notice of Protest: In the event anyone should desire to protest or oppose any pending permit matter before the Board or a hearing officer, the person wishing to protest must file with the Board or hearing officer a written notice of protest or opposition on or before the date on which the application has been set for hearing. For convenience, it is urged that protests be filed at least five (5) days before the hearing date.
- (b) Protest Requirements: Protests shall be submitted in writing with a duplicate copy to the opposite party or parties and shall comply in substance with the following requirements:
 - (1) Each protest shall show the name and address of the protestant.

- (2) The protestant shall identify any injury that will result from the proposed action or matter to be considered by the Board.
 - (3) If the protest is based upon claim of interference with some present right of protestant, it shall include a statement of the basis of protestant's claim of right.
 - (4) Protestant should call attention to any amendment of the application or adjustment which, if made would result in withdrawal of the protest.
- (c) Contested Applications or Proceedings Defined: An application, appeal, motion, or proceeding pending before the Board is considered contested when either protestants or interveners, or both, files the notice of protest as above set out or appears at the hearing or proceeding and presents testimony or evidence in support of their contentions, or presents a question or questions of law regarding the application, motion, or proceeding. When neither protestants nor interveners so appear and offer testimony or evidence in support of their contentions, or raise a question of law with reference to any pending application, motion, or proceeding, the same shall be considered as uncontested.
- (1) In the event of a contested hearing, each party shall furnish other parties to the proceeding with the copy of all motions, amendments, or briefs filed by him with the Board or hearing officer.

RULE 15.7 GENERAL RULES OF PROCEDURES FOR CONTESTED PERMIT HEARINGS:

Permit Hearings are designed to protect the due process rights of applicants and anyone who may be affected if a permit is granted.

- (a) Hearings will be conducted by a quorum of the Board, or a person whom the Board has delegated this responsibility, such as a Hearing Officer.
- (b) The presiding officer may 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.
- (c) The presiding officer may examine persons presenting testimony, ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party, and prescribe reasonable time limits for testimony and the presentation of evidence.
- (d) 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.
 - (1) If the presiding officer prepares a report of the hearing, it must be submitted within 30 days after the hearing to the applicant and each person who provided comment.

- (e) The district may require each person who participates in a permit hearing to submit a hearing registration form stating: the person's name, address and whom the person represents, if the person is not at the hearing in the person's individual capacity.
- (f) The presiding officer shall admit evidence that is relevant to an issue at the hearing, and may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

RULE 15.8 REQUEST FOR REHEARING:

An Applicant may request a rehearing before the Board not later than the 20th day after the date of the Board's decision on any application for exception to the rules or on a contested matter.

- (a) The request for a rehearing must be filed in the principal office of the District and must state the grounds for the request.
- (b) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted.
- (c) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted constitutes a denial of the request.

RULE 15.9 DECISION; WHEN FINAL:

A decision by the Board on an application for exception to the Rules or a contested matter hearing is final:

- (a) on the expiration of the period for filing a request for rehearing, if a request for rehearing is not timely filed; or
- (b) if a request for rehearing is timely filed, on the date:
 - (1) the Board denies the request for rehearing; or
 - (2) the Board renders a decision after rehearing.
- (c) Except as provided by Subsection (d), an applicant or a party to a contested hearing may file a suit against the district 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.
- (d) An applicant or a party to a contested hearing may not file suit against the District if a request for rehearing was not filed on time.

SECTION 16. INVESTIGATIONS AND ENFORCEMENT

RULE 16.1 NOTICE AND ACCESS TO PROPERTY: Board Members and District representatives and employees shall be entitled access to all property within the District to carry out technical and other routine investigations necessary for the implementation of the District Rules. Prior to entering upon the 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, operator, agent, or employee of owner, lessee, operator, or agent, as determined by 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 Members or District representatives or employees who are attempting to conduct an investigation under District 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 Section 16.3 of the District rules. Each day access is denied represents a separate violation.

RULE 16.2 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 property.

RULE 16.3 RULE ENFORCEMENT-PENALTIES FOR VIOLATIONS:

- (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Rules, the Board may institute and conduct a suit in the name of the District for injunctive relief, or to recover civil penalties of not more than ten thousand dollars (\$10,000) for each violation and for each day of violation, or for both injunctive relief and civil penalties for enforcement of rules through the provisions of Chapter 36.102 Texas Water Code.
- (b) The Board shall, by resolution, adopt a Litigation Policy to implement Rule 16.3(a).

RULE 16.4 SEALING/CAPPING WELLS:

- (a) Sealing of Wells: The District may seek an injunction to seal wells that are prohibited from withdrawing groundwater within the district, to ensure that a well is not operated in violation of the District Rules. A well may be sealed when:
 - (1) no application has been made for a permit to drill a new water well which is not excluded or exempted; or
 - (2) no application has been made for a permit to change the operation of an exempt well determined to require said permit in accordance with Section 5 of the District rules; or
 - (3) the Board has denied, cancelled 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 any well owner or primary operator who authorizes or allows that action, to such penalties as provided by the District Rules.

- (b) Capping and Plugging Wells: The District may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must remain capped until such time as the conditions that led to the capping requirement are eliminated. If well pump equipment is removed from a well and the well will be re-equipped at a later date, the well must be capped, provided however that the casing is not in a deteriorated condition that would permit commingling of water strata in which case the well must be plugged. The cap must be capable of sustaining a weight of at least four hundred (400) pounds when installed on/in the well.