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REAL-EDWARDS CONSERVATION AND RECLAMATION DISTRICT RULES

ADOPTED: DECEMBER 12, 2001

EFFECTIVE: JANUARY 1, 2002

REVISED August 4th, 2004

Revised September 22nd, 2004

The rules of the Real-Edwards Conservation and Reclamation District were adopted in an open meeting held in accordance with the Texas Open Meetings Act, following public notice and public hearing.

In accordance with Section 59 of Article XVI of the Texas Constitution, Acts of the 56th Legislature (1959), Ch. 341, 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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REAL-EDWARDS
CONSERVATION AND RECLAMATION DISTRICT
DISTRICT RULES

SECTION 1. DEFINITIONS AND CONCEPTS

RULE 1.1 DEFINITIONS

In the administration of its duties, the Real-Edwards Conservation and Reclamation District follows the definitions of terms set forth in the District Act, Chapter 36 of the Texas Water Code, and other definitions as follows:

“Abandoned well” means a well that has not been used for six consecutive months. A well is considered to be in use in the following cases:

- (a) A non-deteriorated well that contains the casing, pump and pump column in good condition; or
- (b) A non-deteriorated well that has been capped.

“Acre” means the unit measure used to calculate the total land surface area under which the ownership of the water rights beneath the surface are identical.

“Acre-foot” means the amount of water necessary to cover one acre of land one foot deep, or about 325,000 gallons of water.

“Applicant” means the owner of the land on which the well(s) or proposed well(s) are located, unless the landowner authorizes another person to own the permit or registration.

“Aquifer storage and recovery project” means a process of storing water through injection wells or other means into a suitable aquifer for later recovery or retrieval.

“Artesian well” means a well completed in the confined portion of an aquifer such that, when properly cased, water will rise in the well, by natural pressure, above an overlying impermeable stratum.

“Board” means the Board of Directors of the District.

“Commission” means the Texas Natural Resource Conservation Commission, or its successor agency.

“Deteriorated well” means a well, the condition of which shall cause, or is likely to cause, pollution of any groundwater in the District.

“Director” means a person elected or appointed to serve on the board of directors of the district.

“District” means the Real-Edwards Conservation and Reclamation District.

“District Act” means acts of the 56th Legislature and the non-conflicting provisions of Chapter 36, Water Code.

“District Official” means district directors, officers, employees, and persons and business entities engaged in handling investments for the district as representatives of the district.

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

“Employee” means any person employed by the district, but does not include independent contractors or

professionals hired by the district as outside consultants,

“Groundwater” means water located beneath the earth's surface within the District but does not include water produced with oil in the production of oil and gas.

“Hearing Examiner” means a person appointed by the Board of Directors to conduct a hearing or other proceeding.

“Injection well” includes:

- (a) An air conditioning return flow well used to return water used for heating or cooling in a heat pump to the aquifer that supplied the water;
- (b) A cooling water return flow well used to inject water previously used for cooling;
- (c) A drainage well used to drain surface fluid into a subsurface formation;
- (d) A recharge well used to replenish the water in an aquifer;
- (e) A saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the freshwater;
- (f) A sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
- (g) A subsidence control well used to inject fluids into a non-oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; or
- (h) A closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

“Landowner” means the person who bears ownership of the land surface.

“Open Meetings Act” means Chapter 551, Texas Government Code.

“Open Records Act” means Chapter 552, Texas Government Code.

“Operating Permit” means a permit issued by the District for the drilling, equipping or completion of a non-exempt water well, the substantial alteration of the size of a non-exempt water well or well pump, or for groundwater to be withdrawn from a non-exempt water well for a designated period.

“Permittee” means any person to whom a permit has been issued under these Rules.

“Person” includes corporation, individual, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

“Pollution” means 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 or public enjoyment of the water for any lawful or reasonable purpose.

“Presiding Officer” means the President, Vice-President, Secretary, or other Board member presiding at any hearing or other proceeding or a Hearing Examiner conducting any hearing or other proceeding.

“Recharge facility” means any system for recharge, injection, storage, pressure maintenance, cycling or recycling of water, which includes one or more wells, spreading dams, or percolation basins, or any other surface or subsurface system engineered and designed for the purpose of recharging water into a groundwater reservoir.

“Rules” means the rules of the District compiled in this document and as may be supplemented or amended from time to time.

“Substantial Interest” means that as defined by current State law as of the date of adoption of this code of ethics, Chapter 171 of the Local Government Code regulating conflicts of interest of district officials.

“Texas Rules of Civil Procedure” and “Texas Rules of Civil Evidence” mean the civil procedure and evidence rules as amended and in effect at the time of the action or proceeding. Except as modified by the rules of the District, the rights, duties, and responsibilities of the Presiding Officer acting under the Texas Rules of Civil Procedure or the Texas Rules of Evidence are the same as a court acting under those rules.

“Waste” shall mean 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 watering purposes;
- (b) The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose;
- (c) Escape of groundwater from a groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater;
- (d) Pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
- (e) Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or 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 the occupant of the land receiving the discharge has granted permission;
- (g) Groundwater pumped for industrial use or application in excess of that quantity, if any, recognized by the industry according to its Standard Industrial Code (SIC) classification as being the maximum amount of water necessary to efficiently meet the demands for the particular use or application to which the groundwater is being made;
- (h) Groundwater used for heating or cooling that is allowed to drain on the land surface as tailwater and not re-circulated back to the aquifer; and
- (i) For water produced from an artesian well, waste has the meaning assigned by Section 11.205 of the Texas Water Code.

“Well” means any facility, device, or method used to withdraw groundwater from the groundwater supply within the District.

“Well owner” or “well operator” means 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.

“Well system” means a well or group of wells tied to the same distribution system.

“Withdraw” means 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. These rules may not be construed as a limitation or restriction on 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 that may be required to be collected 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

The 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

A reference to a title, chapter or section without further identification is a reference to a title, chapter or section of the Water Code. Construction of words and phrases are governed by the Code Construction Act, Subchapter B, Chapter 311, Government Code.

RULE 1.7 METHODS OF SERVICE UNDER THE RULES

Except as otherwise expressly provided in these rules, any notice or 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 deposit in a post office or other official depository of the United States Postal Service. Service by telephonic document transfer is complete upon transfer, except that any transfer occurring after 5:00 p.m. will be deemed complete 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 of more methods has been attempted and failed, the service is complete upon notice publication in a generally circulated newspaper in Real County and in a generally circulated newspaper in Edwards County.

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.

RULE 2.2 BOARD STRUCTURE, OFFICERS

The Board consists of the members elected and qualified as required by the District Act. The Board will elect one of its members to serve as President, to preside over Board meetings and proceedings; one to serve as Vice President to preside in the absence of the President; and one to serve as Secretary to keep a true and complete account of all meetings and proceedings of the Board. The Board may elect officers bi-annually, but must elect officers at the first meeting following the May elections of each even numbered year. Members and officers serve until their successors are elected or appointed and sworn in accordance with the District Act and these rules.

RULE 2.3 MEETINGS

The Board will hold a regular meeting once each quarter as the Board may establish from time to time by resolution. At the request of the President, or by written request of at least three members, the Board may hold special meetings. All Board meetings will be held according to the Texas Open Meetings Act.

RULE 2.4 COMMITTEES

The President may establish committees for formulation of policy recommendations to the Board, and appoint the chair and membership of the committees. Committee members serve at the pleasure of the President.

RULE 2.5 EX PARTE COMMUNICATIONS

Board members may not communicate, directly or indirectly, about any issue of fact or law in any contested case before the board, with any agency, person, party or their representatives, except on notice and opportunity for all parties to participate. A Board member may communicate ex parte with other members of the Board, subject to the terms of the Texas Open Meetings Act. This rule does not apply to a Board member who abstains from voting on any matter in which ex parte communications have occurred.

SECTION 3. DISTRICT STAFF

RULE 3.1 GENERAL MANAGER

The Board may employ a person to manage the District, and title this person general manager. The general manager will have no power, duty, or responsibility other than gathering information and performing District functions as determined by the Board. The Board will determine the salary and review the position of general manager each year at the beginning of the third quarter of every fiscal year. The general manager, with approval of the Board, may employ all persons necessary for the proper handling of business and operation of the District and the Board will set their salaries.

SECTION 4. DISTRICT

RULE 4.1 MINUTES AND RECORDS OF THE DISTRICT

All documents, reports, records, and minutes of the District are available for public inspection and copying following the Texas Open Records Act. Upon written application of any person, the District will furnish copies of its public records. A copying charge pursuant to policies established by the District will be assessed. The District will furnish a list of the charges for copies.

RULE 4.2 CERTIFIED COPIES

Requests for certified copies must be in writing. Certified copies will be made under the direction of the Board of Directors. A certification charge and copying charge may be assessed, pursuant to policies established by the District.

RULE 4.3 DISTRICT MANAGEMENT PLAN (Revised August 2004)

The District 2004-2014 Management Plan specifies the acts, procedures, performance and avoidance necessary to prevent waste, the reduction of artesian pressure, or the drawdown of the water table. The District shall use the Rules of the District to implement the Management Plan. The Board will review the plan at least every fifth year. The Board, after review and based on evidence presented at hearing, may amend the plan or adopt a new plan if the Board considers such amendment or adoption necessary or desirable. A plan, once adopted, remains in effect until the amendment of the plan the or adoption of a new plan (Revised August 4th, 2004)

RULE 4.4 FEES

- (a) The Board, by resolution, shall establish a schedule of fees. The Board will attempt to set fees that do not unreasonably exceed the costs incurred by the District of performing the administrative function which the fee is charged.
- (b) The Board, by resolution, shall establish a processing fee for an application for well registration, an Operating Permit, a groundwater transportation permit and any other permit provided for in these Rules to cover all reasonable and necessary costs to the District of processing such application. The fee shall be sufficient to cover actual costs incurred by the District for activities associated with processing the application, including, as appropriate: hydrogeological studies and modeling, field inspections, cost benefit analysis and economic modeling, professional fees, and cost of a contested case hearing including costs incurred by the District for a hearings examiner, expert witnesses, attorneys and transcript costs.
- (c) The Board may, by resolution, set and collect fees for all services provided by the District outside of the boundaries of the District. The fees may not unreasonably exceed the cost to the District of providing services outside of the District.
- (d) The District may, by resolution, assess production fees based on the amount of water authorized by permit to be withdrawn from a well or the amount of water actually withdrawn. Production fees shall not exceed the amount authorized by law.
- (e) In any case in which a contested hearing is anticipated, the Board may require the applicant to post a deposit, in an amount established by the District's schedule of fees, to cover anticipated processing costs. As the District incurs costs in processing the application, those costs may be reimbursed from funds deposited by the applicant. The applicant shall be provided an accounting of billings against the application processing deposit. Any funds remaining on deposit after the conclusion of application processing shall be returned to the applicant. If initially deposited funds are determined to be insufficient to cover costs incurred by the District in processing the application, an additional deposit may be required. If the applicant fails to deposit funds as required by the District, the application may be dismissed.

SECTION 5. WELL REGISTRATION AND PERMITTING

RULE 5.1 REGISTRATION OF EXISTING WELLS

Within one hundred and twenty (120) days after the effective date of these Rules, any well existing in the District on or before the effective date of these Rules that is capable of producing more than 25,000 gallons of groundwater per day must be registered with the District on a form prescribed by the District. Any other well in the District existing on or before the date of these Rules may be registered at any time with the District on a form prescribed by the District. A registration number will be issued for each well registered under this Rule 5.1 after the location of such well has been determined by the landowner and District personnel. All wells so registered shall be equipped and maintained so as to conform to the standards of the Texas Water Well Drillers and Pump Installers Rules.

RULE 5.2 REGISTRATION OF NEW WELLS

After the effective date of these Rules, no well owner, well operator, or water well driller may drill, equip or complete any well or substantially alter the size of any well or well pump in the District without first filing a well registration/application form with the District at least five (5) business days before the commencement of such work. The District staff will review the registration and make a preliminary determination as to whether the well meets the exclusions or exemptions provided in Rule 5.5. If the preliminary determination of the District staff is that the well is excluded or exempt, the registrant may begin drilling immediately upon receiving the approved registration. If the preliminary determination of the District staff is that the well is not excluded or exempt, then the registrant must file an application for an Operating Permit before the well may be drilled.

RULE 5.3 GENERAL OPERATING PERMIT POLICIES AND PROCEDURES

- (a) **Application.** Each application for an Operating Permit or a renewal or amendment of an Operating Permit must be filed with the District on the form or forms promulgated by the District, and must:
- (1) Be in writing and sworn to;
 - (2) Contain the name, mailing address and place of residence or principal office of the Applicant;
 - (3) Identify the actual or anticipated location, pump size, and production capacity of the well from which the water is to be produced, and identify the depth of the water-bearing formation from which the Applicant proposes to drill, complete, and produce the well;
 - (4) State the total number of acres of land contiguous in ownership with the land where the well is to be located;
 - (5) State the nature and purpose of the proposed use and the anticipated amount of water to be used;
 - (6) State the anticipated time within which the proposed construction or alteration is to begin;
 - (7) State the presently anticipated duration required for the proposed use of the water;
 - (8) Provide information showing the anticipated effect of the proposed production on the quantity and quality of water available for future use both inside and outside the District;
 - (9) Identify any other presently owned sources of water, the availability of which is both technically feasible and economically reasonable for the permittee, that could be reasonably used for the stated purposes, including quality and quantity of such alternate sources;
 - (10) Identify any other liquids, the availability of which is both technically feasible and economically reasonable for the permittee, that could be reasonably substituted for the fresh ground water, and possible sources of such liquid including quantity and quality;
 - (11) Provide information showing what water conservation measures permittee has adopted, what water conservation goals permittee has established, and what measure and time frames are necessary to achieve the permittee's established water conservation goals;
 - (12) If the water is to be resold to others, provide a description of the permittee's service area,
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- permittee's metering and leak detection and repair program for its water storage delivery and distribution system, permittee's drought emergency water management plan, and information on each customer's water demands, including population and customer data, water use data, water supply system data, wastewater data, water conservation measures and goals, and the means for implementation and enforcement; and
- (13) Identify well(s) producing from the same formation within one-half (1/2) mile of the proposed well and the owner(s) of said well(s).

The application must be accompanied by a map or plat drawn on a scale that adequately details the proposed project, showing:

- (i) The location of the existing or proposed well(s);
- (ii) The location of the existing or proposed production monitoring device(s) for compliance with section (i) of this Rule;
- (iii) The location of the existing or proposed water use facilities; and
- (iv) The location of the proposed or increased use or uses.

- (b) **Notice of Permit Hearing.** Once the District has received a completed application for an Operating Permit or a renewal or amendment to an Operating Permit, the District staff with Board orders will issue written notice indicating a date and time for a hearing on the application in accordance with these rules. The District may schedule as many applications at one hearing as deemed necessary. Any person that wishes to be heard as a potential party to a hearing must, at least five (5) business days prior to the hearing date, provide the District staff with written notice of that person's intent to appear at the hearing. If the District staff decides to contest the application, the District staff must, at least five (5) business days prior to the hearing date, provide the Applicant with written notice of the District staff's intent to contest the application. Not less than ten (10) days before the date set for District consideration of an application, the District shall mail notice by first-class mail, postage prepaid to:
- (1) The Applicant, the records of whose application has been filed with the District; and
 - (2) The property owners within one-half (1/2) mile of the proposed well.

If no person notifies the District staff of their intent to contest the application, and if the District staff does not contest the application, the application will be presented directly to the Board for a final decision. The Board may grant the application or refer the application to the Hearings Examiner for a complete hearing. A hearing on an application may be heard without the necessity of issuing further notice other than the time and place where the hearing is to take place. Hearings shall be conducted in accordance with provisions stipulated in these Rules.

- (c) **Evaluation of Permit Application.** In deciding whether or not to issue a permit, and in setting the terms of the permit, the Board will consider the purpose of the District Act and all other relevant factors, including, but not limited to:
- (1) The District Management Plan;
 - (2) The quality, quantity, and availability of alternative water supplies;
 - (3) The sustainable yield of the aquifer;
 - (4) The impact on other landowners' rights in groundwater from grant or denial of the permit or the terms prescribed by the permit;
 - (5) The quantity of water proposed to be produced;
 - (6) The term for which production is requested;
 - (7) The safety of the proposed production with respect to the contamination of the aquifer;
 - (8) The actual or anticipated number, location, pump size and production capacity of the wells from which water is to be produced;
 - (9) The nature of the proposed use;
 - (10) The effect of the proposed use of the water on municipal, agricultural, industrial, recreational and other categories of use; and

- (11) Such other factors as are consistent with the purposes of the District. Except for temporary permits for temporary withdrawals, the Board will limit groundwater withdrawals, based upon the factors described above, to levels that do not exceed the sustainable yield of the aquifer. To the extent demonstrated to be necessary by hydrologic modeling, the Board may require that the owner of a high production well obtain groundwater rights from affected property owners or well owners, or otherwise mitigate anticipated effects of the high production well on others.
- (d) **Aggregation of Withdrawal**. In determining whether to grant an Operating Permit, the authorized withdrawal for a given well may be aggregated with the authorized withdrawal from other permitted wells designated by the District. Rule 7.1 (Required Spacing) and Rule 8.1 (Maximum Allowable Production) will be considered in determining whether or not to allow aggregation of withdrawal. For the purpose of categorizing wells by the amount of groundwater production, where wells are permitted with an aggregate withdrawal, the total authorized withdrawal will be assigned to the wells in aggregate, rather than allocating to each well its pro rata share of production. This will allow a well owner, with a number of water wells which supply a single well system, to apply for an Operating Permit for the well system; consequently, the well owner will not be required to apply for a separate Operating Permit for each individual well. This provision will allow a well owner to apply for an Operating Permit for each individual well, in the event a number of wells are to be used to supply a very large single well system.
- (e) **Permit Limitations**. On approval of an application, the District shall issue an Operating Permit to the Applicant. The permittee's right to produce shall be limited to the extent and purposes stated in the Operating Permit. The Operating Permit shall be valid for a period not to exceed five (5) years, at which time the permit may be renewed. An Applicant requesting the renewal of an Operating Permit must complete a new application for Operating Permit, which application will be considered in accordance with these Rules and in light of the facts and circumstances then existing. An Operating Permit shall not be transferable except as provided in Rule 5.4.
- (f) **Permit Provisions**. The permit shall be in writing and shall contain substantially the following information:
- (1) The name of the person to whom the permit is issued;
 - (2) The date the permit is issued;
 - (3) The term for which the permit is issued;
 - (4) The date the original application was filed;
 - (5) The actual or anticipated number, location, pump size and production capacity of the wells from which water is to be produced;
 - (6) The total number of acres of land contiguous in ownership with the land where the well is to be located;
 - (7) The destination and use or purpose for which the water is to be produced;
 - (8) The maximum quantity of water to be produced annually, which in unusual or emergency conditions may be expressed in a three year rolling average. For the purposes of this subsection, "unusual or emergency conditions" shall be drought, forces of nature, acts of God, the temporary failure of equipment or machinery, or the failure or reduction of water sources;
 - (9) The permit is issued subject to the rules of the District and to the continuing right of the District to manage the aquifer within the Districts boundaries as authorized by Chapter 36, Texas Water Code, as amended; and
 - (10) Any other information the District prescribes.
- The Operating Permit will also contain the standard provisions listed in Rule 5.4. The permit may also contain provisions relating to the means and methods of transportation of water produced within the district.
- (g) **Effect of Acceptance of Permit**. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment of and agreement to comply with all of the terms, provisions, conditions,

limitations, and restrictions.

- (h) **Reporting.** A permittee authorized to produce water for an agricultural or livestock use shall file with the District annual reports describing the amount of water produced and used for the permitted purpose. Such report shall be filed on the appropriate form or forms provided by the district within fifteen (15) days of December 31 next following commencement of production and annually thereafter. Permittees authorized to produce water for other purposes of use shall file with the District monthly reports describing the amount of water produced and used for the permitted purpose. Such report shall be filed on the appropriate form or forms provided by the district within fifteen (15) days of the first of each month.
- (i) **Monitoring Devices.** All production facilities or wells subject to the requirements of this Subsection shall be equipped with production monitoring devices approved by the District and available for District inspection at any time during normal business hours, which devices must be accurate within plus or minus 10%. An hour meter may be considered as a production monitoring device on the well, if the well output (g.p.m.) can be accurately determined.

RULE 5.4 STANDARD OPERATING PERMIT PROVISIONS

All permits are granted subject to the District Act, these Rules, the District Management Plan, orders of the Board, and the laws of the State of Texas. In addition to any special provisions or other requirements incorporated into the permit, each permit issued shall contain the following standard permit provisions:

1. This permit is granted in accordance with the provisions of the District Act, Water Code, and the Rules, Management Plan, and orders of the District, and acceptance of this permit constitutes an acknowledgment and agreement that the permittee will comply with the Texas Water Code, the District Act, the District Rules, Management Plan, orders of the District Board, and all the terms, provisions, conditions, requirements, limitations and restrictions embodied in this permit.
2. This permit confers no vested rights in the holder, and it may be revoked or suspended, or its terms may be modified or amended pursuant to the provisions of the District Act. To protect the permit holder from the illegal use of a new landowner, within 10 days after the date of sale, the Operating Permit holder must notify the District in writing the name of the new owner. Any person who becomes the owner of a currently permitted well must, within 20 calendar days from the date of the change in ownership, file an application for a permit amendment to effect a transfer of the permit.
3. The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner. In the event that groundwater is to be transported a distance greater than one-half (1/2) mile from the well, it must be transported by a pipeline to prevent waste caused by evaporation and percolation.
4. The permittee must keep records of the amount of groundwater produced and the purpose of the production, and such records shall be available for inspection by District representatives. Immediate written notice must be given to the District in the event production exceeds the quantity authorized by this permit, or the well is either polluted or causing pollution of the aquifer.
5. The well site must be accessible to District representatives for inspection during normal business hours, and the permittee agrees to cooperate fully in any reasonable inspection of the well and well site by District representatives.
6. The application pursuant to which this permit has been issued is incorporated in this permit, and this permit is granted on the basis of and contingent upon the accuracy of the information supplied in that application and in any amendments to the application. A finding that false information has been supplied is grounds for immediate revocation of the permit. In the event of conflict between the provisions of this permit and the

contents of the application, the provisions of this permit shall control.

7. Violation of this permit's terms, conditions, requirements, or special provisions, is punishable by civil penalties as provided by the District Rules.
8. Wherever special provisions are inconsistent with other provisions or District Rules, the special provisions prevail.

RULE 5.5 EXCLUSIONS AND EXEMPTIONS (Revised July 30, 2003)

The District will not require an Operating Permit for any of the following (provided, however, that the following must be registered in accordance with Rule 5.2 above and remain subject to the other requirements of these Rules):

- A. The District may not require a permit for drilling or producing from a well used solely for domestic use or for providing water for livestock or poultry on a tract of land larger than 10 acres that is either drilled, completed or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day (36.117(b)(1)).
- B. The District may not require a permit for drilling or producing from a well for groundwater used to supply water for hydrocarbon production in accordance with 36.117(b)(2) and (3), except that permits may be required by the District for water wells drilled for hydrocarbon production under conditions defined in 36.117(d)(1) and (2).
- C. In addition to the exceptions required by law in Texas Water Code, Section 36.117 and by Section 5.2(A) and (B) of these Rules, the District also exempts from requiring a permit for drilling or producing from a well on lot sizes of ten (10) acres or fewer insofar as there shall be only one well per lot that is either drilled, completed or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day (36.117(b)(1)) and the well is used to supply groundwater for five or fewer households if each of the households is for the well owner, a person related to the well owner within the second degree of affinity or consanguinity, or an employee of the well owner and the water is for Domestic Use only.
- D. A well to supply water for a subdivision of land for which plat approval is required by Chapter 232, Local Government Code, is not exempted under Subsections A and C above.
- E. Nothing in the exemptions of (A) and (C) above can be construed to allow waste of groundwater.
- F. At any time the production of a well exempted by Subsections (A), (B) and (C) is used for purposes other than those stated in Subsections (A), (B) and (C), the well is no longer exempted and application must be made for a permit.
- G. Water wells exempted under this section shall be 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 from any source of the character of the water in any groundwater reservoir. (Revised July 30, 2003)

SECTION 6. DEPOSITS FOR WELL REGISTRATIONS & PERMIT APPLICATION

RULE 6.1 DEPOSITS

Each well registration/application form and permit application must be accompanied by a deposit in the amount determined by the Board by resolution that will be accepted and deposited by the District staff. The deposit will be returned to the Applicant by the District as and to the extent determined by the Board by resolution: (1) if the application is denied; (2) if the application is granted, upon the receipt of correctly completed driller's log of the well; or (3) if the permit location is abandoned without having been drilled or results in a dry hole, upon return and surrender of the permit marked "abandoned" by the Applicant.

In the event that neither the driller's log of the well nor the permit marked "abandoned" is returned to the District office within eight (8) months after application date of the permit, the deposit becomes the property of the District.

SECTION 7. SPACING REQUIREMENTS

RULE 7.1 REQUIRED SPACING (Revised July 30, 2003)

A new well may not be drilled within **50 feet** from the property line of any adjoining landowner provided the well is located at the minimum horizontal distance from the sources of potential contamination..

RULE 7.2 EXCEPTIONS TO SPACING REQUIREMENTS

- (a) If the Applicant presents waivers signed by the adjoining landowner(s) stating that they have no objection to the proposed location of the well site, the spacing requirements will not apply to the new proposed well location.
- (b) Providing an Applicant can show, by clear and convincing evidence, good cause why a new well should be allowed to be drilled closer than the required spacing of 50 feet, the issue of spacing requirements will be considered during the contested case process. If the Board chooses to grant a permit to drill a well that does not meet the spacing requirements, the Board must limit the production of the well to ensure no injury is done to adjoining landowners or the aquifer.
- (c) The Board may, if good cause is shown by clear and convincing evidence, enter special orders or add special permit conditions increasing or decreasing spacing requirements.

SECTION 8. PRODUCTION LIMITATIONS

Revised August 4th, 2004

RULE 8.1 MAXIMUM ALLOWABLE PRODUCTION

(a) A well or well system may only be permitted to be drilled and equipped for the production of no more than a total of 10 gallons per minute (g.p.m.) per contiguous acre owned or operated

(b) In no event may a well or well system be operated such that the total annual production exceeds 2 acre feet of water per acre owned or operated within the same Section.

(c) An exception to the production limitations will be considered only ten days after written notice is given by the Applicant to all adjacent landowners and all other landowners within one-half mile of the well site. Following proof of written notice, the Board shall call a public hearing to take evidence and testimony on the proposed exception, after which they may grant or deny the request for the exception. If all the landowners required to receive notification by this Rule waive their right to object to the exception, the exception shall be granted.

(d) Wells that, upon review, are considered to be exempt shall be drilled and equipped for the production of no more than a total of 17gallons per minute (g.p.m.) or a maximum of 25,000 gallons per day. (Revised August 4th, 2004)

SECTION 9. TRANSFER OF GROUNDWATER OUT OF THE DISTRICT

RULE 9.1 PERMIT REQUIRED

For the purpose of conserving groundwater in this District and to thereby insure the continuing health, welfare and safety of the citizens of this District, groundwater produced from within the District may not be transported outside the District's boundaries unless the Board has issued the well owner a groundwater transport permit.

RULE 9.2 APPLICATION

An application for a groundwater transport permit must be filed in the District office. Such applications shall be on forms provided by the District and must include the following information:

- (a) The name and mailing address of the Applicant;
- (b) The legal description of the exact location of the well(s) from which water to be transported is to be produced;
- (c) The name and address of the fee owner(s) of the land upon which is located the well(s) which is to produce water to be transported;
- (d) The names and addresses of the property owners within one-half (1/2) mile of the location of the well(s) from which water to be transported is to be produced, and the location of any wells on those properties;
- (e) The time schedule for construction and/or operation of the facility or facilities to be used in such transport;
- (f) A complete construction and operations plan that will include, but is not limited to, information as to:
 - (i) A technical description of the proposed well(s) and production facility(ies), including depth of the well, the casing diameter, type and setting, the perforated interval, and the size of pump; and
 - (ii) A technical description of the facilities to be used for transportation of water;
- (g) The use of the water to be transported;
- (h) The volume of water to be transported annually;
- (i) Scientific evidence showing that the proposed operation will not:
 - (i) Cause pollution, as defined in Rule 1 herein; and
 - (ii) Cause waste, as defined in Rule 1 herein;
- (j) Provide information showing the effect of the proposed transportation on the quantity and quality of water available within the District;
- (k) Provide information showing the effect of the proposed transportation on existing wells in the District;
- (l) Identify any other possible sources which could be used for the stated purposes, including quality and quantity of such alternate sources;
- (m) Identify any other liquids that could be substituted for the fresh groundwater and possible sources of such liquid including quantity and quality;
- (n) Provide information on the direct and indirect economic and social consequences within the District of the proposed transportation of water from the District;
- (o) A water conservation plan and a drought management plan;

- (p) Additional information that may be required by the Board; and
- (q) Any mitigation plan developed by the applicant to offset adverse social economic or hydrologic impacts within the District.

RULE 9.3 HEARING AND PERMIT ISSUANCE

- (a) Applications for groundwater transport permits are subject to the hearing procedures provided by these rules Not less than ten (10) days before the date set for District consideration of an application, the District shall mail notice by first-class mail, postage prepaid to:
 - (1) The applicant, the records of whose application has been filed with the District; and
 - (2) The property owners within one-half (1/2) mile of the proposed groundwater transport facility.

Because of the potential to impact areas outside a one-half (1/2) mile radius, notice of the application shall be published by the District in a newspaper of general circulation in the Real County and in a newspaper of general circulation in Edwards County. The notice shall contain the following:

- (i) The name and address of the applicant;
- (ii) The date on which the application was filed;
- (iii) The time and place of the hearing;
- (iv) The location of the proposed groundwater transport facility; and
- (v) A brief summary of the information included in the application.

A hearing on an application may be heard without the necessity of issuing further notice other than the time and place where the Board meeting is to take place. Hearings shall be conducted in accordance with provisions stipulated in these Rules.

- (b) In determining whether to issue a permit to transfer groundwater out of the District, the Board shall:
 - (1) Evaluate the projected total supply and demand of usable groundwater within the District, including projected groundwater in storage and projected groundwater recharge during:
 - (i) The period proposed for transport; and
 - (ii) A period of not less than fifty years;
 - (2) Evaluate the demand for groundwater from existing uses outside the District including demand resulting from the proposed transport application;
 - (3) Consider the availability of water in the District and in the proposed receiving area;
 - (4) Consider the availability of feasible and practicable alternative supplies to the Applicant;
 - (5) Consider the amount and purposes of use for which water is needed in the proposed receiving area;
 - (6) Consider the projected effect of the proposed transfer on aquifer conditions, depletion, subsidence, or effects on existing permit holders or other groundwater users within the District;
 - (7) Consider the indirect costs and economic and social impacts associated with the proposed transfer of water from the District;
 - (8) Consider the approved regional and state water plan, and the certified District Management Plan;
 - (9) Consider other facts and considerations considered necessary by the District's Board for protection of the public health and welfare and conservation and management of natural resources in the District; and
 - (10) Evaluate multiple applications for transport of water outside the district by apportioning surplus yield among applications.
- (c) The Board may limit groundwater for transport outside the District to amounts that are available in excess of the sustainable yield after considering demand for groundwater within the district. If the amount requested in the application for transport outside the District exceeds the sustainable yield, then the District may limit or prohibit transfer groundwater outside the District unless the applicant for transport clearly and convincingly demonstrates satisfaction of the factors described in this Section and the applicant pays the fees provided for in these Rules.
- (d) Water wells used or to be used for the transportation of water out of the District shall be subject to spacing and production requirements as described in the District Rules.

RULE 9.4 FEES AND PERMIT PROVISIONS

- (a) In order to mitigate the economic impact and other detriments that will result from the use of water to service interests outside the District, the District may set and collect fees for transport. Fees will be based upon the economic impact of transporting water from the District and/or the cost of mitigating those impacts. The applicant will determine the economic impact within the District resulting from lost opportunities to use water otherwise available but for the export of water outside the District. The factors to consider in establishing the fee shall include but not be limited to:
 - (1) Foregone water sales within the District by retail public utilities as a result of water exporting;
 - (2) Loss of agricultural production because of water exported outside the District;
 - (3) Changes in industry and commercial enterprises due to outside District water exports;
 - (4) All other direct or indirect costs, economic and social impacts; and
 - (5) Cost of resource replacement associated with the proposed transfer.
- (b) A transportation permit shall be valid for a period not to exceed five years, and shall contain such other standard and special provisions as are set out by the District.
- (c) The District shall assess and the applicant shall pay a fee for costs incurred by the District for hydrological or hydrogeological studies including but not limited to, groundwater modeling conducted by the District to process an application for transportation of water from the District.

RULE 9.5 MONITORING AND REPORTING

- (a) All groundwater transportation facilities subject to registration or permitting shall be equipped with flow monitoring devices approved by the District and shall be available at all reasonable times for inspection by District personnel.
- (b) The operator of a groundwater transportation facility shall be required to keep records and make reports to the District as to the operation of the transportation facility.
- (c) Permitted groundwater transportation facilities shall submit reports to the District on a monthly basis, beginning at the time of registration. Such reports shall include, but not be limited to, the volume of water transported during the preceding month.
- (d) The owner and operator of a groundwater transportation facility shall be charged with strict liability for the prevention of pollution and waste, as these terms are defined in Rule 1 herein, by reason of the operations of said facility.

SECTION 10. AQUIFER STORAGE AND RECOVERY PROJECTS

RULE 10.1 PERMIT REQUIRED

- (a) No injection well may be drilled in any applicable aquifer for the purpose of storing surface water or groundwater without first obtaining a permit from the District.
- (b) The permit may be for any term proscribed by the Board and may be renewed at the end of the term.
- (c) The permit will be processed in accordance with these Rules.

RULE 10.2 APPLICATION

- (a) An application for an Aquifer Storage and Recovery injection well must include the following:
 - (1) All information required for an application for a Class V injection well before the Texas Natural Resource Conservation Commission;
 - (2) A map or plat showing the injection facility and the aquifer in which the water will be stored; and
 - (3) A map or plat showing the location of all water wells completed to the same aquifer within a five-mile radius of the proposed injection site.
- (b) The applicable application fee must accompany the application

RULE 10.3 BOARD CONSIDERATION

- (a) The Board shall consider the following:
 - (1) Whether the introduction of water into the aquifer will alter the physical, chemical, or biological quality of native groundwater to a degree that would render the groundwater produced from the aquifer harmful or detrimental to people, animals, vegetation, or property, or require treatment prior to beneficial use; and
 - (2) Whether the water stored can be successfully harvested without causing undue hardship to the aquifer or any user thereof.
- (b) The Board may consider all relevant facts including the following:
 - (1) The location and depth of the aquifer in which the stored water will be located;
 - (2) The nature and extent of the surface development and activity above the stored water; and
 - (3) The ability of the permittee to determine the compatibility of the stored water with the resident water and monitor the impact on the receiving aquifer.

RULE 10.4 PERMIT CONDITIONS

- (a) The Board may include any permit conditions necessary to ensure the safety, quality, and quantity of groundwater available for withdrawal by other well owners.
- (b) Violation of any permit condition may result in cancellation of the permit, civil penalties, or both.

SECTION 11. RECHARGE FACILITIES

RULE 11.1 APPLICATION AND PERMITTING REQUIREMENTS

Applications shall be made to and permits must be obtained from the Board before installing and/or operating a recharge facility as defined herein. Such applications shall be on forms provided by the District and shall be in accordance with and contain the information called for in the form of application.

RULE 11.2 RULES FOR FILING APPLICATIONS

The application shall be executed by a party having knowledge of the facts called for on the form.

RULE 11.3 INFORMATION TO BE PROVIDED IN APPLICATION

The following information will be provided in or must be submitted with the application, along with any applicable application fee:

- (a) The name and address of the applicant;
- (b) The name and address of the fee owner(s) of the land upon which the recharged facility will be located;
- (c) The legal description of the exact proposed location of the recharge facility;
- (d) The time schedule for construction and/or operation of the facility;
- (e) The names and addresses of the property owners within one-half (1/2) mile of the proposed recharge facility location, and the location of any wells on those properties;
- (f) A complete construction and operations plan that will include, but is not limited to, information as to:
 - (1) A technical description of the facility to be used for recharge;
 - (2) The source of the water to be recharged;
 - (3) The quality of the water to be recharged;
 - (4) The volume of water to be recharged;
 - (5) The rate at which the water will be recharged; and
 - (6) The formation into which water will be recharged;
- (g) Scientific evidence showing that the proposed operation will not:
 - (1) Endanger the structural characteristics of the formation receiving the recharged water;
 - (2) Cause pollution; or
 - (3) Cause waste; and
- (h) Any additional information that may be required by the Board.

RULE 11.4 NOTICE OF HEARING

- (a) Not less than ten (10) days before the date set for District consideration of an application, the District shall mail notice by first-class mail, postage prepaid to:
 - (1) The applicant, the records of whose application has been filed with the District; and
 - (2) The property owners within one-half (1/2) mile of the proposed recharge facility location.
- (b) Because of the potential to impact areas outside a one-half (1/2) mile radius, notice of the application shall be published by the District in a newspaper of general circulation in the Real County and in a newspaper of general circulation in Edwards County.
- (c) The notice shall contain the following:
 - (1) The name and address of the applicant;
 - (2) The date on which the application was filed;
 - (3) The time and place of the hearing;
 - (4) The location of the proposed recharge facility; and
 - (5) A brief summary of the information included in the application.

RULE 11.5 HEARING

A hearing on an application may be heard without the necessity of issuing further notice other than the time and place where the Board meeting is to take place. Hearings shall be conducted in accordance with provisions stipulated in these Rules.

RULE 11.6 MONITORING AND REPORTING

The operator of a recharge facility shall be required to keep records and make reports to the District regarding the operation of the recharge facility. Reports to the District shall be made on a monthly basis, beginning at the time a permit to operate is issued. Such reports shall include, but are not limited to:

- (a) Volumes of water recharged through the recharge facility;
- (b) The source of the water recharged through the recharge facility;
- (c) The quality of the water recharged through the recharge facility; and
- (d) Additional information as may be specifically required by a permit to operate a recharge facility.

RULE 11.7 RESPONSIBILITY

The owner of a recharge facility shall assume and shall be charged with strict liability for the prevention of pollution and waste, as these terms are defined herein, from such facility, as well as damage to the recharged formation by reason of the operation of said facility.

RULE 11.8 EXEMPTIONS

Recharge facilities existing on or before the effective date of the Rules are exempt.

SECTION 12. CAPPING AND COVERING OF WELLS

Revised August 4th, 2004

RULE 12.1 CAPPING AND CLOSING SPECIFICATIONS

Every owner or operator of any land within the District, upon which is located any open or uncovered well or artesian well is, and shall be, required to close or cap the same permanently or temporarily as set forth below and in accordance with Chapter 36, Texas Water Code and subsequent changes thereto:

- (a) The District may require the owner or lessee of land on which an open or uncovered well or artesian well is located to keep the well permanently closed or capped with a covering capable of sustaining weight of at least 400 pounds, except when the well is in actual use by the owner or operator thereof.
- (b) As used in this section, "open or uncovered well" means an artificial excavation that is dug or drilled for the purpose of exploring for or producing water from the groundwater reservoir and is not capped or covered as required.
- (c) If the owner or lessee fails or refuses to close or cap the well in compliance with this Rule within 10 days after being requested to do so in writing by an officer, agent, or employee of the District; any person, firm, or corporation employed by the District may, following due process, go on the land and close or cap the well safely and securely.
- (d) Expenses incurred by the District in closing or capping a well may be recovered as outlined in Section 18 INVESTIGATIONS AND ENFORCEMENT, (18.4) through (18.6) of these Rules.

Nothing in this Rule affects the enforcement of Subchapter A, Chapter 756, Health and Safety Code.

REAL EDWARDS
SECTION 13. PLUGGING OF ABANDONED OR DETERIORATED WELLS
Revised August 4th, 2004

RULE 13.1 RESPONSIBILITY

A deteriorated or abandoned well must be plugged in accordance with (13.2) through (13.4) of these rules and the Texas Department of License and Regulation, Water Well Drillers and Pump Installers Rules (16 TAC Chapter 76).

Water shall not be produced from an abandoned or deteriorated well. A well identified as an abandoned or deteriorated well, or a borehole, must be plugged, capped or re-completed in accordance with the requirements of the District Rules and any statewide law, agency or political subdivision having jurisdiction including, but not limited to, the Texas Water Well Drillers Act, and the Texas Commission on Environmental Quality.

It is the responsibility of the landowner to see that such a well is plugged to prevent pollution of the underground water and to prevent injury to persons and animals. Registration of the well is required prior to, or in conjunction with, well plugging

RULE 13.2 ABANDONED OR DETERIORATED WELL

If a well that does not penetrate any undesirable water zone(s) is deteriorated or abandoned, all removable casing shall be removed from the well and the entire well pressure filled with cement to the land surface. In lieu of filling the entire well with cement to the land surface, one of the following procedures may be followed:

- (a) The well may be filled with mud, as defined herein, followed by a cement plug not less than ten (10) feet in length, extending down from the land surface;
- (b) The cement plug may be started from a depth of four (4) feet below land surface and extended not less than ten (10) feet in length; or
- (c) Wells in potable water formations may be filled with rock or gravel through the water bearing formation, then filled with mud to a level twenty (20) feet below ground level to ten (10) feet below ground level. Dirt or topsoil shall be filled to the surface of the well. Hand dug wells may be filled with rock or gravel through the water bearing formation, then filled with mud to a level twenty (20) feet below ground level and cemented from twenty (20) feet below ground level to eighteen (18) feet below ground level, then filled with dirt to the surface of the well.

RULE 13.3 PENETRATION OF UNDESIRABLE WATER

If a well that penetrates any undesirable water zone(s) is deteriorated or abandoned, all removable casing shall be removed from the well and the entire well pressure filled with cement to the land surface. In lieu of filling the entire well with cement to land surface, one of the following procedures may be followed:

- (a) Either the zone(s) contributing undesirable water or the fresh water zone(s) shall be Isolated with cement plugs and the remainder of the well bore filled with mud to form abase for a cement plug not less than ten (10) feet in length, extending down from the land surface; or
- (b) The cement plug may be started from a depth of four (4) feet below the land surface and extended down not less than ten (10) feet in length.

RULE 13.4 REPORT ON PLUGGING OF WELLS

The person that plugs an abandoned or deteriorated well shall, within sixty (60) days after plugging is

complete, submit a copy of the plugging report (on forms furnished by the Texas Water Well Drillers Board) to the District.

RULE 13.5 FAILURE TO COMPLY

If the owner or lessee fails or refuses to plug or cap the well in compliance with this rule and District standards within thirty (30) days after being requested to do so in writing by an officer, agent, or employee of the District, then, upon Board approval, any person, firm, or corporation employed by the District may go on the land and plug or cap the well safely and securely, pursuant to TWC Chapter 36.118 and District Rule SECTION 18.
INVESTIGATIONS AND ENFORCEMENT

SECTION 14. REWORKING AND REPLACING A WELL

RULE 14.1 PROCEDURES

- (a) An existing well may be reworked, re-drilled, or re-equipped in a manner that will not change the existing well status.
- (b) A permit must be applied for and the board will consider approving the permit, if a party wishes to increase the rate of production of an existing well to the point of increasing the size of the column pipe and g.p.m. rate by reworking, re-equipping, or re-drilling such well.
- (c) A permit must be applied for and granted by the board if a party wishes to replace an existing well with a replacement well.
- (d) A replacement well, in order to be considered such, must be drilled within ten (10) yards (30 feet) of the existing well and shall not be drilled nearer the property line provided the original well was "grandfathered" inside the spacing requirements of Rule 7.1.
- (e) In the event the application meets spacing (Rule 7.1) and production (Rule 8.1) requirements, the board may grant such application without further notice.

SECTION 15. WELL LOCATION AND COMPLETION

RULE 15.1 RESPONSIBILITY

After a well registration application or an Operating Permit has been granted, the well, if drilled, must be drilled within ten (10) yards (30 feet) of the location specified in the permit, and not elsewhere. If the well should be commenced or drilled at a different location, the Board pursuant to Chapter 36, Texas Water Code, may enjoin the drilling or operation of such well. As described in the Texas Water Well Drillers' Rules, all well drillers and persons having a well drilled, deepened, or otherwise altered shall adhere to the provisions of the rule prescribing the location of wells and proper completion.

RULE 15.2 LOCATION OF DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS (Amended August 11, 2003)

- (a) A well must be located a minimum horizontal distance of **50 feet** from any watertight sewage facility and liquid-waste collection facility.
- (b) Water wells shall be a minimum horizontal distance of **150'** from any concentrated source of pollution, such as existing or proposed livestock or poultry yards. . A well shall be located a minimum horizontal distance of one hundred (**100'**) feet from an existing or proposed septic system absorption field. Unless the well is drilled within the Edwards Aquifer, the distances given for separation of wells from sources of potential contamination in subsection (b)(2) of this section may be decreased to a minimum of fifty (50) feet provided the well is cemented with positive displacement technique to a minimum of one hundred (100) feet to surface or the well is tremie pressured filled to the depth of one hundred (100) feet to the surface provided the annular space is three inches larger than the casing. For wells less than one hundred (100) feet deep, the cement slurry, bentonite grout, or bentonite column shall be placed to the top of the producing layer. In areas of shallow, unconfined groundwater aquifers, the cement slurry, bentonite grout, or bentonite column need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement slurry, bentonite grout, or bentonite column need not be placed below the top of the water-bearing strata. Wells that are subject to completion standards of the Texas Natural Resource Conservation Commission under 30 TAC, Chapter 331 for class V injection wells, are exempt from this section.
- (c) A well shall be located at a site not generally subject to flooding; provided, however, that if a well must be placed in a flood prone area, it shall be completed with a watertight sanitary well seal, so as to maintain a junction between the casing and pump column, and a steel sleeve extending a minimum of thirty six (36) inches above ground level and twenty four (24) inches below the ground surface.
- (d) No well may be located within five-hundred (500) feet of a sewage treatment plant, solid waste disposal site, or land irrigated by sewage plant effluent, or within three-hundred (300) feet of a sewage wet well, sewage pumping station, or a drainage ditch that contains industrial waste discharges or wastes from sewage treatment systems.
- (e) In addition to the requirements of 15.2 (a) thru (d), the following well spacing shall be required on permitted wells.

Actual Pumping Capacity	Minimum Distance from existing Permitted wells and between proposed wells	Distance from Property Line
Non-essential Use Only (Less than 17.36 gpm)	150 ft	100 ft
17.36 gpm – 200 gpm	300 ft	100 ft

200 gpm – 400 gpm	750 ft	200 ft
400 gpm – 8100 gpm	1200 ft	400 ft
More than 800 gpm	1500 ft	400 ft

- (f) Production limits for permitted wells on tracts of land larger than 10 acres is 1 acre-foot per acre per year and on tract sizes ten (10) acres or less production limits are ½ acre-foot per acre per year. Production limits as defined above are based on the total service area in the District except as otherwise limited by Rule 5.2(C). This amount may be lowered by the Board in areas where depletion is a factor and is reasonably necessary to protect existing use (36.116(a)(2)(A)(B)(C)(D)(E)). This amount may be increased by the Board on a case by case basis, provided the applicant or permittee drills a minimum of three test wells and conducts a minimum of 72 hour pump test. A licensed engineer and/or geoscientist shall oversee the test and provide a certified report of the finding. The Board after reviewing the report shall decide production limits

RULE 15.3 STANDARDS OF COMPLETION FOR DOMESTIC, INDUSTRIAL, INJECTION, AND IRRIGATION WELLS (Amended August 11th, 2003)

Water well drillers must indicate the method of completion performed on the Well Report (TNRCC-0199) Section 10 Surface Completion. Domestic, industrial, injection, and irrigation wells must be completed in accordance with the following specifications and in compliance with local county or incorporated city ordinances: Monitor wells are exempt from these rules; however, their construction must follow state guidelines.

- (a) The diameter of the drilled hole shall be a minimum of three inches (3") larger than the outside diameter of the casing to be used down to a depth of ten feet (10') except that wells drilled on tracts of five acres or fewer the diameter of the drilled hole shall be a minimum of three inches (3") larger than the outside diameter of the casing to be used down to a depth of fifty feet (50') or to the top of the first potable water bearing strata above fifty feet (50').
- (b) Either steel pipe or polyvinyl chloride (PVC) casing may be used. PVC casing shall meet minimum specifications as defined by the Department of Licensing and Regulations Water Well Drillers and Pump Installers.
- (c) The borehole casing annulus shall be filled with cement slurry or bentonite from ground level to a depth of not less than ten feet (10') except that wells drilled on tracts of five acres or fewer the diameter of the drilled hole shall be a minimum of three inches (3") larger than the outside diameter of the casing to be used down to a depth of fifty feet (50') or to the top of the first potable water bearing strata above fifty feet (50').
- (d) All wells must satisfy all District and State water well completion and annular space sealing requirements.
- (e) The casing shall extend at least eighteen inches (18") above land surface at a site not generally subject to flooding; provided however, that if a well must be placed in a flood prone area, it shall be completed with a water tight sanitary well seal and steel casing extending a minimum of thirty six inches (36") above known flood levels.
- (f) All wells completed with plastic casing shall be completed according to one of the three surface completion methods as described by the following

- (1) Slab - The slab or block shall extend at least two feet (2') from the well in all directions and have a minimum thickness of four inches (4"), and should be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing. The surface of the slab shall be sloped to drain away from the well. The top of the casing shall extend a minimum of one foot (1') above the top of the slab.
- (2) Steel and PVC Sleeve - The steel sleeve shall be a minimum of 3/16" in thickness and/or the plastic sleeve shall be a minimum of schedule 80 sun resistant and twenty four inches (24") in length and shall extend twelve inches (12") into the cement, except when steel casing or a pitless adapter is used. The casing shall extend a minimum of one foot (1') above the original ground surface, and the steel sleeve shall be two inches (2"), larger in diameter than the plastic casing being used.
- (3) Pitless Adapters - In wells with Steel or Plastic Casings completed with pitless adapters, the adapters shall be welded to the casing or fitted with another suitably effective seal, and the borehole-casing annulus filled with cement slurry or bentonite to a depth of not less than fifty feet (50') below land surface, or to the top of the first potable water bearing strata above fifty feet (50'). All wells completed with pitless adapters must satisfy all State water well completion and annular space sealing requirements that pertain to pitless adapters
- (g) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer or zone.
- (h) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

RULE 15.4 RE-COMPLETIONS

- (a) The landowner shall have the continuing responsibility of insuring that a well does not allow commingling of undesirable water and fresh water or the unwanted loss of water through the wellbore to other porous strata.
- (b) If a well is allowing the commingling of undesirable water and fresh water or the unwanted loss of water, and the casing in the well cannot be removed and the well re-completed within the applicable rules, the casing in the well shall be perforated and cemented in a manner that will prevent the commingling or loss of water. If such a well has no casing, then the well shall be cased and cemented, or plugged in a manner that will prevent such commingling or loss of water.
- (c) The Board of Directors may direct the landowner to take steps to prevent the commingling of undesirable water and fresh water, or the unwanted loss of water.

REAL EDWARDS
SECTION 16. WASTE AND BENEFICIAL USE
Revised August 4th, 2004

RULE 16.1 WASTE PREVENTION

- (a) Groundwater shall not be produced within, or used within or without the District, in such a manner as to constitute waste as defined in Rule 1.1 hereof. No person shall commit waste as that term is defined in Rule 1.1 above.
- (b) No person shall pollute or harmfully alter the character of any 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.
- (c) Any person producing or using groundwater shall use every possible precaution, in accordance with the most approved methods, to stop and prevent waste of such water.

RULE 16.2 USE FOR A BENEFICIAL PURPOSE

“Use for a beneficial purpose” means use for:

- (a) Agricultural, gardening, domestic, stock raising, municipal, mining, manufacturing, industrial, commercial, recreational, fish and wildlife, or pleasure purposes;
- (b) Exploring for, producing, handling, or treating oil, gas, sulfur, or other minerals; or
- (c) Any other purpose that is useful and beneficial to the user that does not commit Waste (as defined in Rule 1.1).

SECTION 17. HEARINGS

RULE 17.1 TYPES OF HEARINGS

The District conducts two general types of hearings: hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing, and rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner.

(a) **Permit Hearings**

(1) **Permit Applications, Amendments and Revocations.** The District will hold hearings on Operating Permits, other permits provided for in these Rules, permit renewals or amendments and permit revocations or suspensions. Hearings involving permit matters may be scheduled before a Hearing Examiner.

(2) **Hearings on Motions for Rehearing.** Motions for Rehearing will be heard by the Board pursuant to Rule 17.8(b).

(b) **Rule-making Hearings.**

(1) **Plan.** At its discretion, the Board may hold a hearing to consider adoption of a new District Management Plan.

(2) **Other Matters.** A public hearing may be held on any matter within the jurisdiction of the Board, if the Board deems a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District.

RULE 17.2 NOTICE AND SCHEDULING OF HEARINGS

The General Manager, as instructed by the Board, is responsible for giving notice of all hearings in the following manner:

- (a) Notice will be given to each person who requests copies of hearing notices pursuant to the procedures set forth in subsection (b), and any other person the Board of Directors deem appropriate. The date of delivery or mailing of notice may not be less than ten calendar days before the date set for the hearing.

Notice of hearing will be published at least once in a newspaper of general circulation in the District. The date of publication may not be less than ten calendar days before the date set for the hearing. A copy of the notice will be posted at the county courthouse in the place where notices are usually posted. The date of posting may not be less than ten calendar days before the date of the hearing.

In addition to the notices required above, when a hearing involves (1) an Operating Permit matter, notice of the date, time, and location of the hearing will be given to the Applicant at least ten calendar days before the day of the hearing; and/or (2) designation of a Production Limitation Management Area, a copy of the notice must be provided to each landowner, well owner, well operator and known groundwater right holder in the proposed management area.

- (b) Any person having an interest in the subject matter of a hearing or hearings may receive written notice of such hearing or hearings by submitting a request in writing. The request must identify with as much specificity as possible the hearing or hearings for which written notice is requested. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. Failure to provide written notice under this section does not invalidate any action taken by the Board.

- (c) Hearings may be scheduled during the District's regular business hours, Monday through Friday of each week, except District holidays. All permit hearings will be held at the District Office. However, the Board may from time to time change or schedule additional dates, times, and places for permit hearings by resolution adopted at a regular Board meeting. The General Manager is instructed by the Board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings. Other hearings will be scheduled at the dates, times and locations set at a regular Board meeting.

RULE 17.3 GENERAL PROCEDURES

- (a) **Authority of Presiding Officer.** The Presiding Officer may conduct the hearing or other proceeding in the manner the Presiding Officer deems most appropriate for the particular proceeding. The Presiding Officer has the authority to:
- (1) Set hearing dates, other than the initial hearing date for permit matters set by the General Manager in accordance with Rule 17.2(c);
 - (2) Convene the hearing at the time and place specified in the notice for public hearing;
 - (3) Establish the jurisdiction of the District concerning the subject matter under consideration;
 - (4) Rule on motions and on the admissibility of evidence and amendments to pleadings;
 - (5) Designate and align parties and establish the order for presentation of evidence;
 - (6) Administer oaths to all persons presenting testimony;
 - (7) Examine witnesses;
 - (8) Issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
 - (9) Require the taking of depositions and compel other forms of discovery under these Rules;
 - (10) Ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 - (11) Conduct public hearings in an orderly manner in accordance with these Rules;
 - (12) Recess any hearing from time to time and place to place;
 - (13) Reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
 - (14) Exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer.
- (b) **Hearing Registration Forms.** Each individual attending a hearing or other proceeding of the District must submit a form providing the following information: name; address; whether the person plans to testify; and any other information relevant to the hearing or other proceeding.
- (c) **Appearance; Representative Capacity.** Any interested person may appear in person or may be represented by counsel, engineer, or other representative provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. Any partner may appear on behalf of the partnership. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.
- (d) **Alignment of Parties; Number of Representatives Heard.** Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The Presiding Officer may require the participants of an aligned class to select one or more persons to represent them in the proceeding or on any particular matter or ruling and may limit the number of representatives heard, but must allow at least one representative of an aligned class to be heard in the proceeding or on any particular matter or ruling.
- (e) **Appearance by Applicant or Movant.** The Applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to

so appear may be grounds for withholding consideration of a matter and dismissal without prejudice or may require the rescheduling or continuance of the hearing or other proceeding if the Presiding Officer deems it necessary in order to fully develop the record.

- (f) **Reporting.** Hearings and other proceedings will be recorded on audiocassette tape or, at the discretion of the Presiding Officer, may be recorded by a certified shorthand reporter. The District does not prepare transcripts of hearings or other proceedings recorded on audiocassette tape on District equipment for the public, but the District will arrange access to the recording. Subject to availability of space, any party may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 17.5(b). If a reporter records a proceeding other than a permit hearing, and any person orders a copy of the transcript of testimony, the testimony will be transcribed and the original transcript filed with the papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing or other proceeding thus reported may be purchased from the reporter.
- (g) **Continuance.** The Presiding Officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District Office) for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the Presiding Officer before it is recessed, a notice of any further setting of the hearing or other proceeding will be delivered at a reasonable time to all parties, persons who have requested notice of the hearing pursuant to Rule 17.2(b), and any other person the Presiding Officer deems appropriate, but it is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.
- (h) **Filing of Documents; Time Limit.** Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these Rules or by law must be received in hand at the District's Office within the time limit, if any, set by these Rules or by the Presiding Officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.
- (i) **Computing Time.** In computing any period of time specified by these Rules, by a Presiding Officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday as determined by the Board, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.
- (j) **Affidavit.** Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This Rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.
- (k) **Broadening the Issues.** No person will be allowed to appear in any hearing or other proceeding that in the opinion of the Presiding Officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
- (l) **Conduct and Decorum.** Every person, party, representative, witness, and other participant in a proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may engage in any activity during a proceeding that interferes with the orderly conduct of District business. If in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the proceeding for such time and under such conditions as the Presiding Officer deems necessary.

RULE 17.4 UNCONTESTED PERMIT HEARINGS PROCEDURES

- (a) **Written Notice of Intent to Contest**. Any person who intends to contest a permit application must provide written notice of that intent to the District office located at Leakey, Texas at least five calendar days prior to the date of the hearing. If the Board of Directors intends to contest a permit application, the Board of Directors must provide the Applicant written notice of that intent at least five calendar days prior to the date of the hearing. If no notice of intent to contest is received five calendar days prior to the hearing, the general manager as instructed by the Board of Directors, will cancel the hearing and the board will consider the permit at the next regular board meeting.
- (b) **Informal Hearings**. Permit hearings may be conducted informally when, in the judgment of the Hearing Examiner, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- (c) **Agreement of Parties**. If, during an informal proceeding, all parties reach a negotiated or agreed settlement which, in the judgment of the Hearing Examiner, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.
- (d) **Decision to Proceed as Uncontested or Contested Case**. If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Hearing Examiner determines these issues will require extensive discovery proceedings, the Hearing Examiner will declare the case to be contested and convene a prehearing conference as set forth in Rule 17.5. The Hearing Examiner may also recommend issuance of a temporary permit for a period not to exceed 4 months, with any special provisions the Hearing Examiner deems necessary, for the purpose of completing the contested case process. Any case not declared a contested case under this provision is an uncontested case and the Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.

RULE 17.5 CONTESTED PERMIT HEARINGS PROCEDURES

- (a) **Prehearing Conference**. A prehearing conference may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process.
 - (1) **Matters Considered**. Matters which may be considered at a prehearing conference include, but are not limited to, (1) the designation of parties; (2) the formulation and simplification of issues; (3) the necessity or desirability of amending applications or other pleadings; (4) the possibility of making admissions or stipulations; (5) the scheduling of discovery; (6) the identification of and specification of the number of witnesses; (7) the filing and exchange of prepared testimony and exhibits; and (8) the procedure at the hearing.
 - (2) **Notice**. A prehearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 17.2, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the Hearing Examiner.
 - (3) **Conference Action**. Action taken at a prehearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.
- (b) **Assessing Reporting and Transcription Costs**. Upon the timely request of any party, or at the discretion of the Hearing Examiner, the Hearing Examiner may assess reporting and

transcription costs to one or more of the parties. The Hearing Examiner must consider the following factors in assessing reporting and transcription costs:

- (1) The party who requested the transcript;
- (2) The financial ability of the party to pay the costs;
- (3) The extent to which the party participated in the hearing;
- (4) The relative benefits to the various parties of having a transcript;
- (5) The budgetary constraints of a governmental entity participating in the proceeding;
- (6) Any other factor that is relevant to a just and reasonable assessment of costs.

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

- (c) **Designation of Parties**. Parties to a hearing will be designated on the first day of hearing or at such other time as the Hearing Examiner determines. The Board of Directors and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Hearing Examiner, there exists good cause and the hearing will not be unreasonably delayed.
- (d) **Rights of Designated Parties**. Subject to the direction and orders of the Hearing Examiner, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.
- (e) **Persons Not Designated Parties**. At the discretion of the Hearing Examiner, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or statements submitted by non-parties may be included in the record, but may not be considered by the Hearing Examiner as evidence.
- (f) **Furnishing Copies of Pleadings**. After parties have been designated, the author must provide a copy of every pleading, request, motion, or reply filed in the proceeding to every other party or the party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.
- (g) **Interpreters for Deaf Parties and Witnesses**. If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment, which inhibits the person's comprehension of the proceedings or communication with others.
- (h) **Agreements to be in Writing**. No agreement between parties or their representatives affecting any pending matter will be considered by the Hearing Examiner unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered as record.
- (i) **Discovery**. Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Hearing Examiner. Unless specifically modified by these Rules or by order of the Hearing Examiner, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by

agreement or by order of the Hearing Examiner.

- (j) **Discovery Sanctions**. If the Hearing Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Hearing Examiner may:
 - (1) Suspend processing of the application for a permit if the Applicant is the offending party;
 - (2) Disallow any further discovery of any kind or a particular kind by the offending party;
 - (3) Rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling;
 - (4) Limit the offending party's participation in the proceeding;
 - (5) Disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
 - (6) Recommend to the Board that the hearing be dismissed with or without prejudice.
- (k) **Ex Parte Communications**. The Hearing Examiner may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence.
- (l) **Compelling Testimony; Swearing Witnesses and Subpoena Power**. The Hearing Examiner may compel the testimony of any person that is necessary, helpful, or appropriate to the hearing. The Hearing Examiner will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth. The Hearing Examiner may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.
- (m) **Evidence**. Except as modified by these Rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
- (n) **Written Testimony**. When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection.
- (o) **Requirements for Exhibits**. Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
- (p) **Abstracts of Documents**. When documents are numerous, the Hearing Examiner may receive in evidence only those that are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.
- (q) **Introduction and Copies of Exhibits**. Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Hearing Examiner and to each of the parties, unless the Hearing Examiner rules otherwise.
- (r) **Excluding Exhibits**. In the event an exhibit has been identified, objected to, and excluded, the offering party may withdraw it. If withdrawn, the exhibit will be returned and the offering party waives

all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.

- (s) **Official Notice**. The Hearing Examiner may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- (t) **Documents in District Files**. Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.
- (u) **Oral Argument**. At the discretion of the Hearing Examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Hearing Examiner may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, the Board may hear further oral arguments.

RULE 17.6 CONCLUSION OF THE HEARING; REPORT

- (a) **Closing the Record; Final Report**. At the conclusion of the presentation of evidence and any oral argument, the Hearing Examiner may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Hearing Examiner. After the record is closed, the Hearing Examiner will prepare a report to the Board. The report must include a summary of the evidence, together with the Hearing Examiner's findings and conclusions and recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy must be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties must be by certified mail.
- (b) **Exceptions to the Hearing Examiner's Report; Reopening the Record** Prior to Board action any party in a contested case may file written exceptions to the Hearing Examiner's report, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board. Upon review of the report and exceptions, the Hearing Examiner may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the report and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the Hearing Examiner for further proceedings.
- (c) **Time for Board Action on Certain Permit Matters**. In the case of hearings involving new permit applications, original applications for existing wells, or applications for permit renewals or amendments, the Hearing Examiner's report should be submitted, and the Board should act, within 60 calendar days after the close of the hearing record.

RULE 17.7 RULEMAKING HEARINGS PROCEDURES

- (a) **General Procedures**. The Presiding Officer will conduct the rulemaking hearing in the manner the Presiding Officer deems most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The Presiding Officer may follow the guidelines of "Parliamentary Procedure at a Glance," New Edition, O. Garfield Jones, 1971 revised edition, or as amended.
- (b) **Submission of Documents**. Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 17.2; provided, however, that the Presiding Officer may grant additional time for the submission of documents.

- (c) **Oral Presentations.** Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The Presiding Officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the Presiding Officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.
- (d) **Conclusion of the Hearing; Closing the Record; Hearing Examiner's Report.** At the conclusion of the testimony, and after the receipt of all documents, the Presiding Officer may either close the record, or keep it open to allow the submission of additional information. If the Presiding Officer is a Hearing Examiner, the Hearing Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject of the hearing and the public comments received, together with the Hearing Examiner's recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy must be submitted to the Board. Any interested person who so requests in writing will be notified when the report is completed, and furnished a copy of the report.
- (e) **Exceptions to the Hearing Examiner's Report; Reopening the Record.** Any interested person may make exceptions to the Hearing Examiner's report, and the Board may reopen the record, in the manner prescribed in Rule 17.6(b).

RULE 17.8 FINAL DECISION; APPEAL

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

REAL EDWARDS CONSERVATION AND RECLAMATION DISTRICT
SECTION 18. INVESTIGATIONS AND ENFORCEMENT

Revised August 4th, 2004

RULE 18.1 NOTICE AND ACCESS TO PROPERTY

Board Members and District agents and employees are entitled to access to all property within the District to carry out technical and other investigations necessary to the implementation of the District Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing or in person or by telephone to the owner, lessee, or operator, agent, or employee of the well owner or lessee, as determined by information contained in the application or other information on file with the District. Notice is not required if prior permission is granted to enter without notice. Inhibiting or prohibiting access to any Board Member or District agents or employees who are attempting to conduct an investigation under the 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 36.102, Texas Water Code, as the same may be hereafter amended or modified.

RULE 18.2 CONDUCT OF INVESTIGATION

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

RULE 18.3 RULE ENFORCEMENT

If it appears that a person has violated, is violating, or is threatening to violate any provision of the District Rules the Board of Directors may institute and conduct a suit in the name of the District for enforcement of rules through the provisions of Section 36.102, Texas Water Code, as the same may be hereafter amended or modified.

RULE 18.4 SEALING OF WELLS

Following due-process, the District may, upon orders from the judge of the courts, seal, cap and or/plug wells that are prohibited from withdrawing groundwater within the District by the District Rules 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 to drill or operate a new water well or (2) no application has been made for an Operating Permit to withdraw groundwater from an existing well that is not excluded or exempted from the requirement that a permit be obtained in order to lawfully withdraw groundwater; (3) the Board has denied, canceled or revoked an Operating Permit or other applicable permit, or (4) the owner and/or operator has failed to act upon the District's request to seal, cap, and/or plug an abandoned or deteriorated well.

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.

RULES 18.5 VIOLATIONS:

Officers, agents and employees of the District are authorized to serve or cause to be served written notice upon any owner or operator of a well in violation of this rule, thereby requesting such owner and/or operator to cap, plug or otherwise close such well with a covering in compliance with this rule. In the event any owner or operator falls to comply with such request within ten (10) days after written notice, any officer, agent, or employee of the District may go upon said land and cap or close the well in a manner complying with this rule, and all expenditures thereby incurred shall constitute a lien upon the land where such well is located, provided however, such lien shall not exceed the sum of one thousand dollars (\$1,000.00) for any single closing. Any officer, agent, or employee of the District is authorized to perfect such lien by filing, in the County deed records, an affidavit stating the following:

- (a) the existence of the well;
- (b) the legal description of the property on which the well is located;
- (c) the approximate location of the well on the property;
- (d) the failure or refusal of the owner or lessee, after notification, to cap the well within ten (10) days after the notification;
- (e) the capping of the well by the District, or by an authorized agent, representative, or employee of the District; and
- (f) the expense incurred by the District in capping the well.

RULE 18.6 CIVIL ACTION:

- (a) The District may enforce the provisions of Chapter 36, Texas Water Code and its rules by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction.
- (b) If the District prevails in such a suit, it may, in the same action, recover a fine of up to \$5000.00 for each violation of a District rule, reasonable fees for attorneys, expert witnesses, and all other costs incurred by the District before the court.

REAL EDWARDS CONSERVATION AND RECLAMATION DISTRICT
SECTION 19: ADMINISTRATIVE PENALTIES
Adopted September 22nd, 2004

RULE 19.1: BOARD POWERS:

The District shall have the power to assess administrative penalties to property owners; well owners (or their assignees); Water Well Drillers; Pump Installers; and/or other persons who are in violation of District Rules. Such penalties will be assessed after completion of an Administrative Hearing as set forth in **Section 17: Hearings** of these rules and upon evidence from that hearing that a violation has occurred.

Nothing in this section shall nullify powers given to the Board in Chapter 36 of the Texas Water Code and/or other sections of the District Rules.

Nothing in this section shall disallow the Board from seeking an immediate injunction against the property owner; Well Driller, Pump Installer, and/or other persons if there is an immediate threat to the health and safety of the public.

RULE 19.2: LANDOWNERS; WELL OWNERS; AND OTHER PERSONS

The Board may assess administrative penalties against property owners,; well owners (or their assignees) and/or other individuals for, but not limited to the following;

- a) For Failure to “Plug” an abandoned or deteriorated well or Failure to Close or Cap a well as outlined in District Rule 12 within required period an administrative penalty of up to \$2,000.00 per day may be assessed by the Board until the violation has been corrected
- b) For having a well drilled, altered or re-equipped without obtaining a “Well Registration / Application”, “Permit Amendment” and/or “Operating Permit” an administrative penalty of up to \$2,000.00 per day may be assessed by the Board until the violation has been corrected. The normal repair of an existing well is excluded under this section unless such repair to the well would alter the size, pumping capacity and/or depth of the well and require the owner or operator to apply to the District as outlined in Section 5 of these rules.
- c) For the “Waste of water as defined in Section 1.1 of these rules an administrative penalty of up to \$2,000.00 per day may be assessed by the Board until the violation has been corrected.
- d) For the withdrawal of groundwater in excess of the amount authorized or permitted by the District, an administrative penalty of up to \$2,500.00 per day may be assessed by the Board until the violation has been corrected.
- e) For the pollution/contamination of groundwater, an administrative penalty of up to \$2,500.00 per day may be assessed by the Board until the violation has been corrected.
- f) For knowingly falsifying records or providing inaccurate information & documentation to the District an administrative penalty of up to \$2,000.00 per violation may be assessed by the Board.

- g) For the violation of any District Rule not otherwise addressed in this Section 19.2, an administrative penalty of up to \$1,000.00 per day may be assessed by the Board until the violation has been corrected

RULE 19.3: WELL DRILLERS AND PUMP INSTALLERS

- a) For Falsification of records or providing inaccurate information & documentation to the District an administrative penalty of up to \$2,000.00 per violation may be assessed by the Board.
- b) For performing services as a Driller without a License issued by the Texas Department of Licensing and Regulation an administrative penalty of up to \$3,000.00 per violation may be assessed by the Board and the well shall be plugged at the owner's expense.
- c) For performing services as a Pump Installer without a License Issued by the Texas Department of Licensing and Regulation an administrative penalty of up to \$2,000.00 per violation may be assessed by the Board.
- d) For Failure to drill and/or complete well as outlined in District Rules the following administrative penalties may be assessed by the Board:
 - 1. 1st Offense up to \$2,500 + remediation
 - 2. 2nd Offense up to \$3,500 + remediation + Formal complaint with Texas Board of License and Regulation + One year ban from drilling within the District boundaries
 - 3. 3rd Offense \$5,000 + remediation + Formal Complaint with Texas Board of License and Regulation + permanent ban from drilling within the District boundaries
- e) For Failure to file Applications, well logs and/or other documentation as required by the District within specified time period or for failure to insure that proper authorization and/or permits had been received prior to drilling, the following administrative penalties shall be assessed by the Board:
 - 4. 1st Offense up \$1,500,
 - 5. 2nd Offense up to \$2,500 + Formal complaint with Texas Board of License and Regulation + One year ban from drilling within the District boundaries.
 - 6. 3rd Offense \$ 5,000 + Formal Complaint with Texas Board of License and Regulation + permanent ban from drilling within the District boundaries
- h) For the pollution/contamination of groundwater, an administrative penalty of up to \$2,500.00 per day may be assessed by the Board until the violation has been corrected.
- i) For the violation of any District Rule not otherwise addressed in this Section 19.3, an administrative penalty of up to \$1,000.00 per day may be assessed by the Board until the violation has been corrected

The board officially finds, determines, and declares that this rule SECTION 19: ADMINISTRATIVE PENALTIES was reviewed, carefully considered, and adopted at a regular meeting of the board on the date set forth below and that a sufficient written notice of the date, hour, place, and subject of this meeting was posted at a place readily accessible and convenient to the public within the district and on a bulletin board located at a place convenient to the public in the Real and Edwards County Courthouses for the

time required by law preceding this meeting, as required by the Open Meetings Law, Section 551.001, et seq., TEXAS GOV'T CODE, as amended, and that this meeting had been open to the public as required by law at all times during which this rule was discussed, considered, and acted upon. The board further ratifies, approves and confirms such written notice and the contents and posting thereof

PASSED AND APPROVED this 22nd day of September, 2004

**REAL-EDWARDS CONSERVATION AND
RECLAMATION DISTRICT**

President

ATTEST:

Secretary