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***BENBROOK WATER AUTHORITY***

***WATER WELL RULES***

***TARRANT COUNTY, TEXAS***

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## **BACKGROUND AND PURPOSE**

The Texas Constitution authorizes the creation of conservation and reclamation districts to plan, develop, and regulate the use of water. The Benbrook Water Authority (“the Authority”) is a conservation and reclamation district, water control and improvement district, political subdivision, and local unit of government authorized by the Texas Legislature to provide water and wastewater service to its customers and to implement a regulatory program governing the drilling, equipping, completion, location, and production of groundwater wells to protect groundwater resources and the beneficial use of groundwater by the Authority and other well owners located within the Authority’s boundaries.

These rules are adopted by the Board of Directors (“Board”) to implement the statutory powers of the Authority, and have been adopted at a properly noticed public meeting in compliance with the Texas Open Meetings Act and in accordance with Section 59 of Article XVI of the Texas Constitution, Chapters 49 and 51 of the Texas Water Code, and the Authority’s enabling act [Acts 1955, 54<sup>th</sup> Leg., R.S., Ch. 123, as amended] (“Authority’s Act”). The effective date of these rules is the sixth day after the publication of notice of these rules, pursuant to §§ 51.129 and 51.130 of the Texas Water Code.

These rules are and have been adopted to simplify procedures, avoid delays, and facilitate the administration of the applicable laws of the State of the Texas. These rules are to be construed to attain those objectives.

### **SECTION I.** **MANDATORY PERMIT REQUIREMENT FOR DRILLING, EQUIPPING,** **COMPLETING, ALTERING, AND OPERATING GROUNDWATER WELLS**

#### **RULE 1 – DRILLING PERMITS**

- Rule 1.1      **Permit mandatory.** The Authority requires a Drilling Permit for an exempt and nonexempt well sought to be drilled, equipped, or completed after the effective date of these rules, and for any exempt and nonexempt well existing on the effective date of these rules that will be replaced, altered, and/or reworked after the effective date of these rules. The Authority and its wells are exempt from the requirements of Rule 1 and its subparts.
- Rule 1.2      **Term.** Unless specified otherwise by the Board or these rules, drilling permits are effective for a term ending 120 (one hundred twenty) calendar days after the date the permit is issued by the Authority, which may be extended by the General Manager with good cause shown.
- Rule 1.3      **Permit conditions.** The permit holder, by accepting the permit, agrees to abide by any and all groundwater withdrawal regulations established by the Authority that are currently in place, as well as any and all regulations established by the Authority in the future. 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 of the permit and the rules of the Authority. In addition to any special provisions or other requirements incorporated into the permit, each permit is subject to the following standard permit provisions:

- (a) The permit terms may be modified or amended pursuant to the provisions of the Authority’s rules or to comply with statutory requirements.
- (b) The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.
- (c) The well site must be accessible to the Authority’s representatives for inspection, and the permit holder agrees to cooperate fully in any reasonable inspection of the well and well site by the Authority’s representatives.
- (d) The application pursuant to which this permit has been issued is incorporated in the permit, and the permit is granted on the basis of, and contingent upon, the accuracy of the information supplied in that application. A finding that false information has been supplied is grounds for immediate revocation of the permit.
- (e) Violation of a permit’s terms, conditions, requirements, or special provisions is punishable by civil penalties as provided by the Authority’s rules and may subject the permit to cancellation by the Authority's Board.

Rule 1.4 Replacement wells. The Board may grant an Application for a Drilling Permit seeking a replacement well without notice, if the well is drilled within a reasonable distance of the existing well, in the sole discretion of the Board, and it otherwise meets the Authority’s spacing requirements.

Rule 1.5 Location of new wells. After a Drilling Permit has been issued, the well must be drilled at the location specified in the Drilling Permit, and not elsewhere, provided, however, that spacing restrictions be met.

Rule 1.6 Spacing, location, and completion of new wells. All new wells, exempt or nonexempt, must comply at a minimum with the spacing, location, and completion requirements set forth under the Texas Water Well Drillers and Pump Installers Administrative Rules, Title 16, Part 4, Chapter 76, Texas Administrative Code, except that wells shall not be located within 100 (one hundred) feet from a property line. Water well drillers shall indicate the method of completion performed on the Well Report (Texas Department of Licensing and Regulation Form #001 WWD, Section 10, Surface Completion). Additionally, all new wells must comply with the following:

Well casing <u>Diameter</u> <sup>1</sup> : Up to 4”	Minimum distance from then-existing registered or permitted <u>wells and between proposed wells</u> 300 ft.	Minimum Distance from <u>Property Line</u> 100 ft.
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<sup>1</sup> The inside diameter, measured in inches, of the tubing installed within the casing or borehole of a well for the purpose of conducting the water produced.

>4" up to 5"	400 ft.	200 ft.
>5" up to 6"	500 ft.	200 ft.
>6" up to 7"	600 ft.	250 ft.
>7" but less than 8"	700 ft.	300 ft.
8" but less than 10"	800 ft.	350 ft.
10" or greater	1000 ft.	400 ft.

Rule 1.7 Spacing of existing wells. Wells drilled prior to the effective date of these rules are not subject to spacing requirements of this rule except that these existing wells shall have been drilled in accordance with state law in effect, if any, on the date such drilling commenced.

Rule 1.8 Exceptions to spacing requirements. The Board may grant exceptions to the spacing requirements of the Authority upon the showing of good cause by the person seeking the exception.

- (a) An exception may be granted by the Board after written notice has been given by the applicant by mailing notice by certified mail, return receipt requested, to all owners of property and of then-existing or permitted wells located within ½ mile radius of the proposed well site, and after a public hearing at which all interested parties may appear and be heard. Provided, however, if all such owners execute a waiver in writing, stating that they do not object to the granting of the exception, the Board may proceed, upon notice to the applicant only and without hearing, and take action to grant or deny the application in full or in part. The applicant shall provide notice under this Rule in a form and content as directed by the General Manager and shall mail the notice no less than 30 days prior to the scheduled date of the public hearing given to the applicant by the General Manager. Proof of the mailed notice shall be given to the General Manager by the applicant no less than ten days prior to the date of the public hearing.
- (b) If the applicant presents waivers signed by all owners of property and of then-existing or permitted wells located within ½ mile of the proposed well site stating that they have no objection to the proposed location of the well site, the Board, upon the General Manager's recommendation, may waive the spacing requirements for which waiver is sought by the applicant.
- (c) An applicant may seek an exception to the spacing requirements on the grounds that the well or wells proposed in the application will produce groundwater from an aquifer or subdivision thereof other than the aquifer or

subdivision thereof from which the then-existing permitted or registered wells that are closer than the minimum distances are producing.

## **RULE 2 – OPERATING PERMITS**

- Rule 2.1 Permit mandatory. The owner of a nonexempt water well, existing on the effective date of these rules or new, or any other person with lawful authority to operate the well, must obtain an Operating Permit from the Authority prior to operating the well and withdrawing and placing groundwater from the well to beneficial use. However, the owner of an existing well that has produced groundwater for a beneficial use prior to the effective date of these rules who files a completed permit application with the Authority within 90 days of the effective date of these rules may continue to operate the well without a permit until the Board takes final action on the permit application. The Authority and its wells are exempt from the requirements of Rule 2 and its subparts.
- Rule 2.2 Term. Unless specified otherwise by the Board or these rules, the initial Operating Permit is effective until December 31 of the next calendar year following the year in which the initial Operating Permit is issued. If renewed, such a permit shall thereafter be effective for a five-year term from the initial expiration date unless specified otherwise by the Board; provided, however, that an Operating Permit holder shall apply for an amendment at any time it desires to increase the quantity of water available for withdrawal and beneficial use specified in the permit.
- Rule 2.3 Authorized quantity of production. The Authority shall designate the annual quantity of groundwater authorized to be withdrawn and used under an Operating Permit pursuant to the conditions of the Authority's Act, Chapters 49 and 51 of the Texas Water Code, and these rules, provided, however, that the quantity shall not exceed the lesser of the production limitations established under Rule 2.9 or an amount demonstrated by the applicant and determined by the Board to be necessary for beneficial use during the permit term, except as may be reduced if the Authority imposes restrictions as provided by the Authority's rules.
- Rule 2.4 Protecting the sustainability of the Aquifer. The Authority may limit the total annual production and maximum annual rate of groundwater withdrawal from any aquifer within the Authority as the Authority determines to be necessary to ensure that groundwater may be used on a sustainable basis. The Authority's determination shall be based upon the best available hydrogeologic, geographic, and other relevant scientific data, including but not limited to noted changes in the water levels, water quality, groundwater withdrawals, annual recharge, the loss of stored water in the aquifer, or future planning projections developed by or accessible to the Authority. Using the best available hydrogeologic, geographic, and other relevant scientific information, the Authority will continue to study and accumulate data on the various aquifers and their subdivisions located within the boundaries of the Authority, and may amend from time to time the limit on total annual production or the authorized rate of production either throughout the

Authority or for a particular aquifer or its subdivision, based upon this data and any water resource management goals adopted by the Authority's Board.

Rule 2.5 Proportional adjustment. As determined by the Authority, if the total amount of production within an aquifer or its subdivision is greater than the annual sustainable amount available for withdrawal, production amounts may be decreased proportionally among all permit holders producing from that aquifer or its subdivision. When establishing proportional adjustment restrictions, the Board shall first set aside an amount of groundwater equal to an estimate of total exempt use.

Rule 2.6 Permit conditions. The permit holder, by accepting the permit, agrees to abide by any and all groundwater withdrawal regulations established by the Authority that are currently in place, as well as any and all regulations established by the Authority in the future. 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 of the permit and the rules of the Authority. In addition to any special provisions or other requirements incorporated into the permit, each permit is subject to the following standard permit provisions:

- (a) The permit terms may be modified or amended pursuant to the provisions of the Authority's rules or to comply with statutory requirements.
- (b) The operation of the well for the authorized withdrawal must be conducted in a non-wasteful manner.
- (c) The well site must be accessible to the Authority's representatives for inspection, and the permit holder agrees to cooperate fully in any reasonable inspection of the well and well site by the Authority's representatives.
- (d) The application pursuant to which this permit has been issued is incorporated in the permit, and the permit is granted on the basis of, and contingent upon, the accuracy of the information supplied in that application. A finding that false information has been supplied is grounds for immediate revocation of the permit.
- (e) Violation of a permit's terms, conditions, requirements, or special provisions is punishable by civil or criminal penalties as provided by the Authority's rules and may subject the permit to cancellation by the Authority's Board.
- (f) A permit issued by the Authority does not vest the permit holder with any rights regarding the level of quality or quantity of the groundwater subject to the jurisdiction of the Authority, nor does the Authority make any representations regarding the physical quantity or quality of groundwater that a well may encounter.

Rule 2.7 Permit Amendment. A permit amendment is required prior to any deviation from the permit terms regarding the drilling of a well, the location of a proposed well,

the maximum amount of groundwater to be produced from a well, ownership of a well or permit, the purpose of use of the groundwater, the location of use of the groundwater, or operation of additional wells, even if aggregate withdrawals remain the same.

Rule 2.8 Ownership Transfer. Absent an express reservation of rights in the transferor, the transfer of ownership of the well(s) designated by a permit is presumed to transfer ownership of the permit, and the transfer of the land and well site on which the well is located is presumed to transfer ownership of the well. The ownership of a permit may be transferred separately from the ownership of a well or the underlying land, subject to these rules and the permit's conditions. Upon transfer of ownership of any well(s), written notice must be given to the Authority by the transferor or transferee as soon as practicable, but not longer than 45 days, and a permit amendment shall be applied for, if applicable. Within 45 days following the transfer of ownership of any well(s), the transferee shall file an affidavit in the real property records of Tarrant County, Texas. Such affidavit shall be executed by the transferee, and shall state that all notices required to be given under this Rule have been timely mailed or delivered by the transferee. The transferee shall attach to the affidavit (a) a copy of the Operating Permit, and (b) a copy of all notices given as required by this Rule.

Rule 2.9 Production Limitations. Subject to the Authority's Act, Chapters 49 and 51 of the Texas Water Code and these rules, the District shall not designate an annual quantity of groundwater authorized to be withdrawn and used under an Operating Permit which exceeds in any calendar year 2 (two) acre-feet per acre of land contiguous to the well site and owned or leased for the right to produce groundwater by the applicant as designated in the permit application.

### **RULE 3 – APPLICATIONS FOR DRILLING PERMITS, OPERATING PERMITS, AND PERMIT AMENDMENTS**

Rule 3.1 Requirements for all permit applications. To secure a Drilling Permit, Operating Permit, and permit amendment, an application must be filed, applicable fees must be paid, if any, and notice must be issued as provided for in these rules. Application forms will be provided by the Authority and furnished to the applicant upon request. All permit applications submitted to the Authority regarding nonexempt wells which were in existence, completed, and that had produced groundwater for a beneficial use prior to the effective date of these rules will not be subject to any fee requirement the Board may establish for processing permit applications or renewals.

Rule 3.2 Aggregation of withdrawal among multiple wells in a consolidated permit application. One application may be filed for a Drilling Permit or Operating Permit, or for renewal thereof, for which the applicant seeks authority to put to beneficial use a quantity of groundwater aggregated among two or more wells that

may be withdrawn from any one or more of these wells where all wells included in the application are tied to the same distribution system.

Rule 3.3 Components of permit application. All applications for a permit shall be in writing and sworn to, and shall include the following:

- a) the name and mailing address of the applicant and the owner of the land on which the well will be located;
- b) if the applicant is other than the owner of the land constituting the well site for the proposed or existing well, documentation establishing the applicable authority to drill or operate a well for the proposed use, as applicable;
- c) the location of each well and the estimated rate at which water will be withdrawn;
- d) a declaration that the applicant will comply with the Authority's rules and all groundwater use permits issued to the applicant and all plans promulgated pursuant to the Authority's rules;
- e) a location map of all then-existing wells, including then-existing wells of the Authority, within a ¼ mile radius of the proposed well or the existing well to be modified or otherwise permitted;
- f) a map or other documentation from the tax appraisal district or other county office indicating the location of the proposed well or the existing well to be modified or otherwise permitted, the subject property, and adjacent owners' physical addresses and mailing addresses;
- g) a statement of the nature and purpose of the proposed use and the amount of water to be used for each purpose;
- h) a hydrogeological report shall be attached to applications meeting the following conditions:
  - i) requests to operate a nonexempt well with an annual maximum permitted use of at least 5 acre feet.
  - ii) requests to amend and increase by at least 5 acre feet the annual maximum permitted use of an Operating Permit.
- i) Hydrogeological reports required under this rule shall include the following information:
  - i) address the area of influence of the well for which a permit is being requested.
  - ii) include an assessment of the geology at the site of the well for which a permit is being requested and a description of the aquifer that will supply water to the well.

Rule 3.4 Notice of filing of an application. All permit applicants must provide notice by publication in a newspaper of general circulation in the Authority, and by certified



mail, return receipt requested, to all property owners within a one-fourth (1/4) mile radius of the existing or proposed well that is the subject of the application.

- 1) All public notices covered by this section must include the following information on a form first approved by the Authority prior to issuance or publication:
  - (i) name and address of the applicant;
  - (ii) date the application was filed;
  - (iii) location and a description of the well that is the subject of the application; and
  - (iv) a brief summary of the information in the application.
  
- 2) The applicant must provide the Authority with the following information for the Authority to declare that the application is administratively complete:
  - (i) proof of publication of public notice;
  - (ii) proof of mailing by certified mail of the public notice to the property owners identified to receive notice in accordance with this Rule; and
  - (iii) a list of the names and addresses of the property owners notified by certified mail.

#### **RULE 4 – PERMIT EXEMPTIONS**

Rule 4.1 The Authority's Operating Permit requirements in these rules do not apply to a well used solely for domestic use or for providing water for livestock or poultry that is either drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day and that:

(a) was in existence, completed, and had produced water for a beneficial use prior to the effective date of these rules on a tract of land of any size; or

(b) is a new well that does not meet the requirements of Rule 4.1(a) and is located or to be located on a tract of land larger than 10 acres in size,

The Authority's Operating Permit requirements also do not apply to monitoring, leachate, or dewatering wells. For the purposes of this rule, the term "domestic use" means the use of groundwater by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes; for irrigation of lawns, or of a family garden and/or orchard; and for watering of domestic animals. The term "domestic use" does not include water used to support activities for which consideration is given or received or for which the product of the activity is sold. Further, "domestic use" does not include use by or for a public water system. The term "providing water for livestock or

poultry," as that term is used in this rule, means the use of groundwater by an individual or household for the open-range watering of livestock, exotic livestock, game animals, or fur-bearing animals.

Rule 4.2 A registration form must be filed for each new and existing exempt well in accordance with Rule 9.2.

Rule 4.3 A well qualifying for exemption under Rule 4.1 which was in existence on the effective date of these rules was required to be drilled in accordance with the state laws in effect, if any, on the date such drilling commenced pursuant to Rule 1.7. A new well which qualified for exemption under Rule 4.1 must comply with the requirements of Rule 1.6, but may be granted an exception by the Board under Rule 1.8.

Rule 4.4 A well exempt under this section will lose its exempt status if the well is subsequently used for a purpose or in a manner that is not exempt.

#### **RULE 5 – BOARD CONSIDERATION OF PERMIT APPLICATIONS**

Rule 5.1 Factors to be considered for Drilling Permits. The Authority's Board shall take into consideration each and every one of the following criteria when evaluating an application for a Drilling Permit:

- (a) the application contains all the information requested;
- (a) whether the well and withdrawal from the well at the proposed rate and quantity will affect existing well owners due to its proposed location and, if so, whether the location can be changed to minimize any such effects;
- (b) whether the proposed drilling, equipping, and completion of the well will comply with Chapter 1901, Occupations Code, and any rules adopted under that chapter; and
- (c) whether the proposed well location is compliant with the well spacing and location requirements of these rules; and
- (e) the proposed well construction and operation activities will not threaten or otherwise impact the groundwater supplies of the Authority;

Rule 5.2 Factors to be considered for Operating Permits. The Authority's Board shall take into consideration each and every one of the following criteria when evaluating an application for an Operating Permit:

- (a) the application contains all the information requested;
- (b) each water well complies with spacing and production limitations identified in these rules;

- (c) the proposed use of water does or does not unreasonably affect existing groundwater resources or the beneficial use of groundwater by the Authority or existing well owners;
- (d) the proposed use of water is dedicated to a beneficial use;
- (e) the proposed well construction and operation activities will not threaten or otherwise impact the groundwater supplies of the Authority;
- (f) the applicant agrees to use reasonable diligence to protect groundwater quality and to avoid waste and achieve water conservation; and
- (g) the applicant has agreed that reasonable diligence will be used to protect groundwater quality, including compliance with Chapter 1902, Occupations Code, and that the applicant will follow well plugging guidelines at the time of well closure.

Rule 5.3 Standard governing Board's decision on applications. The Authority may not unreasonably withhold issuance of a permit if an applicant proves by competent sworn testimony or documentation that the proposed water well will not unreasonably affect existing groundwater resources or the beneficial use of groundwater by the Authority or other existing well owners, that the applicant agrees to use reasonable diligence to protect groundwater quality, including compliance with Chapter 1901, Occupations Code, and any rules adopted under that chapter, that the proposed well construction and operation activities will not threaten or otherwise impact the groundwater supplies of the Authority, and that the application complies with the well spacing and production requirements of the Authority.

## **RULE 6 – HEARING ON PERMIT APPLICATIONS**

Rule 6.1 Public hearing required. A quorum of the Authority's Board shall take evidence, admit protestants to an application, consider the relevant factors in these rules, and make a decision in a public hearing conducted in accordance with these rules.

Rule 6.2 Hearing conducted by Presiding Officer. The Authority shall designate one of its Board Members or any other person to conduct the hearing as Presiding Officer.

Rule 6.3 The Presiding Officer shall conduct the hearing in the manner determined by the Presiding Officer to be most appropriate for the particular hearing.

Rule 6.4 The Presiding Officer has the authority to:

- (a) determine whether evidence is admissible;
- (b) establish the order for presentation of evidence;
- (c) administer oaths to all persons presenting testimony;
- (d) examine witnesses and allow other Board Members to examine witnesses;

- (e) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
- (f) conduct public hearings in an orderly manner in accordance with these rules;
- (g) recess or continue any hearing from time to time and place to place; and
- (h) exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer.

Rule 6.5 Notice and scheduling of hearing. Once the Authority has received an administratively complete application for a Drilling Permit or Operating Permit, the Authority's General Manager will issue written notice on the application in accordance with these rules.

Rule 6.6 Notices of all hearings of the Authority shall be prepared by the General Manager and shall, at a minimum, state the following information:

- (1) the name and address of the applicant;
- (2) the name or names of the owner or owners of the land if different from the applicant;
- (3) the time, date, and location of the hearing;
- (4) the address or approximate proposed location of the well, if different than the address of the applicant;
- (5) a brief summary of the General Manager's recommendation; and
- (6) any other information the Board or General Manager deems appropriate to include in the notice.

Rule 6.7 Not less than 30 calendar days prior to the date of the hearing, notice shall be:

- (1) posted by the General Manager at a place convenient to the public in the Authority's Office;
- (2) provided by the General Manager to the County Clerk of Tarrant County, whereupon the County Clerk shall post the notice on a bulletin board at a place convenient to the public in the county courthouse; and
- (3) provided to the applicant in written form.

Rule 6.8 The General Manager shall set a permit hearing date within 30 calendar days after the date the administratively complete application is submitted. The permit hearing shall be held within 35 calendar days after the setting of the date. Within this same time frame, the General Manager shall post notice and set a hearing on the application before the Authority Board. The General Manager may schedule as many applications at one hearing as the General Manager deems necessary.

Rule 6.9 Appearance at the hearing. Protestants and non-protestant interested persons may present evidence, exhibits, or testimony, or make an oral presentation as allowed

by the Presiding Officer. A person appearing in a representative capacity may be required to prove proper authority. Each person attending and participating in a hearing of the Authority must submit on a form provided by the Authority, prior to or at the commencement of the hearing, the following information: the person's name and address, who the person represents if other than himself, whether the person wishes to testify, whether the person is protesting the application, and any other information relevant to the hearing.

- i) Protestants: A person other than the General Manager desiring to protest an application for a Drilling Permit or an Operating Permit shall file with the Authority a notice of protest that must be received by the Authority no later than 5 days prior to the date of the hearing. The notice of protest shall set forth the protestant's justiciable interest and how that justiciable interest would be adversely affected by the permit proposed by the application. The Board may take testimony and shall deliberate and take official action at the hearing to determine whether the protestant has sufficiently demonstrated their justiciable interest and how that justiciable interest would be adversely affected by the permit proposed by the application. If the Board finds that a protestant does not adequately establish that its justiciable interest is affected by the proposed permit, then the protestant shall not be allowed to participate in the hearing.
- ii) Non-protestant interested persons: A person may appear at a hearing in person or by representative provided the representative is fully authorized, in writing, to speak and act for the principal. Provided, however, any person other than the General Manager desiring to protest an application must timely file a notice of protest and qualify pursuant to Subsection (a)(i) of this rule as a condition to participating as an official protestant in the hearing.

Rule 6.10 Procedural order at the hearing. After the Presiding Officer calls a hearing to order, the Presiding Officer shall announce the subject matter of the hearing and the order and procedure for presentations. The Presiding Officer may prescribe reasonable time limits for the presentation of evidence and oral argument.

Rule 6.11 Presentation of evidence. When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form, but shall be subject to cross-examination. 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. If requested with good cause shown and if allowed in the sole discretion of the Presiding Officer, any person who appears at a hearing and makes a presentation before the Board may supplement that presentation by filing additional written evidence with the Board within up to 10 calendar days after the date of conclusion of the hearing, as determined by the Presiding Officer.

- Rule 6.12 Relevance of evidence. The Presiding Officer may admit evidence if it is relevant to an issue at the hearing. The Presiding Officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious.
- Rule 6.13 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, except as required by the Texas Open Meetings Act, Chapter 551, Government Code. If a hearing or other proceeding is continued and a time and place 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 persons who submitted a hearing registration form under this Section, and any other person the Presiding Officer deems appropriate, and posted in accordance with the Texas Open Meetings Act.
- Rule 6.14 Uncontested Hearings. If no persons timely protest the application and the General Manager proposes to grant the application, whether a partial or full grant, the application shall be considered uncontested. If, during a contested case hearing, all interested persons contesting the application withdraw their protests or are found by the Board not to have a justiciable interest affected by the application, or the parties reach a negotiated or agreed settlement which, in the judgment of the Board, settles the facts or issues in controversy, the proceeding will be considered an uncontested hearing.
- Rule 6.15 Board Action. Within 60 calendar days after the final hearing date is concluded, the Board must take action on the subject matter of the hearing.
- Rule 6.16 Request for Rehearing and Appeal. A decision of the Board concerning a hearing matter may be appealed by filing a request for rehearing before the Board within 20 calendar days of the date of the Board's decision. The date of the Board's decision shall be the date of the Board's vote to deny or grant the application, whether a partial or full grant, or otherwise act on the application. Such a rehearing request 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 to District Court may be brought. The Board's decision is final if no request for rehearing is made within the specified time, upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the Board, the Board shall conduct a rehearing within 45 calendar days of the decision to grant the rehearing. The failure of the Board to grant or deny the request for rehearing within 90 calendar days of the filing date shall constitute a denial of the request by operation of law.

## **RULE 7 – PERMIT RENEWAL**

Rule 7.1 Permit Renewal. Renewal applications shall be provided by the Authority prior to expiration of the Operating Permit term, and shall be filed with the Authority no later than October 20<sup>th</sup> of the year in which the permit will expire. Operating Permits will not be renewed unless the well has been drilled at the time of the renewal application. The General Manager may rule on any renewal application that seeks renewal with the identical permit conditions in the existing permit without notice, hearing, or further action by the Board, or with such notice and hearing as the General Manager deems practical and necessary under the circumstances.

Any permit holder seeking renewal may appeal the General Manager's ruling by filing, within ten calendar days of notice of the General Manager's ruling, a written request for a hearing before the Board. The Board will hear the applicant's appeal at the next available regular Board meeting. The General Manager shall inform the Board of any renewal applications granted or denied. On the motion of any Board member, and a majority concurrence in the motion, the Board may overrule the action of the General Manager. The General Manager may authorize an applicant for a permit renewal to continue operating under the conditions of the prior permit, subject to any changes necessary under proportional adjustment regulations or these rules, for any period in which the renewal application is the subject of a hearing.

Rule 7.2 Basis for Renewal. While there is no automatic right of renewal, an application for renewal will be approved if the General Manager or Board finds that the applicant's continued use of groundwater will remain in compliance with the terms, provisions, and requirements of the applicant's current permit and the Authority Act and rules, subject to adjustment by the General Manger or Board for any new production limits or proportional adjustment requirements that may be applicable to the renewed permit.

Rule 7.3 Basis for Denial. The General Manager or Board may deny a renewal application on grounds that the applicant is in violation of the Authority's rules, the Authority Act, or Chapters 49 or 51, Water Code, or that the applicant has a previous violation on record with the Authority, which has become a final order of the Authority's Board and is no longer subject to a motion for rehearing before the Authority, that has not been corrected or overturned by a court, including, but not limited to, being current on payment of all fees to the Authority. The Authority has the burden of proof regarding establishment of any such violation. This rule shall not be interpreted in a manner that creates a standard in connection with the renewal of a permit that would preclude the Authority from lawfully revoking a permit for violation of the permit terms, the Authority's rules or Act, or Chapters 49 or 51, Water Code.

Rule 7.4 Renewal Application Requirements. The Authority will timely provide a form for an application for renewal prior to expiration of the permit term. The renewal

application will be a streamlined application and will not include all of the elements required for an original application.

## **RULE 8 – FILING OF DOCUMENTS**

Rule 8.1 Applications, requests, and other documents required to be filed with the Authority shall be filed either by hand delivery, mail, or telephonic document transfer to the Authority's office. The document shall be considered filed as of the date received by the Authority for a hand delivery; as of the date reflected by the official United States Postal Service postmark if mailed; and, for telephonic document transfers, as of the date on which the telephonic document transfer is complete, except that any transfer occurring after 5:00 p.m. will be deemed complete on the following business day. If a person files a document by facsimile, he or she must file a copy by mail within 3 calendar days.

## **SECTION II.** **MANDATORY REGISTRATION OF ALL WELLS** **LOCATED WITHIN THE AUTHORITY'S BOUNDARIES**

## **RULE 9 – WATER WELL REGISTRATION**

Rule 9.1 Registration mandatory. All water wells, existing on the effective date of these rules and new, exempt and nonexempt, must be registered with the Authority and are required to comply with the Authority's registration requirements in these rules. The Authority and its wells are exempt from the requirements of Rule 9 and its subparts.

Rule 9.2 Registration policies and procedures. A registration form must be filed for each new exempt well prior to withdrawing and putting the groundwater to beneficial use. A registration form must be filed no later than 1 (one) year from the effective date of these rules for each exempt well existing on the effective date of these rules. The Authority shall make registration forms available soon after the effective date of these rules. Authority staff will review the registration form and make a determination on whether the well meets the exemptions provided in these rules. Providing the Authority's determination is that the well is exempt, the registrant of the exempt well may withdraw and put groundwater to beneficial use.

Rule 9.3 Term: A registration certificate is perpetual in nature, subject to cancellation for violation of these rules.

Rule 9.4 Re-registration: If the owner or operator of a registered well plans to change the type of use of the groundwater, increase the withdrawal rate, or substantially alter the size of the well or well pump in a manner that does not require an Operating Permit, the well must be re-registered.



Rule 9.5 Ownership Transfer: Upon the ownership transfer of any well(s) covered by a registration, the new registration holder must provide notice of transfer of the registration to the Authority within 45 (forty-five) calendar days from the date of the change in ownership.

**SECTION III.**  
**METERING AND REPORTING REQUIREMENTS**

**RULE 10 – METERING**

Rule 10.1 Meters required. A meter must be installed to meet the Authority’s specifications, at the well owner’s cost, on each permitted non-exempt well that is capable of producing more than 25,000 gallons per day, at the time of completing the well, and prior to commencing the production of groundwater for beneficial use. This requirement is effective 90 days after the effective date of these rules for nonexempt wells that were in existence, completed, and producing groundwater for a beneficial use on the effective date of these rules. Meters are not required to be installed on nonexempt wells that are drilled, completed, or equipped so that they are incapable of producing more than 25,000 gallons per day, as long as an alternative measuring method approved by the Authority is used to record and report groundwater production from this type of well. Further, meters are not required to be installed on exempt wells.

The only type of meters that may be installed on a well permitted or registered with the Authority are an electronic meter, a radio-read meter, or a mechanically driven, totalizing water meter. For a mechanically driven, totalizing water meter, the totalizer must not be resettable by the permittee and must be capable of a maximum reading greater than the maximum expected pumpage during the permit term. Battery operated registers must have a minimum five-year life expectancy and must be permanently hermetically sealed. Battery operated registers must visibly display the expiration date of the battery. All meters must meet the requirements for registration accuracy set forth in the American Water Works Association standards for cold-water meters as those standards existed on the effective date of these rules. Water meters installed to meet the Authority's requirements shall be calibrated to ensure an accuracy reading range of 95% to 105% of actual flow. Bypasses are prohibited unless they are also metered. Meters are not required to be installed on exempt wells.

Rule 10.2 Costs. The Authority may allocate funds for a portion or all of the meters required under this subsection, and may supply the meters, in the sole discretion of the Board. However, installation costs are to be paid by the well owner. Costs of meter maintenance shall be borne by the well owner or operator, if applicable.

Rule 10.3 Meter Installation. The water meter must be installed according to the manufacturer's published specifications in effect at the time of the meter

installation, or the meter's accuracy must be verified by the permittee in accordance with Rule 10.4. If no specifications are published

Rule 10.4 Meter Accuracy to be Tested: The General Manager may require the permittee, at the permittee's expense, to test the accuracy of a water meter and submit a certificate of the test results. The certificate shall be on a form provided by the District. The General Manager may further require that such test be performed by a third party qualified to perform such tests. The third party must be approved by the General Manager prior to the test. Except as otherwise provided herein, certification tests will be required no more than once every three years for the same meter. If the test results indicate that the water meter is registering an accuracy reading outside the range of 95% to 105% of the actual flow, then appropriate steps shall be taken by the permittee to repair or replace the water meter within 90 calendar days from the date of the test. The District, at its own expense, may undertake random tests and other investigations at any time for the purpose of verifying water meter readings. If the District's tests or investigations reveal that a water meter is not registering within the accuracy range of 95% to 105% of the actual flow, or is not properly recording the total flow of groundwater withdrawn from the well or wells, the permittee shall reimburse the District for the cost of those tests and investigations, and the permittee shall take appropriate steps to bring the meter or meters into compliance with these rules within 90 calendar days from the date of the tests or investigations. If a water meter or related piping or equipment is tampered with or damaged so that the measurement of accuracy is impaired, the District may require the permittee, at the permittee's expense, to take appropriate steps to remedy the problem and to retest the water meter within 90 calendar days from the date the problem is discovered and reported to the permittee.

## **RULE 11 – REPORTING**

Rule 11.1 Annual report due. An annual report of total groundwater withdrawal during the calendar year shall be filed with the Authority by all non-exempt well owners no later than February 1<sup>st</sup> each year.

Rule 11.2 Notice of overpumpage. Immediate written notice shall be given to the Authority in the event an Operating Permit holder has exceeded the quantity authorized by the Operating Permit. An Operating Permit holder shall seek permit amendment immediately upon recognizing that it will likely exceed its permit allocation.

## **SECTION IV.**

### **RULES COMPLIANCE AND ENFORCEMENT; WELL PLUGGING AND CAPPING**

## **RULE 12 – RULES COMPLIANCE AND ENFORCEMENT**

- Rule 12.1 If it appears that a person has violated, or is violating any provision of the Authority's Rules, the Board of Directors may institute and conduct a suit in the name of the Authority for injunctive relief, recovery of a civil penalty of not more than \$5,000 per violation, or both injunctive relief and a civil penalty. The Authority may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the Authority before the court.
- Rule 12.2 Notice and Access to Property. Board Members and Authority agents and employees are entitled to access to all property within the Authority to carry out technical and other investigations necessary to the implementation of the Authority's Rules. Prior to entering upon property for the purpose of conducting an investigation, the person seeking access must give notice in writing, in person, or by telephone to the contact referred to in the application 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 Authority. 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 12.3 A person who violates a rule of the Authority commits a criminal offense which, pursuant to § 51.241 of the Texas Water Code, is a Class C misdemeanor. The Board may prosecute a violation of the Authority's Rules as a civil penalty and/or a criminal offense.
- Rule 12.4 The remedies provided for in this rule are not exclusive of any other civil remedies or criminal penalties available under state or federal law.
- Rule 12.5 The Authority may employ a peace officer or reserve peace officer to prevent or abate the commission of any offense against the rules of the Authority. Any peace officer or reserve peace officer employed by the Authority shall exercise only those duties assigned by the Authority and authorized by § 49.216 of the Texas Water Code, and shall comply with the statutory requirements set forth by § 49.216, prior to performing any duties on behalf of the Authority.

### **RULE 13 – CAPPING AND PLUGGING OF WELLS**

- Rule 13.1 The Authority may require a well to be capped to prevent waste, prevent pollution, or prevent further deterioration of a well casing. The well must remain capped until such time as the conditions that led to the capping requirement are eliminated. If well pump equipment is removed from a well and the well will be re-equipped at a later date, the well must be capped, provided however that the casing is not in a deteriorated condition that would permit co-mingling of water strata, in which case the well must be plugged. The cap must be capable of

sustaining a weight of at least four hundred (400) pounds and must be constructed with a water tight seal to prevent entrance of surface pollutants into the well itself, either through the well bore or well casing.

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

Any person that plugs a well in the Authority must submit a copy of the plugging report to the Authority and the Texas Department of License and Regulation within thirty (30) calendar days of plugging completion.

Rule 13.3 Water Quality Protection Grant Program. The Authority may establish a Water Quality Grant Program to provide grants to landowners who have one or more water wells located on their property that are required to be capped or plugged under these rules. The grants provided by the Water Quality Protection Grant Program will be awarded based on criteria established by the Board. The landowners who receive grants must use the Water Quality Protection Grant Program grants to cap or plug the applicable water well(s) or for a water quality protection project approved by the Board.

#### **RULE 14 – SEVERABILITY**

Rule 14.1 In case any one or more of the provisions contained in these rules shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other rules or provisions hereof, and these rules shall be construed as if such invalid, illegal, or unenforceable rule or provision had never been contained herein.