RESOLUTION AND ORDER NO. 224 20231102-02

OF THE BOARD OF DIRECTORS OF THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT ADOPTING HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT RULES, RULE 1 (INTRODUCTION), RULE 2 (DEFINITIONS), RULE 3 (WELL CONSTRUCTION, OPERATING PERMITS AND WATER UTILITY CONNECTIONS), RULE 4 (WELL CONSTRUCTION, REPORTS AND SPACING), RULE 5 (HEARINGS), RULE 6 (TAGGING PROHIBITED USE, CAPPING OR PLUGGING WELLS), RULE 9 (PROHIBITIONS AGAINST WASTE AND POLLUTION; WATER LOSS AUDITS), RULE 10 (ENFORCEMENT), RULE 12 (REPORTING), RULE 13 (DROUGHT MANAGEMENT), RULE 15 (MANAGEMENT ZONE)

WHEREAS, the Hays Trinity Groundwater Conservation District ("HTGCD" or "the District") is a political subdivision of the State of Texas, created by Act of May 28, 1999, 76th Leg., R.S., ch. 1331, 1999 Tex. Gen. Laws 4536, §§ 1-18 and by Act of May 27, 2001, 77th Leg., R.S., ch. 966, 2001 Tex. Gen. Laws 1991, 2027, §§ 3.0301-3.0313, codified at Texas Special District Local Laws Code ch. 8843 ("HTGCD Act");

WHEREAS, HTGCD has as its purpose the conservation, preservation, protection, recharging, and prevention of waste of groundwater and groundwater reservoirs or their subdivisions, including the Trinity Aquifer, within its jurisdiction in Hays County, consistent with the objectives of Section 59, Article XVI, Texas Constitution, Chapter 36 of the Texas Water Code, and Chapter 8843, Special District Local Laws Code. Tex. Water Code Ann. § 36.0015(b); HTGCD Act § 8843.101;

WHEREAS, groundwater conservation districts "are the state's preferred method of groundwater management in order to protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater." Tex. Water Code Ann. § 36.0015(b);

WHEREAS, the District has "all of the rights, powers, privileges, authority, functions, and

duties provided by the general law of this state, including Chapter 36, Water Code, applicable to groundwater conservation districts created under Section 59, Article XVI, Texas Constitution." HTGCD Act § 8843.101;

WHEREAS, the District is authorized by the HTGCD Act to collect certain fees for well construction, application renewals and service connections. HTGCD Act §§ 8843.151, 8843.1515 and 8843.152; and

WHEREAS, the District is authorized to "make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent waste of groundwater and to carry out the powers and duties provided by this chapter." Tex. Water Code Ann. § 36.101(a);

WHEREAS, in adopting a rule under Chapter 36 of the Texas Water Code, a district is required to "(1) consider all groundwater uses and needs; (2) develop rules that are fair and impartial; (3) consider the groundwater ownership and rights described by Section 36.002; (4) consider the public interest in conservation, preservation, protection, recharging, and prevention of waste of groundwater, and of groundwater reservoirs or their subdivisions, and in controlling subsidence caused by withdrawal of groundwater from those groundwater reservoirs or their subdivisions, consistent with the objectives of Section 59, Article XVI, Texas Constitution; (5) consider the goals developed as part of the district's management plan under Section 36.1071; and (6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal conservation program." Tex. Water Code Ann. § 36.101(a);

WHEREAS, the District is authorized to enforce Chapter 36 of the Water Code "and its rules against any person by injunction, mandatory injunction, or other appropriate remedy in a court of competent jurisdiction." Tex. Water Code Ann. § 36.102(a);

WHEREAS, the District is authorized to "set reasonable civil penalties against any person for breach of any rule of the district not to exceed $10,000 per day per violation, and each day of a continuing violation constitutes a separate violation." Tex. Water Code Ann. § 36.102(b);

WHEREAS, civil penalties for violations of the District's rules may be enforced against any person by a suit filed in Hays County. Tex. Water Code Ann. § 36.102(c);

WHEREAS, Section 36.102 of the Texas Water Code provides, "If the district prevails in any suit to enforce its rules, the district may seek and the court shall grant against any person, in the same action, recovery for attorney's fees, costs for expert witnesses, and other costs incurred by the district before the court. Tex. Water Code Ann. § 36.102(d);

WHEREAS, the Texas Legislature amended provisions of Chapter 36, Texas Water Code in the 88th Regular Session of the Texas Legislature, resulting in necessary changes to the District's rules. Tex. Water Code Ann. Ch. 36;

WHEREAS, when it adopts rules, the District must comply with the applicable procedural rulemaking requirements of Chapter 36 and the District's rules. Tex. Water Code Ann. § 36.101; District Rule 5;

WHEREAS, pursuant to Tex. Water Code Ann. § 36.101 and Sections 5.1 and 5.2 of the District's Rules, the District provided notice of the rulemaking hearing held with respect to the Proposed Rules ("PRs"), by 20 days before the hearing: posting the notice in a place readily accessible to the public at the District's office; providing the notice to the Hays County Clerk; publishing the notice in the *Wimberley View* and *Dripping Springs Century News*, newspapers of

general circulation in the District; providing the notice by mail, facsimile, or electronic mail to those persons who have requested notice; and making available a copy of the proposed rules at the District's office during the District's business hours and on the District's website;

WHEREAS, pursuant to § 36.101, Tex. Water Code Ann., and Sections 5.1 and 5.2 of the District's Rules, the District held a public rulemaking hearing at which the public was allowed to make comments on the PRs and the hearing was conducted in accordance with the Texas Open Meetings Act, Tex. Gov't Code Ann. §§ 551.001-551.146;

WHEREAS, the Texas Private Real Property Rights Preservation Act Assessment, as set out in Exhibit A, is attached hereto and incorporated for all purposes;

WHEREAS, the District has considered all comments submitted prior to the adoption of this order;

WHEREAS, the District adopted a board amendment to the PRs, which is attached hereto as Exhibit B;

WHEREAS, the District has prepared Final Rules ("FRs"), as set out in Exhibit C, which are attached hereto and incorporated for all purposes; and

WHEREAS, the board has reviewed the FRs and finds that they are consistent with the District's statutory authority and should be adopted.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE BOARD OF DIRECTORS OF THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT THAT:

Section 1. The recitals set out above are found to be true and correct and they are hereby adopted by the Board and are made a part of this Resolution and Order for all purposes.

Section 2. The Texas Private Real Property Rights Preservation Act Assessment, which is attached hereto as Exhibit A, and all of the statements, findings, and conclusions

contained therein are hereby approved and adopted by the board and are incorporated into this Resolution and Order for all purposes.

Section 3. The FRs, which are attached to this Resolution and Order as Exhibit C, are hereby adopted as Final Rules by the Board.

Section 4. The FRs become effective immediately.

PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT THIS 2ND DAY OF NOVEMBER, 2023.

Linda Kay Rogers, President

ATTEST:

David Smith
Secretary/Treasurer

APPROVED AS TO FORM:

Gregory M. Ellis, General Counsel
Deborah Trejo

EXHIBIT A

HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT RULEMAKING

Document Title: **TEXAS PRIVATE REAL PROPERTY RIGHTS PRESERVATION ACT ASSESSMENT**

Rules: **HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT RULES**
Rule 1 (Introduction)
Rule 2 (Definitions)
Rule 3 (Well Construction, Operating Permits and Water Utility Connections)
Rule 4 (Well Construction, Reports and Spacing)
Rule 5 (Hearings)
Rule 6 (Tagging Prohibited Use, Capping or Plugging Wells)
Rule 9 (Prohibitions Against Waste and Pollution; Water Loss Audits)
Rule 10 (Enforcement)
Rule 12 (Reporting)
Rule 13 (Drought Management)
Rule 15 (Management Zone)

Rule Type: **Proposed Rules (PRs)**

Prepared By: Gregory M. Ellis, General Counsel
Deborah C. Trejo

Approved By: Charlie Flatten, General Manager

Date: October 30, 2023

I. Duty of Certain Governmental Entities to Conduct a Takings Impact Assessment under Certain Circumstances

Chapter 2007 of the Texas Government Code[1] requires governmental entities, under certain circumstances, to prepare a takings impact assessment ("TIA") in connection with certain covered categories of proposed governmental actions.[2]

II. Applicability of TPRPRPA to the Hays Trinity Groundwater Conservation District

The requirement to prepare a TIA generally applies to a "governmental entity."[3] The term "governmental entity" is defined by TPRPRPA to include "a political subdivision

[1] Tex. Gov't Code Ann. §§ 2007.001-.045 (the "Texas Private Real Property Rights Preservation Act" or "TPRPRPA").

[2] *See id.* §§ 2007.043(a); 2007.003(a)(1)-(3).

[3] *Id.* § 2007.043(a).

of this state."[4] The express language of the enabling statute for the Hays Trinity Groundwater Conservation District (the "District")[5] establishes the district as a "groundwater conservation district" under Article XVI, Section 59 of the Texas Constitution.[6] Groundwater conservation districts created under Article XVI, Section 59 of the Texas Constitution are "political subdivisions" of the State of Texas.[7] The District, therefore, is a "governmental entity."

III. Applicability of TPRPRPA to Rulemaking Generally

Although TPRPRPA does not apply to the repeal of a rule by a governmental entity, it does apply to the adoption of a rule.[8] Section 2007.003(a) of TPRPRPA states that "[t]his chapter applies only to the following governmental actions: (1) the *adoption or issuance* of a rule."[9] There is no provision describing any type of governmental action that could be construed as the repeal of a rule. TPRPRPA, therefore, applies only to the District's adoption of rules.

IV. The District's Adoption of Its Proposed Rules is Excluded from TPRPRPA under TPRPRPA's Statutory Exclusions.

Tex. Gov't Code Ann. § 2007.003(b)(1) through (14) sets forth statutory exclusions that exempt certain governmental actions from TPRPRPA's coverage. The District's adoption of rules falls within at least two of these exclusions.

A. The District's Adoption of the Proposed Rules is Excluded From TPRPRPA under Tex. Gov't Code Ann. § 2007.003(b)(11)(C).

Tex. Gov't Code Ann. § 2007.003(b)(11)(C) excludes from TPRPRPA's applicability "an action taken by a political subdivision under the political subdivision's statutory authority to prevent waste or protect rights of owners of interest in groundwater."[10] The District's proposed rules revise the District's existing rules to: make the rules consistent with amendments to Chapter 36, Water Code, including with respect to rulemaking and contested case hearing procedures and revise the District's existing rules related to general provisions, definitions, well construction, operating permits, water utility connections, well construction, well plugging, reports, spacing, hearings, enforcement, drought management, and waste and pollution; and to make non-substantive editorial changes. The rules adoption is an action taken by the District under

[4] *Id.* § 2007.002(1)(A).

[5] Acts 1997, 75th Leg., R.S., ch. 1075, 1997 Tex. Gen. Laws 4151, amended in 2009, and codified in Texas Special District Local Laws Code, Chapter 8816 ("Act").

[6] *See id.* §§ 8821.002, 8821.101.

[7] *See e.g., Guaranty Petroleum Corp. v. Armstrong*, 609 S.W.2d 529, 530 (Tex. 1980).

[8] *See* Tex. Gov't Code Ann. § 2007.003(a).

[9] *Id*. § 2007.003(a)(1) (emphasis added).

[10] *Id.* § 2007.003(b)(11)(C).

its statutory authority to manage groundwater withdrawals and thus, is an action to protect the rights of owners of interests in groundwater and to prevent the waste of groundwater, and therefore, is excluded from the requirements of TPRPRPA.

The Texas Legislature created the District for the express purpose of accomplishing "the purposes of Section 59, Article XVI, Texas Constitution."[11] Tex. Spec. Dist. Code Ann. §§ 8816.101 and 8816.106 provide that the District has all of the rights and powers provided under Chapters 36 and 49, Texas Water Code. The District is also a "district" under § 36.001(1) of the Texas Water Code.[12] Therefore, the District has all of the powers and authority provided for in Chapter 36 of the Texas Water Code, to prevent the waste of groundwater and to protect interests in groundwater.

Groundwater conservation districts, such as the District, are the "state's preferred method of groundwater management."[13] Accordingly, Chapter 36 of the Texas Water Code provides for the creation of districts for the express purpose of preventing the waste of groundwater, and indirectly the interests therein, through conservation, preservation, protection, and recharge.[14] Section 36.101(a) of the Texas Water Code authorizes districts, such as the District, to "develop rules which are fair and impartial" to carry out this purpose.[15] This section provides as follows:

> A district may make and enforce rules, including rules limiting groundwater production based on tract size or the spacing of wells, to provide for conserving, preserving, protecting, and recharging of the groundwater or of a groundwater reservoir or its subdivisions in order to control subsidence, prevent degradation of water quality, or prevent *waste* of groundwater and to carry out the powers and duties provided by this chapter.[16]

In other words, the Legislature has authorized groundwater conservation districts, such as the District, to engage in rulemaking in order to prevent the waste of groundwater and to generally protect ownership interests through conservation and preservation.[17]

Chapter 36 of the Texas Water Code also sets forth the details of significant

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[11] Tex. Spec. Dist. Code Ann. § 8816.002.

[12] Tex. Water Code Ann. § 36.001(1).

[13] *Id*. § 36.0015.

[14] *See id*. "In order to provide for the conservation, preservation, protection, recharging, and prevention of *waste* of groundwater, and of groundwater reservoirs or their subdivisions groundwater conservation districts may be created as provided by this chapter." *Id.* (emphasis added).

[15] *Id.* § 36.101(a).

[16] *Id.* (emphasis added).

[17] *See Bragg*, 71 S.W.2d at 736.

elements of a permit program, and provides for the regulation of well spacing.[18] Specifically, § 36.1071 requires districts to develop a comprehensive management plan which considers controlling and preventing the waste of groundwater as a management goal.[19] As applied to the regulation of spacing and production, § 36.116(a) provides that "[i]n order to prevent waste, a district by rule may regulate [spacing and production]."[20] As these provisions demonstrate, the District is clearly authorized to take action under the statutory authority provided by the Legislature to prevent the waste of groundwater, including through the adoption of permitting and other related rules to regulate production.[21] The Texas Supreme Court in *Bragg v. Edwards Aquifer Authority* noted that the authority to prevent waste under the Property Rights Act's exclusion refers to the broader concept of preventing waste through a permit system that is designated by the Legislature,[22] such as the District's permitting scheme authorized by Chapter 36 of the Texas Water Code.

Through the implementation of a permit program, ownership interests in groundwater are also protected under Chapter 36 of the Texas Water Code. By providing for the enactment of rules designed to protect and conserve groundwater, the District ensures that all ownership interests in groundwater are protected and that water is available for beneficial use by multiple users.[23] Chapter 36 requires districts to consider the effects of new permits on existing users. Before granting or denying a permit, a district is required to consider whether "the proposed use of water unreasonably affects existing permit holders."[24] District rules to manage groundwater withdrawals allow the District to conserve and protect groundwater in the District, and thus, serve to protect the rights of the owners of interest in groundwater and to prevent waste.

That the District's adoption of proposed rules is exempt from the Property Rights Act under § 2007.003(b)(11)(C) of the Texas Government Code is supported by the Supreme Court's decision in *Bragg*.[25] In that case, well owners sued to invalidate a set of rules adopted by the Edwards Aquifer Authority, a groundwater conservation district, which were designed to implement a permitting program. The court held that the adoption of the district's well permitting rules was exempt from the Property Rights Act under § 2007.003(b)(11)(C) of the Texas Government Code as they were adopted under the

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[18] *See* Tex. Water Code Ann. § 36.113(a) (requiring a district to issue permits); *see also* § 36.102 (providing for enforcement); § 36.116 (providing for well spacing).

[19] *Id*. § 36.1071(a)(2).

[20] *Id.* § 36.116(a).

[21] *See Bragg*, 71 S.W.2d at 736.

[22] 71 S.W.2d 729, 736 (Tex. 2002).

[23] *See* Tex. Water Code Ann. § 36.0015 (providing that the purpose of a District is to conserve and protect groundwater); *see also* §§ 36.101(a), 36.113(d)(2), 36.1131(b), 36.115, 36.116(a) (relating to permitting a permitting program that protects and conserves groundwater); § 36.118 (relating to the capping of open or uncovered wells), § 36.119 (providing remedies for illegal drilling), and § 36.123 (providing authority for inspections).

[24] *Id*. § 36.113(d)(2).

[25] 71 S.W.2d at 736.

district's statutory authority to prevent waste and protect the rights of owners of interest in groundwater.[26] Similarly, the District's adoption of rules to conserve and protect groundwater within the District is necessary to implement its regulatory programs and should be exempt.

The proposed rules relate to the management of groundwater within the District. These rules are reasonable and necessary to protect and conserve groundwater and to protect the rights of the owners of interest in groundwater and prevent waste or pollution of groundwater.

Accordingly, the District's adoption of proposed rules, under the District's statutory mandate to regulate the production of groundwater within the District and to conserve groundwater and prevent the waste and pollution of groundwater, is exempt from the Property Rights Act's requirement to prepare a TIA.

B. The District's Adoption of Proposed Rules is Excluded From TPRPRPA under Tex. Gov't Code Ann. § 2007.003(b)(4)

The District's adoption of proposed rules is also exempted from TPRPRPA under § 2007.003(b)(4) of the Texas Government Code. This provision excludes from TPRPRPA's coverage: "an action of a political subdivision, that is reasonably taken to fulfill an obligation mandated by state law."[27] The adoption of the District's proposed rules constitutes an action reasonably taken by the District to fulfill its obligation, mandated by state law, to adopt rules to conserve, preserve and protect groundwater. That action is, therefore, excluded from the requirements of TPRPRPA.

As discussed above, the District is required to fulfill its mandate to serve a public use and benefit, through the implementation and enforcement of a groundwater withdrawal program. Chapter 36 of the Texas Water Code obligates the District to adopt rules to carry out these powers and duties under state law. Significantly, § 36.0015 of the Texas Water Code states, "Groundwater conservation districts created as provided by this chapter are the state's preferred method of groundwater management through rules developed, adopted and promulgated by a district in accordance with this chapter." Indeed, Chapter 36 requires that the District adopt rules in accordance with the chapter, "After notice and hearing, the board shall adopt and enforce rules to implement this chapter" and any "rules developed, adopted, and promulgated by a district must be in accordance with the chapter." Tex. Water Code Ann. § 36.101(b). Districts are required to adopt a comprehensive management plan to carry out the district's policies and to "adopt rules necessary to implement the management plan." *Id.* § 36.1071(a) and (f). Districts must require permits "for the drilling, equipping, or completing of wells or well pumps," and except for exempt wells,[28] for operating a well. *Id.* §§ 36.113(a) and 36.115(c). The District has adopted permitting and related rules as a means of carrying

[26] 71 S.W.2d at 735-37.

[27] Tex. Gov't Code Ann. § 2007.003(b)(4).

[28] *See* Tex. Water Code Ann. § 36.117 (providing for exemptions, exceptions and limitations on permit requirements).

out its statutory obligation to protect, conserve and prevent the waste or pollution of groundwater. The plain language of these provisions demonstrates that the District is mandated by state law to implement the provisions of Chapter 36 of the Texas Water Code through the adoption of rules.[29]

When a political subdivision acts reasonably to carry out functions necessary to accomplish the purposes for which it was created, those acts are excluded from TPRPRPA under § 2007.003(b)(4) of the Texas Government Code.[30] The District's proposed rules are adopted to carry out the District's statutory mandate under the Act and Chapter 36 of the Texas Water Code to protect, conserve and preserve groundwater through the adoption of a permitting program and other rules. Therefore, the District's adoption of proposed rules is exempt from the Property Rights Act's requirement to prepare a TIA.

V. Covered Governmental Action Determination

The District's adoption of proposed rules is excluded from the requirements of TPRPRPA under both § 2007.003(b)(11)(C) and § 2007.003(b)(4) of the Texas Government Code and, therefore, no takings impact assessment is required.

[29] *See Edwards Aquifer Auth. v. Bragg*, 21 S.W.3d 375, 380 (Tex. App.—San Antonio 2000), *aff'd, Bragg v. Edwards Aquifer Auth.*, 71 S.W.3d 729 (Tex. 2002).

[30] *See McMillan v. Northwest Harris County Mun. Util. Dist. No. 24*, 988 S.W.2d 337, 340-41 (Tex. App.—Houston 1999); s*ee also Edwards Aquifer Auth. v. Bragg,* 21 S.W.3d at 379-80.

EXHIBIT B

AMENDMENT NO. 1
Regular Board Meeting, November 2, 2023

HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT RULEMAKING

Title: **HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT RULES**
Rule 1 (Introduction)
Rule 2 (Definitions)
Rule 3 (Well Construction, Operating Permits and Water Utility Connections)
Rule 4 (Well Construction, Reports and Spacing)
Rule 5 (Hearings)
Rule 6 (Tagging Prohibited Use, Capping or Plugging Wells)
Rule 9 (Prohibitions Against Waste and Pollution; Water Loss Audits)
Rule 10 (Enforcement)
Rule 12 (Reporting)
Rule 13 (Drought Management)
Rule 15 (Management Zone)

Rule Type: **Amendment to Proposed Rules (PRs) (redlined)**

Prepared By: Gregory M. Ellis & Deborah C. Trejo, Counsel

Approved By: Charlie Flatten, General Manager

Date Prepared: November 2, 2023

Section 1.5 Regulatory Compliance

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(1.5.1) All persons within the District, including land owners, well owners, operators, and ~~wells, permits and~~ permittees shall comply with all applicable r~~R~~ules, orders, regulations, requirements~~, resolutions, policies, directives, standards, guidelines, or~~ and ~~any~~ other regulatory measures adop~~implemen~~ted by the District.

(1.5.3) Following the contested case hearing concerning a NOAV, the Board shall make a decision on the proper resolution of the enforcement matter. If the Board determines that the person has committed a violation or is threatening to commit a violation, the Board may, among other things:

A. recommend and/or authorize acceptance of a settlement amount in lieu of litigation; or

B. file suit in a court of competent jurisdiction to seek civil penalties and/or injunctive relief, attorney's fees and costs necessary to resolve the matter.

RULE 2. DEFINITIONS

DEWATERING WELL – A well used temporarily for lowering the water table for construction purposes.

SUBSTANTIALLY ALTER - altering the size of a well or well pump to increase the size of the pipe in the well or the size of the pump on the well, or the production capacity of the well, unless the well's production capacity is below 25,000 GPD.

WELL CONSTRUCTION FEE – The fee charged by the District for ~~the construction of a new well drilled after September 1, 2001~~drilling, equipping, or completing any well or substantially altering the size of a well or well pump, or converting an oil and gas well to a water well.

Section 3.5 New Operating Permits

(3.5.2) A completed operating permit application verified under oath or declaration must be submitted to the District ~~prior to operating the well. The District General Manager has the authority to waive certain requirements if not applicable~~. In order for the operating permit application to be found administratively complete, the following documentation shall be included for new and existing wells or other withdrawals of groundwater by springs, or means other than a well, as appropriate:

m) a study and other information showing the impacts of the proposed use of the well on water availability, existing groundwater and surface water resources, and on other permittees and groundwater users, during periods in which the aquifer is within and outside of a declared drought stage;

Section 3.6 Transportation Outside District Boundaries; Export Permit Required

(3.6.6) Each person transporting groundwater outside the boundaries of the District shall report the total amount of groundwater transported during the previous calendar year no later than January 30th.

(3.11.1) New wells exempted from obtaining an operating permit must comply with District Rules and all State requirements and District well construction standards. The following wells and other means of withdrawing groundwater do~~are~~ not require~~d to obtain~~ an operating permit:

(3.13.4) A moratorium applicable to an authorization or permit from the District tolls the application of this section.

Section 4.3 Well Location and Spacing

(4.3.4) Spacing between Wells and Property Lines for All New Wells

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EXHIBIT B

Projected Pumping Capability of Proposed Well, in Daily Average Gallons per Minute and Acre-Feet per Year	Minimum Horizontal Distance Between Proposed Well and Existing Wells[1]	Minimum Horizontal Distance Between Proposed Well and Adjacent Property Lines[2]
<17.36 GPM	150 feet	100 feet[3]
1 to <25 ac-ft/yr (17.36 GPM to <40 GPM)	300 feet	150 feet
25 to <100 ac-ft/yr (40 to <161 GPM)	750 feet	375 feet
100 to <150 ac-ft/yr (161 to <240 GPM)	1,200 feet	600 feet
≥150 ac-ft/yr (≥240 GPM)	1,500 feet	750 feet

Section 5.6 Contested Case Hearing Procedures

(5.6.6) The Board shall conduct the fFinal hearing once the Board concludes the eEvidentiary hearing or receives the report from the hHearings examiner or from SOAH. The fFinal hearing must be conducted no later than the one-hundred and twentieth (120th) day following receipt of the proposal for decision. A fFinal hearing is to review the submitted report, hear legal argument and deliberate the merits of the application. A fFinal hearing may be continued from time to time or day to day as needed to allow all the parties sufficient time to prepare additional arguments as required by the Board, or to allow time for the Board to fully consider and debate the merits of the application. At the conclusion of the fFinal hearing, the Board shall make a motion and vote on granting, denying or issuing the permit with conditions. For contested case hearings conducted by the State Office of Administrative Hearings, the Board decision on a proposal for decision must be made no later than 180th day after the date the District received the final proposal for decision from SOAH. The Board is considered to have adopted a final proposal for decision of the administrative law judge as a final order on the 181st day after the date the administrative law judge issued the final proposal for decision if the board has not issued a final decision by:

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(5.7.5) Following the contested case hearing concerning athe N O A V, the Board shall make a decision on the proper resolution of the enforcement matter. If the Board determines that the person has committed a violation or is threatening to commit a

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violation, tThe Board may, among other things:

A. recommend and/or authorize acceptance of a settlement amountAssess a penalty in accordance with Rule 10; B. Make an offer of Compromise and Settlement in lieu of litigation; or

BC. fFile suit in a court of competent jurisdiction to seek civil penalties, injunctive relief, attorney's fees and costs, or both as necessary and appropriate to resolve the matter.

RULE 9. PROHIBITIONS AGAINST WASTE AND POLLUTION

Section 9.1 Prohibition Against Waste and Pollution

(9.1.1) A person may not waste groundwater within the District or water withdrawn from any aquifer within the District. No person shall withdraw or use groundwater in such a manner as to constitute waste. Producing groundwater that exceeds the amount reasonably needed for beneficial use or a beneficial purpose is wasteful and prohibited. Unmetered or unbilled beneficial use of groundwater, including groundwater used by a water utility for line flushing or water system maintenance that is required by Texas Commission for Environmental Quality Rules and groundwater used for emergency response purposes, including firefighting, are not considered to be real loss or waste.

(10.1.2.1) Settlement of an NOAV for violating the withdrawal limitations in a permit may include, but is not limited to:

a. payment of the settlement amount;

b. negotiation of a settlement amount based on receipts proving repair to a water system negatively impacted by a "force majeure"; and

a.c. negotiation of a settlement amount based on receipts proving installation of improved water conservation or management systems.

(10.1.5) The permittee, for which a licensed public water system operator is operating a well or wells, shall be responsible for complying with and resolving any violations of the District's rules, permits or orders.

RULE 13. DROUGHT MANAGEMENT

Section 13.3 Drought Stages

(13.3.1) District drought management consists of four drought stages. When streamflow drops below a drought trigger (shown in the table below), or the PDSI reaches the indicated level, a daily counter begins. If the counter for either of the drought indicators reaches 30 days, the General Manager will declare the appropriate drought stage. When streamflow increases above a drought trigger and the PDSI reaches the next less severe

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drought severity level or indicates no drought ~~and remains there~~ for the entirety of a period of 60 days, the General Manager will declare the lesser drought stage.

Percent Curtailment	Drought Stage	PDSI level or Pedernales River flow rate	PDSI level or Blanco River flow rate
~~0%~~	~~No Drought/Voluntary Conservation~~	~~Above 31.6 cfs~~	~~Above 28.5 cfs~~
10%	Conservation	PDSI = -1.5 to -1.9; or at or below 59 cfs	PDSI = -1.5 to -1.9; or at or below 41 cfs
20%	Alarm	PDSI = -2 to -2.9; or a~~A~~t or below 31.6 cfs	PDSI = -2 to -2.9; or a~~A~~t or below 28.5 cfs
30%	Critical	PDSI = -3 to -4.9; or a~~A~~t or below 10.2 cfs	PDSI = -3 to -4.9; or a~~A~~t or below 14.5 cfs
40%	Emergency	PDSI = -5 or less; or a~~A~~t or below 2.23 cfs	PDSI = -5 or less; or ~~A~~at or below 9.28 cfs

(13.3.3) The following additional restrictions apply during each indicated stage:

~~(a)~~A. During Stage 2 (Alarm), Stage 3 (Critical), or Stage 4 (Emergency) conditions, groundwater withdrawn for a non-exempt use may not be used to fill or refill ponds.

~~(b)~~B. During Stage 3 (Critical) or Stage 4 (Emergency) conditions, the District will not accept any application for a new operating permit or any amendment to increase production under an existing operating permit.

C. During Stage 3 (Critical) or Stage 4 (Emergency) conditions, no new well may be constructed other than wells drilled to replace existing permitted wells or wells for exempt uses. The Board may grant a variance to this rule if an existing condition in the District ~~for new wells used to alleviate conditions imminently~~ threatening the health, safety, or welfare of the public will be significantly lessened by a proposed new well.

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EXHIBIT C

HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT RULEMAKING

Title: **HAYS TRINITY GROUNDWATER CONSERVATION DISTRICT RULES**
Rule 1 (Introduction)
Rule 2 (Definitions)
Rule 3 (Well Construction, Operating Permits and Water Utility Connections)
Rule 4 (Well Construction, Reports and Spacing)
Rule 5 (Hearings)
Rule 6 (Tagging Prohibited Use, Capping or Plugging Wells)
Rule 9 (Prohibitions Against Waste and Pollution)
Rule 10 (Enforcement)
Rule 12 (Reporting)
Rule 13 (Drought Management)
Rule 15 (Management Zone)

Rule Type: **Final Rules (FRs) (redlined)**

Prepared By: Greg M. Ellis, General Counsel
Deborah C. Trejo

Approved By: Charlie Flatten, General Manager
Laura Thomas, Assistant General Manager

Date Prepared: November 2, 2023

Effective Date: November 2, 2023 Board approves FRs: November 2, 2023 Public Hearing on PRs: November 2, 2023 Board approved publication of PRs: October 5, 2023 GM approves PRs: October 5, 2023

GLOBAL EDITORIAL CHANGES	
Edit	**Example**
Uniform capitalization, abbreviations and use of terms, where appropriate	
Grammar and typos	
Renumber affected sections and subsections accordingly.	

RULE 1. INTRODUCTION

Section 1.4 Action on Rules

(1.4.1) The Board may from time to time, following notice and public hearing, amend or revoke these Rules or adopt new Rules.

(1.4.2) The Board may adopt an emergency rule with an abbreviated notice and hearing.

(1.4.3) The Board may adopt new Rules or amend Rules as necessary to carry out the purposes of the District and to implement State and Regional Water Plans and the District's Groundwater Management Plan.

Section 1.5 Regulatory Compliance

(1.5.1) All persons within the District, including landowners, well owners, operators, and permittees shall comply with all applicable rules, orders, regulations, requirements, and any other regulatory measures adopted by the District.

(1.5.2) Conformance to District Rules does not eliminate requirements for the applicant or contractor to conform to other laws.

(1.5.3) Following the contested case hearing concerning a NOAV, the Board shall make a decision on the proper resolution of the enforcement matter. If the Board determines that the person has committed a violation or is threatening to commit a violation, the Board may, among other things:

A. recommend and/or authorize acceptance of a settlement amount in lieu of litigation; or

B. file suit in a court of competent jurisdiction to seek civil penalties and/or injunctive relief, attorney's fees and costs necessary to resolve the matter.

Section 1.8 Petition for Rulemaking

(1.8.1) All Regular, Special, and Emergency Board Meetings will be called and conducted under the provisions of the Texas Open Meetings Act, Chapter 551, Government Code.

(1.8.2) A person with a real property interest in groundwater in the District may file a petition with the District to request the adoption of a rule.

(1.8.3) Petitions must be submitted in writing to the District office and must comply with the following requirements:

A. Each rule requested must be submitted by separate petition;

B. Each petition must be signed and state the name and address of each person signing the petition;

C. Each petition must include:

1) a brief description of the petitioner's real property interest in groundwater in the District;

2) a brief explanation of the proposed rule;

3) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any; and

4) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(1.8.4) The General Manager may reject any petition for failure to comply with the requirements of this section and shall provide notice to the petitioner of the reason for the rejection.

(1.8.5) Within 90 days after submission of a petition that complies with this section, the Board shall either deny the petition, stating its reasons for denial in the minutes of the board meeting or in a letter providing a written explanation to the petitioner, or initiate rulemaking proceedings as provided by Section 36.101, Texas Water Code.

RULE 2. DEFINITIONS

DEWATERING WELL – A well used temporarily for lowering the water table for well construction purposes.

DRILLING PERMIT – The authorization issued by the District under which a person may drill, equip, cap, plug, or complete any well or substantially alter the size of a well or well pump, or convert an oil and gas well to a water well.

EXEMPT WELL – A well for which the owner is not required to obtain a well drilling permit or operating permit, as applicable. To qualify for an exempt use the well must be registered with the District as an exempt use well and must be used exclusively for an exempt use.

GEOEXCHANGE WELL – A well used solely for earth-coupled heat exchange purposes and not equipped to produce groundwater.

GPM – gallons per minute.

NON-EXEMPT USE – Any use of groundwater for which an operating permit is required.

NOTICE OF ALLEGED VIOLATION (NOAV) – A notice sent under Section 10.1.2 to a person believed to be in violation of a rule, permit or order that the District is charged with enforcing.

OPERATING PERMIT - The authorization issued by the District under which an owner or operator of property within the District may withdraw a specific amount of groundwater for a non-exempt use for a designated period of time.

PALMER DROUGHT SEVERITY INDEX (PDSI) - a standardized index based on a simplified soil water balance and estimates relative soil moisture conditions. The magnitude of PDSI indicates the severity of the departure from normal conditions. A PDSI value >4 represents very wet conditions, while a PDSI <-4 represents an extreme drought.

PERMIT AMENDMENT - A District approved change in a permit.

PERMITTEE - A person or entity who has a permit from the District.

PLUGGING - The permanent closure of a borehole, which should be performed in accordance with approved State standards and District Rules.
REAL LOSSES – Losses from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks.

DOMESTIC SHARED WELL – One new or existing well on private property that serves no more than four single-family dwellings on the same property or adjoining properties, the groundwater is used exclusively for domestic use, and the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons per day (17.36 GPM).

TEST WELL – A well drilled prior to drilling a well in connection with an operating permit to evaluate groundwater quality or quantity, including a test well required under Section 11.6.4.

WELL CONSTRUCTION FEE – The fee charged by the District for drilling, equipping, or completing any well or substantially altering the size of a well or well pump, or converting an oil and gas well to a water well.WELL CONSTRUCTION NOTIFICATION – Notice provided to the District on a District Form of intent to drill, equip, cap, plug, or complete any well or substantially alter the size of a well or well pump, or convert an oil and gas well to a water well.

WITHDRAW OR WITHDRAWAL - The act of extracting groundwater by pumping or any other method.

RULE 3. WELL CONSTRUCTION, OPERATING PERMITS and WATER UTILITY CONNECTIONS

Section 3.1 General Provisions

(3.1.1) Except as provided in Sections 3.3.1 or 3.11, well owners and others withdrawing

groundwater are required to obtain a drilling permit and an operating permit.

(3.1.2) All wells constructed within the District shall be subject to District rules and to terms and conditions including the drilling, equipping, capping, plugging, completion, or alteration of wells or pumps, and the District's definition of waste.

(3.1.3) The decision whether to grant or deny a permit required under these Rules, shall be based on the considerations required by Texas Water Code Section 36.113(d), as authorized by Texas Water Code Section 36.113(f).

Section 3.2 Existing Wells

(3.2.1) All owners of wells are required to submit a completed well registration form. A well construction notification fee will not be required prior to drilling, completing or equipping wells drilled prior to September 1, 2001.

Section 3.3 Drilling Permits for Wells

(3.3.1) (a) Except as provided in Subsection (d) of this section, the owner and/or operator of a well or proposed well must apply for and obtain a drilling permit from the District before drilling, equipping, capping, plugging, or completing any well or substantially altering the size of a well or well pump, or converting an oil and gas well to a water well.

(b) Any person seeking to drill, equip, cap, plug, or complete any well or substantially alter the size of a well or well pump, or convert an oil and gas well to a water well must file an application for a drilling permit on a form prescribed by the District.

(c) A drilling permit is not required for well maintenance or repair that does not increase the production capabilities of the well to more than its authorized production rate.

(d) The owner and/or operator of any of the following types of water wells is required to provide a well construction notification to the District in accordance with Section 3.4 but is exempt from the duty to obtain a drilling permit prior to drilling, completing, or equipping the well:

(1) a well drilled and operated solely for domestic use if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;

(2) a well drilled and operated solely for providing water for wildlife, if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day, and located on a tract of land equal to or greater than 10 acres;

(3) a well or proposed well drilled solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the

Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig is exempt from the requirement to obtain a drilling permit;

(4) a well drilled and authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code;

(5) a well for temporary use solely to supply water for a rig that is actively engaged in drilling a well to produce groundwater authorized by a drilling permit from the District;

(6) a well used solely for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, poultry operations; or

(7) a well used solely for dewatering and monitoring in the production of coal or lignite.

(3.3.2) Except as provided by 3.3.3, a one-time well construction fee will be incurred for all new wells.

(3.3.3) A well used solely for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, poultry operations, or a well used for dewatering and monitoring in the production of coal or lignite is not required to pay the well construction fee. Wells used for both domestic use and conventional farming and ranching activities are not exempt from the duty to pay the well construction fee in Section 3.3.2. A person claiming the conventional farming and ranching activities exemption must provide a copy of their “Texas Agricultural or Timber Registration” card.

Section 3.4 Well Construction Notification

(3.4.1) All persons shall notify the District prior to drilling, equipping, capping, plugging, or completing any well or substantially altering the size of a well or well pump, or converting an oil and gas well to a water well by completing and submitting a well construction notification form. Based on the information provided, staff will determine whether the person is required to file an application for a drilling permit. A well construction notification form must include a property plat and map, indicating the well location, Hays County property identification number, and a well construction fee. Incomplete notifications will not be processed by the District.

(3.4.2) Once the notification is declared to be administratively complete by the District, District staff has a minimum of three workdays to process and approve the well construction notification for wells exempt from drilling permit requirements without Board action. A confirmation document will be sent to both the well owner or operator and the drilling company allowing the drilling to begin. The confirmation to drill or alter a well for

wells exempt from drilling permit requirements is valid for 90 days from the date of issuance. Additional 90-day extensions, up to a total of 270 days, may be obtained from District staff upon request. An applicant seeking a well drilling permit for a test well is required to meet with District staff to discuss the planned testing approach as part of the application process.

(3.4.3) Based on the information provided in the well construction notification, or other information available to the District, the District staff shall determine whether a well is exempt or non-exempt from the requirement to obtain a drilling permit and/or operating permit. A well owner or operator shall obtain an operating permit for any non-exempt groundwater withdrawals.

(3.4.4) It is the responsibility of the well driller to submit a completed State of Texas Well Report to the District within 60 days of well completion.

Section 3.5 New Operating Permits

(3.5.2) A completed operating permit application verified under oath or declaration must be submitted to the District. In order for the operating permit application to be found administratively complete, the following documentation shall be included for new and existing wells or other withdrawals of groundwater by springs, or means other than a well, as appropriate:

a) a completed and approved well construction notification, well registration, and/or drilling permit, as applicable;
b) the physical location of the well, including an address and the latitude and longitude;
c) a completed and signed User Drought Contingency Plan and a Water Conservation Plan;
d) a property plat, survey, or map of the parcel showing the location of the proposed well and that includes existing or proposed buildings, all water wells (including those abandoned, deteriorated, or not currently in service), septic tanks, septic disposal areas, driveways, barns, feedlot, ponds, creeks, rivers, intermitted streams, property lines, and any other known or suspected potential sources of pollution;
e) annual production amount requested including all formulas and calculations used to determine the annual production amount;
f) the capacity of the well and the requested rate of withdrawal;
g) a description of the place of use or project where groundwater will be used;
h) the purpose of use for the groundwater to be withdrawn;
i) the name, phone number, mailing address, and email address for:
1) the well owner;
2) the well operator (if any);
3) the person responsible for permit compliance; and
4) the person responsible for reading the meter and reporting production to the District;
j) a copy of the project's engineering plans;
k) for any commercial or industrial use: the number of full time employees, number

of part-time employees, number of days open per week, number of sinks, number of toilets, number of showers/baths, number of ponds or pools, size of ponds/pools, rainwater collection storage amounts, non-rainwater storage amounts, will rainwater be used for outdoor irrigation or indoor use, describe outdoor irrigation area, will groundwater be used as a material item, number of buildings/structures, number of total occupants;

l) geophysical logs of the well, including gamma-ray log (natural-gamma logs), electric logs (resistivity logs, spontaneous- potential logs, and single-point-resistance logs), temperature logs, and caliper logs, and any other downhole logs available;

m) a study and other information showing the impacts of the proposed use of the well on water availability, existing groundwater and surface water resources, and on other permittees and groundwater users, during periods in which the aquifer is within and outside of a declared drought stage;

n) a well-performance test (Tier 2) shall be required if the total annual production on a permit is greater than two (2) and less than or equal to six (6) acre-feet. Test results shall be submitted to the District as part of the permit application. The performance test and report shall follow the guidelines of the District's "Certification of Groundwater Availability";

o) an aquifer test (Tier 3) and aquifer report are required if the total annual production on a permit is greater than 6 acre-feet per year or if the application is a permit amendment that increases the permit amount to a volume greater than 6 acre-feet per year. Test results shall be submitted to the District as part of the permit application;

p) for a new operating permit for an existing well, the State Well Report for that well;

q) evidence that well(s) do not allow comingling between sub-aquifers; and

r) the applicant's signature or the applicant's agent's signature, and the date the application was signed.

Section 3.6 Transportation Outside District Boundaries; Export Permit Required

(3.6.6) Each person transporting groundwater outside the boundaries of the District shall report the total amount of groundwater transported during the previous calendar year no later than January 30th.

Section 3.7 Renewal of an Operating Permit

(3.7.3) Renewals shall be automatically approved except when the applicant: (a) is delinquent in paying a fee required by the district; (b) is subject to a pending enforcement action for a substantive violation of a district permit, order, or rule that has not been settled by agreement with the district or a final adjudication; or (c) has not paid a civil penalty or has otherwise failed to comply with an order resulting from a final adjudication of a violation of a district permit, order, or rule.

If the permit amendment process results in the denial of an amendment, the permit as it existed shall be renewed, unless Subsection (a), (b) or (c) of this section applies to the

applicant.

Section 3.10 Water Utility Connection Categories and Fees

(3.10.1) There are two categories of water utility connections: A. Community Water Connections - are long term supply. The most common community water connections: 1) Apartment Complex 2) Duplex 3) Home/Townhome 4) One (1) well supplying to more than four (4) residences 5) RV Park Slips B. Non-Community Water Connections - Short Term, not designed nor intended for long term living. The most common non-community water connections: 1) Hotel / Motel 2) Bed and Breakfast 3) Small Businesses: gas station, convenience stores, restaurants 4) Dental / Medical Office 5) School 6) Hospital

(3.10.2) Service Connection Fees: The District shall levy and collect a service connection fee for each new water utility service connection, and each new meter or tap will be charged a Service Connection Fee. The District shall adopt fees for each water utility service connection and each new meter or tap by resolution and order.

(3.10.3) Service Connection Fees for Community Water systems, with the exception of RV slips, will be assessed by the number of living units or dwellings multiplied by the connection fee amount.

Section 3.11 Operating Permit Exemptions

(3.11.1) New wells exempted from obtaining an operating permit must comply with District Rules and all State requirements and District well construction standards. The following wells and other means of withdrawing groundwater do not require an operating permit:

. . .

A. Residential/Domestic: A well used solely for domestic use by a single private residential household if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons per day (17.36 gallons per minute).

B. Agricultural: A well used solely for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, or poultry operations. Landscape irrigation such as sport fields are not considered agricultural use.

C. A well used solely for dewatering and monitoring in the production of coal or lignite.

D. A well used solely to supply water for a rig that is actively engaged in drilling or exploration operations permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the well is located on the same lease or field on which the drilling rig is located or is in close proximity to the drilling rig. The District may not deny an application for a permit for any well used to supply

water for hydrocarbon production activities if the application is in compliance with the spacing, density, and production Rules applicable to all permitted water wells of the District. If a well is no longer solely used to supply water for a rig actively engaged in drilling or exploration operations the well owner must obtain an operating permit from the District. Hydraulic fracturing is one means of enhanced recovery of oil and gas operations, and not part of the drilling or exploration process.

E. A well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from such a well to the extent the withdrawals are required for mining purposes regardless of any subsequent use of the water. These water wells are not required to comply with the spacing requirements of the District. The District shall require a well to be permitted and comply with District Rules if the withdrawals from the well are no longer necessary for mining activities, or are greater than the amount necessary for mining activities specified in the permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code. An entity holding such a Chapter 134 permit for a water well shall report monthly to the District (1) the total amount of water withdrawn during the month; (2) the quantity of water necessary for mining activities; and (3) the quantity of water withdrawn for other purposes.

F. A monitoring well, remediation well, injection well, construction dewatering well or cathodic protection well.

G. A geoexchange well for earth-coupled heat exchange purposes. The well must comply with Rule 3.12. A geoexchange well may not produce groundwater and must be of a “closed loop” design.

H. A domestic shared well.

I. A well drilled and operated solely for providing water for wildlife, if the well is drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day, and located on a tract of land equal to or greater than 10 acres, or others withdrawing groundwater solely for providing water for wildlife in an amount of no more than 25,000 gallons of groundwater a day, and where the withdrawals are occurring on a tract of land equal to or greater than 10 acres.

J. A temporary water well used solely to supply water for a rig that is actively engaged in drilling a groundwater production well permitted by the District.

K. Withdrawals of groundwater by springs, or means other than a well: (1) for solely domestic use or for wildlife in an amount not to exceed 25,000 gallons of groundwater a day for use on a tract of land equal to or greater than 10 acres; (2) solely to supply water for a rig that is actively engaged in

drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig is exempt from the requirement to obtain a drilling permit; (3) solely for temporary use to supply water for a rig that is actively engaged in drilling a well to produce groundwater authorized by a drilling permit from the District; or (4) solely for conventional farming and ranching activities, including such intensive operations as aquaculture, livestock feedlots, poultry operations.

Section 3.12 Geoexchange Wells (Geothermal wells; closed loop earth-coupled heat exchange wells)

(3.12.1) All geoexchange wells shall comply with these minimum rules and standards, as well as the applicable requirements of Rule 4. “Open loop” geoexchange wells are prohibited in the District.

Section 3.13 Project Dormancy

(3.13.1) An authorization or permit from the District shall be considered dormant for purposes of Section 245.005, Texas Local Government Code, if no progress has been made toward completion of the project for which the authorization or permit was obtained within two years of the issuance of the authorization or permit.

(3.13.2) A project for which an authorization or permit from the District was required shall be considered dormant for purposes of Section 245.005, Texas Local Government Code, if no progress has been made toward completion of the project for which the authorization or permit was obtained within five years of the issuance of the first authorization or permit.

(3.13.3) For purposes of this section, progress towards completion of a project shall include any one of the following:

(1) a required application for a final plat or plan is submitted to a regulatory agency other than the District for the project;

(2) a good-faith attempt is made to file with a regulatory agency other than the District an application for an authorization or permit necessary to begin or continue towards completion of the project;

(3) costs have been incurred for developing the project including, without limitation, costs associated with roadway, utility, and other infrastructure facilities designed to serve, in whole or in part, the project (but exclusive of land acquisition) in the aggregate amount of five percent of the most recent appraised market value of the real property on which the project is located;

(4) fiscal security is posted with a regulatory agency other than the District to ensure performance of an obligation required by the regulatory agency for the project; or

(5) required utility connection fees or impact fees for the project have been paid to a regulatory agency other than the District.

RULE 4. WELL CONSTRUCTION, REPORTS AND SPACING

Section 4.2 Reports and Monitoring

(4.2.3) Upon District request, subsurface geological cuttings samples shall be provided to the District from all new non-exempt use wells, test wells, and monitoring wells within sixty (60) days of well completion. This includes geoexchange wells, at least one well per well registration. The samples shall be taken at ten (10) foot intervals to total depth. The samples shall be stored in cloth or plastic bags and properly labeled with well designation, number and depth interval. The samples shall be representative of the intervals drilled and shall identify the Hammet Shale and its depth.

Section 4.3 Well Location and Spacing

(4.3.4) Spacing between Wells and Property Lines for All New Wells

Projected Pumping Capability of Proposed Well, in Daily Average Gallons per Minute and Acre-Feet per Year	Minimum Horizontal Distance Between Proposed Well and Existing Wells[1]	Minimum Horizontal Distance Between Proposed Well and Adjacent Property Lines[2]
Up to 17.36 GPM	150 feet	100 feet[3]
1-25 ac-ft/yr (up to 40 GPM)	300 feet	150 feet
25-100 ac-ft/yr (40-161 GPM)	750 feet	375 feet
100-150 ac-ft/yr (161-240 GPM)	1,200 feet	600 feet
>150 ac-ft/yr (> 240 GPM)	1,500 feet	750 feet

[1] Any person seeking to drill a new well may provide, and the District may consider, site-specific geological or hydrogeological information that supports the use of an alternative Minimum Horizontal Distance between the proposed well and registered wells in the same Aquifer Management Zone. The District may authorize the use of an alternative Minimum Horizontal Distance between the proposed well and registered wells in the same Aquifer Management Zone, provided the site-specific geological or hydrogeological information supports a finding that the proposed well location and use will not create any unreasonable impacts. If no such site-specific geological or hydrogeological information is provided, or if the site-specific geological or hydrogeological information does not support a finding that the well's location and use will not create any unreasonable impacts, the Minimum Horizontal Distance requirements apply.

[2] The distance indicated may include one-half of the width of a right of way of a utility, roadway, or other conveyance that forms part of the well's property line, provided it is not

subject to groundwater development, but prospective wells must be no less than 10 feet from that property line itself.

[3] The Minimum Horizontal Distance between a proposed well and recorded property line may be reduced to 50 feet, provided,

(1) the District approves the proposed well location,

(2) the proposed well location complies with District Rules and applicable Texas regulations, and

(3) the top 100 feet of annular space of the proposed well is pressure cemented. The well owner is required to obtain authorization to reduce the Minimum Horizontal Distance from a property line to 50 feet, otherwise the Minimum Horizontal Distance from the property line shall be 100 feet. Where tract size prohibits compliance with the Minimum Horizontal Distance of 50 feet, the Alternative Siting Methods prescribed by the Texas Department of Licensing and Regulation under 16 TAC § 76.100(b)(2) shall apply.

RULE 5. HEARINGS

Section 5.6 Contested Case Hearing Procedures

(5.6.6) The Board shall conduct the final hearing once the Board concludes the evidentiary hearing or receives the report from the hearings examiner or from SOAH. The final hearing must be conducted no later than the 120th day following receipt of the proposal for decision. A final hearing is to review the submitted report, hear legal argument and deliberate the merits of the application. A final hearing may be continued from time to time or day to day as needed to allow all the parties sufficient time to prepare additional arguments as required by the Board, or to allow time for the Board to fully consider and debate the merits of the application. At the conclusion of the final hearing, the Board shall make a motion and vote on granting, denying or issuing the permit with conditions. For contested case hearings conducted by the State Office of Administrative Hearings, the Board decision on a proposal for decision must be made no later than 180th day after the date the District received the final proposal for decision from SOAH. The Board is considered to have adopted a final proposal for decision of the administrative law judge as a final order on the 181st day after the date the administrative law judge issued the final proposal for decision if the board has not issued a final decision by:

(1) adopting the findings of fact and conclusions of law as proposed by the administrative law judge; or

(2) issuing revised findings of fact and conclusions of law as provided by this section.

(5.6.9) Request for findings of fact and conclusions of law, and motions for rehearing shall be considered as follows:

D. If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted and

shall make a final decision on the application not later than the 90th day after the date of the decision by the board that was subject to the motion for rehearing. Any action by the Board on a request for rehearing shall be made at a Board meeting subject to the Open Meetings Act.

Section 5.7 Hearings on Enforcement Actions

(5.7.5) Following the contested case hearing concerning a NOAV, the Board shall make a decision on the proper resolution of the enforcement matter. If the Board determines that the person has committed a violation or is threatening to commit a violation, the Board may, among other things:

A. recommend and/or authorize acceptance of a settlement amount in lieu of litigation; or

B. file suit in a court of competent jurisdiction to seek civil penalties, injunctive relief, attorney's fees and costs, as necessary and appropriate to resolve the matter.

RULE 6. TAGGING PROHIBITING USE, CAPPING OR PLUGGING WELLS

Section 6.2 Capping Wells

(6.2.1) A well owner or operator or other person who possesses a well shall cap any open or uncovered well to prevent waste, pollution, or deterioration. A drilling permit from the District is required prior to capping a well. The well shall remain capped until conditions that led to the capping are eliminated or until the well is properly plugged. The cap shall provide a sanitary seal to prevent the introduction of potential contaminants and shall be capable of sustaining a weight of at least four hundred pounds. If the owner fails to cap the well in compliance with District Rules, the District, following the procedures of Rule 7, may cap the well. Reasonable expenses incurred by the District in capping a well may be collected from the well owner or the land owner, and any amount due shall constitute a lien on the land on which the well is located pursuant to Section 36.118, Texas Water Code and Section 1901.256, Occupations Code.

Section 6.3 Plugging Wells

(6.3.1) Not later than the 180th day after the date an owner or operator or other person who possesses a deteriorated or abandoned well learns of its condition, the well shall be plugged in accordance with Texas Department of Licensing and Regulation, Title 16 of the Texas Administrative Code part 4, Chapter 76, Rule 76.1004. A drilling permit from the District is required prior to plugging a well. It is the responsibility of the landowner to ensure that such a well is plugged in order to prevent pollution of the groundwater and to prevent injury to persons. Not later than the 30th day after the date the well is plugged, the driller, licensed pump installer, or well owner who plugs the abandoned or deteriorated well shall submit a plugging report to the District, as required by Section 1901.255(d), Texas Occupations Code.

(6.3.2) If an owner, operator or other person who possesses a well fails to plug the well in

compliance with State law, the District may:

A. following the procedures of Rule 7, plug the well. Reasonable expenses incurred by the District in plugging a well constitute a lien on the land on which the well is located pursuant to , Section 36.118, Texas Water Code; or

B. as authorized by Section 1901.256, Texas Occupations Code, , otherwise enforce Section 1901.255 related to owners, operators or other persons who have an abandoned or deteriorated well located on their property.

RULE 9. PROHIBITIONS AGAINST WASTE AND POLLUTION

Section 9.1 Prohibition Against Waste and Pollution

(9.1.1) A person may not waste groundwater within the District or water withdrawn from any aquifer within the District. No person shall withdraw or use groundwater in such a manner as to constitute waste. Producing groundwater that exceeds the amount reasonably needed for beneficial use or a beneficial purpose is wasteful and prohibited. Unmetered or unbilled beneficial use of groundwater, including groundwater used by a water utility for line flushing or water system maintenance that is required by Texas Commission for Environmental Quality Rules and groundwater used for emergency response purposes, including firefighting, are not considered to be real loss or waste.

(9.1.2) No person may pollute or contribute to the pollution of groundwater.

RULE 10. ENFORCEMENT

Section 10.1 Enforcement

(10.1.2) The District shall send a notice of alleged violation to a person who is believed to be in violation of District Rules or Board Orders. The notice shall include information about the violation(s) and may require remedial action and may include a payment amount required to settle the violation. The notice shall provide the opportunity for a contested case hearing.

(10.1.2.1) Settlement of an NOAV for violating the withdrawal limitations in a permit may include, but is not limited to:

a. payment of the settlement amount;

b. negotiation of a settlement amount based on receipts proving repair to a water system negatively impacted by a “force majeure”; and

c. negotiation of a settlement amount based on receipts proving installation of improved water conservation or management systems.

(10.1.3) Civil Penalty Schedule: The District hereby establishes a civil penalty schedule of $100 to $10,000 per day, per violation.

(10.1.4) Settlement Schedule: The District shall adopt by resolution and order a settlement schedule to resolve enforcement actions.

RULE 12. REPORTING

Section 12.1 Reporting Requirements

(12.1.1) As part of the Operating Permit, permittees shall submit quarterly reports to the District. The quarterly report may be submitted on-line, instructions are available on the District website. These reports are due by the 10th of the month following the end of each calendar quarter. The report shall document information as agreed to in the operating permit.

RULE 13. DROUGHT MANAGEMENT

Section 13.2 Drought Triggers

(13.2.2) C. The General Manager shall report the current stage of the Palmer Drought Severity Index at every Board meeting, and the Board may take action to implement the next drought stage based on the drought triggers in Section 13.3.

Section 13.3 Drought Stages

(13.3.1) District drought management consists of four drought stages. When streamflow drops below a drought trigger (shown in the table below), or the PDSI reaches the indicated level, a daily counter begins. If the counter for either of the drought indicators reaches 30 days, the General Manager will declare the appropriate drought stage. When streamflow increases above a drought trigger and the PDSI reaches the next less severe drought severity level or indicates no drought for the entirety of a period of 60 days, the General Manager will declare the lesser drought stage.

Percent Curtailment	Drought Stage	PDSI level or Pedernales River flow rate	PDSI level or Blanco River flow rate
10%	Conservation	PDSI = -1.5 to -1.9; or at or below 59 cfs	PDSI = -1.5 to -1.9; or at or below 41 cfs
20%	Alarm	PDSI = -2 to -2.9; or at or below 31.6 cfs	PDSI = -2 to -2.9; or at or below 28.5 cfs

30%	Critical	PDSI = -3 to -4.9; or at or below 10.2 cfs	PDSI = -3 to -4.9; or at or below 14.5 cfs
40%	Emergency	PDSI = -5 or less; or at or below 2.23 cfs	PDSI = -5 or less; or at or below 9.28 cfs

(13.3.3) The following additional restrictions apply during each indicated stage:

A. During Stage 2 (Alarm), Stage 3 (Critical), or Stage 4 (Emergency) conditions, groundwater withdrawn for a non-exempt use may not be used to fill or refill ponds.

B. During Stage 3 (Critical) or Stage 4 (Emergency) conditions, the District will not accept any application for a new operating permit or any amendment to increase production under an existing operating permit.

C. During Stage 3 (Critical) or Stage 4 (Emergency) conditions, no new well may be constructed other than wells drilled to replace existing permitted wells or wells for exempt uses. The Board may grant a variance to this rule if an existing condition in the District imminently threatening the health, safety, or welfare of the public will be significantly lessened by a proposed new well.

RULE 15. MANAGEMENT ZONE

Section 15.1 Jacob's Well Groundwater Management Zone (JWGMZ)

(15.1.2) Any existing Tier 2 or Tier 3 non-exempt use well within the JWGMZ drilled prior to March 5, 2020, and all other permitted wells thereafter, must comply with all standard operating permit requirements plus the following additional requirements:

1) Each existing non-exempt use well owner must record and report the amount of groundwater produced each calendar month. During a curtailment period, groundwater production reports must be submitted to the District within 5 business days after the end of the month being reported.

2) Each operating permit must include a Monthly Baseline Production Amount for groundwater production within the JWGMZ.

3) A well located within the JWGMZ may not be aggregated under a single permit with any other well or well field located outside the JWGMZ. The Board may allocate a Monthly Baseline Production Amount based on aggregate pumping amounts reported for any well located inside JWGMZ that was operated in aggregate with one or more wells outside JWGMZ during 2017.

4) An operating permit to produce groundwater from the Upper Trinity aquifer or the Middle Trinity aquifer may not be amended to increase the annual production total if the amendment application is filed after the effective date of this rule.

EXHIBIT C

Section 15.2 Drought Curtailments

(15.2.1) Drought curtailments are mandatory for all non-exempt use wells within the JWGMZ. The District will post the then current drought curtailment percentage applicable to that month on the first business day each month that a drought curtailment applies. The amount of groundwater authorized to be withdrawn during that month may not exceed the baseline amount as adjusted by the applicable drought curtailment amount. Monthly Baseline Production Amounts may be averaged only during contiguous months of a specific drought stage.

(15.2.2) Monthly Baseline Production Amount. Each Tier 2 or Tier 3 non-exempt use well permit shall include a Monthly Baseline Production Amount based on the average actual amount of groundwater produced and put to a beneficial use for each calendar month from January 2017 through December 2019. The Monthly Baseline Production Amount only applies during a curtailment period. A permittee may amend the Monthly Baseline Production Amount by filing a Monthly Baseline Production Amount adjustment request form with the District. The Monthly Baseline Production Amount may be adjusted if the Board determines any of the following: . . .

(15.2.5) Each permittee shall prepare a Drought Curtailment Implementation Plan detailing how the required production curtailments will be achieved. Drought Curtailment Implementation Plans must be submitted to the District as part of applications for operating permits with the District.