

**RULES OF THE KENEDY COUNTY  
GROUNDWATER CONSERVATION DISTRICT**

Effective January 14, 2009

## **RULE REVISION RECORD**

The history of each specific Rule is noted following that Rule.

<b>Date Adopted</b>	<b>Effective Date</b>	<b>Affected Rules</b>
Oct. 8, 2008	Oct. 8, 2008	Original Rules
Jan. 14, 2009	Jan. 14, 2009	Amendment Rules 3.8, 8.3, 8.4, and 11.3

## TABLE OF CONTENTS

<b>Rule 1: GENERAL PROVISIONS .....</b>	<b>5</b>
1.1 Authority to Promulgate Rules.....	5
1.2 District Boundaries .....	5
1.3 Purpose of the Rules.....	6
1.4 Effective Date .....	6
1.5 Action on Rules .....	6
1.6 Regulatory Compliance .....	6
1.7 Variances.....	7
1.8 Administrative Fees.....	7
1.9 Annexations.....	7
<b>Rule 2: DEFINITIONS .....</b>	<b>9</b>
<b>Rule 3: REGISTRATION AND PERMITTING .....</b>	<b>20</b>
3.1 Wells Subject to Operating Permits and Exemptions .....	20
3.2 Required Registration of Wells.....	21
3.3 Information Required for Registration .....	21
3.4 Required Operating Permit for Non-Exempt Wells .....	23
3.5 Information Required in an Operating Permit Application .....	23
3.6 Processing an Operating Permit Application.....	25
3.7 Considerations for Issuing an Operating Permit.....	25
3.8 Change in Well Conditions or Operations, Permit Amendment and Revocation, Replacing a Well.....	27
<b>Rule 4: WELL CONSTRUCTION STANDARDS .....</b>	<b>32</b>
4.1 State Standards Applicable .....	32
4.2 Additional Well Construction Standards.....	32
4.3 Watertight Sanitary Seal.....	32
4.4 Inspection Port .....	33
4.5 Responsibility for Compliance.....	33
<b>Rule 5: REPORTING AND RECORDKEEPING .....</b>	<b>34</b>
5.1 Well Drilling, Completion, and Water Data Reporting .....	34
5.2 Annual Water Use Report .....	34
5.3 Plugging Report .....	34
5.4 Temporary Rig Supply Wells.....	35
5.5 In Situ Uranium Exploration, Mining, and Related Activities .....	35
5.6 Texas Surface Coal Mining and Restoration Act and Water Wells.....	35
<b>Rule 6: PLUGGING, CAPPING, AND SEALING OF WELLS .....</b>	<b>37</b>
6.1 Plugging Wells .....	37
6.2 Capping Wells.....	37
6.3 Sealing Wells.....	38
<b>Rule 7: ENFORCEMENT.....</b>	<b>39</b>
7.1 Complaints and Investigations.....	39
7.2 Notice of Violation.....	40

Kenedy County Groundwater Conservation District

7.3	<i>Penalty Schedule</i> .....	40
7.4	<i>Notice and Access to Property</i> .....	41
7.5	<i>Civil Enforcement</i> .....	41
<b>Rule 8</b>	<b>PROCEDURAL RULES</b> .....	<b>42</b>
8.1	<i>Hearing on Rules Other Than Emergency Rules</i> .....	42
8.2	<i>Adoption of Emergency Rules</i> .....	44
8.3	<i>Actions On Operating Permits</i> .....	44
8.4	<i>Permit Actions by the Board</i> .....	45
8.5	<i>Permit Actions Requiring a Contested Case Hearing</i> .....	47
8.6	<i>Enforcement Hearing</i> .....	51
<b>Rule 9</b>	<b>IN SITU URANIUM MINING WATER WELLS</b> .....	<b>53</b>
9.1	<i>Exploration Activity</i> .....	53
9.2	<i>Development of an Area Permit Application</i> .....	55
9.3	<i>Activities Affecting Groundwater Allocation</i> .....	56
<b>Rule 10</b>	<b>WELL SPACING</b> .....	<b>57</b>
10.1	<i>Purpose</i> .....	57
10.2	<i>Applicability</i> .....	57
10.3	<i>Spacing from Potential Sources of Pollution</i> .....	57
10.4	<i>Spacing From Property Lines</i> .....	58
10.5	<i>Well Spacing Variance Procedures</i> .....	58
<b>Rule 11</b>	<b>PRODUCTION LIMITS</b> .....	<b>61</b>
11.1	<i>Existing Non-Exempt Wells</i> .....	61
11.2	<i>New Non-Exempt Wells</i> .....	61
11.3	<i>Calculation of Production Limits Based on Acreage</i> .....	62
11.4	<i>Effect of Drought on Production Limits</i> .....	63
<b>Rule 12</b>	<b>PROHIBITION AGAINST WASTE AND POLLUTION</b> .....	<b>64</b>
12.1	<i>General Prohibition</i> .....	64
12.2	<i>Wasteful Use</i> .....	64
12.3	<i>Wasteful Production</i> .....	64
12.4	<i>Groundwater Pollution</i> .....	64
12.5	<i>Orders to Prevent Waste or Pollution</i> .....	65
<b>Rule 13:</b>	<b>WATER WELLS ASSOCIATED WITH OIL, GAS, AND MINING ACTIVITIES OTHER THAN IN SITU URANIUM MINING</b> .....	<b>66</b>
13.1	<i>District Jurisdiction Over Water Wells Associated with Oil, Gas, and Mining Activities</i> .....	66
13.2	<i>Water Wells Associated with Mining Activities Authorized Under Texas Natural Resources Code, Chapter 134</i> .....	66
13.3	<i>Water Wells Associated With Oil And Gas Activities</i> .....	66

## **Rule 1: GENERAL PROVISIONS**

### **1.1 Authority to Promulgate Rules**

The Kenedy County Groundwater Conservation District (the District) is a political subdivision of the State of Texas. The District was created by the 78th Legislature (2003) through Senate Bill 25 and House Bill 3374, subject to voter approval. Both Senate Bill 25 and House Bill 3374 give the District all of the rights, powers, privileges, authority, functions and duties provided under the general law of this state, including Texas Water Code Chapter 36, applicable to groundwater conservation districts created under Section 59, Article XVI, of the Texas Constitution. To the extent of any conflicts between the legislation creating the District, as the bill enacted later in time, House Bill 3374 prevails.

In a confirmation election held on November 2, 2004, District voters confirmed the creation of the District and elected five Directors to the Board of Directors. As a duly created and confirmed groundwater conservation district, the District may exercise any and all statutory authority or power conferred under its Enabling Legislation and under Chapter 36 of the Texas Water Code, including the adoption and enforcement of rules under Section 36.101 Rule Making Power. All references to statutory provisions in these Rules are to those provisions as may be amended from time to time.

The District is located within Groundwater Management Area 16. Most of the District is located in the Coastal Bend Regional Water Planning Area (N). District territory in Hidalgo and Willacy counties is located in the Region M Regional Water Planning Area.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **1.2 District Boundaries**

The District includes all territory located within Kenedy County and parts of Brooks, Hidalgo, Jim Wells, Kleberg, Nueces, and Willacy counties. Territory has been annexed from time to time in response to landowner petitions. A current description and map of the District is kept in the District office.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **1.3 Purpose of the Rules**

The District Rules are promulgated under its Enabling Legislation and the Texas Water Code Chapter 36 authority to make and enforce rules to provide for the conservation, preservation, protection, and recharge of groundwater and aquifers within the District, while recognizing the ownership and rights of the owners of the land and their lessees and assigns in groundwater.

These Rules, and any orders, requirements, resolutions, policies, directives, standards, guidelines, groundwater management plan, or other regulatory measures implemented by the Board, have been promulgated to fulfill these objectives. These Rules may not be construed to limit, restrict, or deprive the District or Board of any exercise of any power, duty, or jurisdiction conferred by the District's Enabling Legislation, Texas Water Code Chapter 36, or any other applicable law or statute.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **1.4 Effective Date**

These Rules and any amendment are effective on the effective dates indicated following each subsection.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **1.5 Action on Rules**

**A.** The Board may from time to time, following notice and public hearing, amend or revoke these Rules or adopt new Rules following the procedures of Rule 8.1.

**B.** The Board may adopt an emergency Rule without prior notice or hearing, or with an abbreviated notice and hearing, according to Rule 8.2.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **1.6 Regulatory Compliance**

All wells located within the District, owners of those wells, and others under the jurisdiction of the District, shall be in compliance with all applicable Rules, orders, regulations, requirements, resolutions, policies, directives,

standards, guidelines, or any other regulatory measures implemented by the District.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **1.7 Variances**

Any exceptions or variances to the requirements imposed by District Rules shall be considered on a case-by-case basis. A request for variance shall be submitted in writing and include the reasons for the request. This Rule 1.7 is not applicable to a request for a variance from an operating permit requirement. A variance from any requirements contained in an operating permit requires an application for an amendment pursuant to Rule 3.8.E.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **1.8 Administrative Fees**

Texas Water Code Section 36.205 authorizes the District to assess fees for administrative acts of the District. These fees may not unreasonably exceed the cost to the District of providing the administrative function for which the fee is charged. Fees shall be assessed in accordance with the District Fee Schedule set by the Board. A copy of the Fee Schedule may be obtained from the District Office.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **1.9 Annexations**

**A.** Unless this restriction is waived by the Board, petitions for annexation of territory into the District shall only be considered by the Board each October.

**B.** A petition by a landowner contiguous to the District and filed under Texas Water Code Sections 36.321 – 36.324 shall comply with those sections and must include the following information:

- (1) An executed and notarized annexation application on a form obtained from the District;
- (2) A description of the annexed property by metes and bounds;

Kenedy County Groundwater Conservation District

- (3) A plat or map identifying and designating the property to be considered for annexation;
- (4) A copy of the landowner's most recent property tax statement;
- (5) Population and census data; and
- (6) Other information requested by the District.

**C.** A petition of a defined area of territory, whether or not contiguous, filed under Texas Water Code Sections 36.325 – 36.331 shall comply with those sections. The petitioner must have a pre-petition meeting with the General Manager during which the petition process will be detailed.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*



**Rule 2: DEFINITIONS**

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

- (1) a non-deteriorated well containing the casing, pump, and pump column in good condition; or
- (2) a non-deteriorated well which has been capped.

**Administratively Complete Application** – a permit application received by the District that includes all documentation and fees required by Texas Water Code Sections 36.113 and 36.1131 and District Rules. In order for an application to be deemed administratively complete, it must include all administrative and technical information required by the District and there must be no unresolved District enforcement actions against the applicant or against the well.

**Agent** – one who is authorized to act for or in place of another; a representative. For purposes of these Rules, this includes a person who reasonably appears to have authority to act for another, regardless of whether actual authority has been conferred.

**Aggrieved party** - for purposes of District Rule 7.1 and Texas Water Code Section 36.119, a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which the well subject to a complaint is located, or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the subject well.

**Agricultural use or purpose** – the use of groundwater for:

- (1) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (2) practicing floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or non-soil media, by a nursery grower;
- (3) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;

- (4) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure;
- (5) engaging in wildlife management as defined in Texas Tax Code Section 23.51(7); and,
- (6) raising or keeping equine animals.

**Aquifer exemption** – approval by the U.S. Environmental Protection Agency required in conjunction with approving a Class III Underground Injection Control (UIC) permit under the Safe Drinking Water Act and Texas Water Code Chapter 27, finding under 40 Code of Federal Regulations Section 144.7(b) and 30 Texas Administrative Code Section 331.13 that an underground aquifer is not suitable or used for drinking water purposes.

**Area permit** – a permit issued pursuant to Texas Water Code Section 27.011 for mining of uranium that authorizes the construction and operation of production and monitoring wells used in operations and restoration associated with in situ recovery of uranium. It may authorize two or more similar injection wells within a specified area for mining of uranium.

**Area permit applicant** – a person applying for an area permit.

**Area permit application** – an application submitted to the Texas Commission on Environmental Quality to obtain an area permit.

**Area permit application well** – a well that must be registered with the Texas Commission on Environmental Quality under Texas Water Code Section 27.023(b), which is used during the development of an area permit application to obtain required pre-mining geologic, hydrologic, and water quality information.

**Artesian pressure** – where water is confined in an aquifer under pressure so that the water will rise in the well casing or drilled hole above the bottom of the confining bed overlying the aquifer.

**Beneficial use** - the use of groundwater for:

- (1) agricultural, gardening, domestic, livestock, municipal, mining, manufacturing, industrial, commercial, recreational, or pleasure purposes;

- (2) exploring for, producing, handling, or treating oil, gas, sulphur, or other minerals; or
- (3) any other purpose that is useful and beneficial to the user.

**Board** – the Board of Directors of the Kenedy County Groundwater Conservation District.

**Capping a well** – placing on a well a covering that is capable of preventing surface pollutants from entering the well and sustaining a weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

**Cased uranium exploration well** – a cased well subject to a uranium exploration permit.

**Commercial use or purpose** - the use of groundwater to supply water to properties or establishments that are in business to build, supply or sell products, or provide goods, services or repairs and that use water in those processes, or to supply water to the business establishment primarily for employee and customer conveniences (i.e. flushing of toilets, sanitary purposes, or limited landscape watering). Does not include agricultural, livestock, industrial, or irrigation uses.

**Completion of a well** – when construction of a water well is finished, excluding setting the pump. Includes drilling, setting casing, cementing, and constructing the surface pad.

**Complaint Under Texas Water Code Section 36.119** – a written complaint filed pursuant to Rule 7.1 by an aggrieved party citing to Texas Water Code Section 36.119 alleging drilling or operating a well without a required permit or producing groundwater in violation of a District Rule adopted under Texas Water Code Section 36.116(a)(2).

**Confidential information** – in the context of District Rule 9 regarding in situ uranium mining water wells, information submitted to the Texas Railroad Commission concerning mineral deposits, including test borings, core sampling, geophysical logs, or trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant for an exploration permit and specifically identified as confidential by the applicant, if not essential for public review as determined by the Texas Railroad Commission.

**Conservation** – those water saving practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.

**Contested Case Hearing** – a permit hearing requested as authorized by Rule 8.4.1, which is noticed and conducted according to the procedures of Rule 8.5.

**Deteriorated Well** – a well that, because of its condition, will cause or is likely to cause pollution of any water in the State, including groundwater.

**Dewatering well** - an artificial excavation that is constructed to produce groundwater to lower the water table or potentiometric surface and that is not used to produce or to facilitate the production of minerals under a state regulatory program.

**Director** – an elected or appointed member of the Board of Directors of the District.

**District** – the Kenedy County Groundwater Conservation District (KCGCD) or one of its authorized representatives.

**District Office** – the main office of the District at such location as may be established by the Board.

**Domestic use** - the use of groundwater by an individual or 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 orchard; for watering domestic animals; and for water recreation including aquatic and wildlife enjoyment. 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.

**Emergency Rule** – a rule adopted under Rule 8.2.

**Emergency Temporary Order** – an order issued under Rule 12.5 when the District finds that an imminent peril to public health, safety, or welfare requires the immediate entry of an order to prohibit waste or pollution.

**Enabling Legislation** – special law enactments that created the District, as summarized in Rule 1.1, and as may be amended from time to time.

**Enforcement Action** – an action taken by the District to enforce District Rules, orders, or permits, or any other law within its enforcement authority.

**Enforcement Hearing** – a hearing held under Rule 8.6.

**Environmental soil borings** - an artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

**Exempt oil and gas well** – a water well associated with oil or gas activities described in Rule 3.1.A(2).

**Exempt well** – a well that is not required to obtain an operating permit, as described in Rule 3.1.A.

**Existing Well** – a well drilled prior to or on October 8, 2008.

**Fees** – charges imposed by the District pursuant to Texas Water Code Chapter 36.

**Groundwater or Underground Water** – water percolating beneath the earth's surface.

**Groundwater Management Plan** – a management plan developed by the District pursuant to Texas Water Code Section 36.1071.

**Hearings Examiner** – a person, other than a Board member, appointed by the Board to conduct a hearing on a permit, rule, or enforcement action.

**Industrial use or purpose** - water used in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including commercial fish and shellfish production, aquaculture, and the development of power by means other than hydroelectric, but does not include agricultural use.

**Investigation Report** – a report prepared by the District summarizing its investigation of a possible violation of law and making a recommendation to the Board regarding any further action.

**Irrigation use or purpose** - the use of water for watering crops, trees, and pasture land, including golf courses and parks that do not receive water through a municipal distribution system.

**Livestock use** – the use of water for the watering of livestock, poultry, or wildlife, including exotic livestock, game animals, fur-bearing animals, birds, or waterfowl and for maintaining aquatic life. Aquaculture is not livestock use. Livestock use includes watering livestock that are kept for pleasure, recreational use, or commercial use.

**Major amendment** – a permit amendment required when a well with an operating permit increases the production of groundwater or increases the capability of a well to produce groundwater. See Rule 3.8.E(3).

**Managed Available Groundwater** - the amount of water that may, to the extent possible, be permitted by a district for beneficial use in accordance with the desired future condition of the aquifer and that is calculated by the Texas Water Development Board under Texas Water Code Section 36.108(o).

**Minor amendment** – a permit amendment required when a well with an operating permit changes the type of use of a well; alters the size or depth of a well, the well pump, or its pumping volume that does not increase the production amount or capability; or changes the approved conservation plan. See Rule 3.8.E(4).

**Monitoring well** – well used to measure or monitor the level, quality, quantity, or movement of subsurface water that is not used in conjunction with the production of oil, gas, or other minerals.

**New well** – a well drilled after October 8, 2008 or an existing well that has been substantially altered after October 8, 2008.

**Non-exempt well** – a well that is required to obtain an operating permit under Rule 3.1.B.

**Notice of Violation (NOV)** – written correspondence from the District notifying a person that they are in violation of District Rules, orders, or permit, or other law within the District's enforcement authority.

**Open Meetings Act** – Texas Government Code, chapter 551.

**Open or Uncovered Well** – a non-deteriorated well that is open at the surface. This includes a well that is left unattended without a pump installed or with the pump removed.

**Operating permit** – an authorization issued by the District under Rule 3, which allows a non-exempt well to be drilled and operated, producing groundwater.

**Party in Contested Case Hearing** – the applicant and any other person designated as a party by the presiding officer under Rule 8.5.H.

**Permit amendment** – approval required when a well with an operating permit makes any change to the operation, use, or condition of the well. See Rule 3.8.E(1).

**Permittee** – a person who holds an operating permit issued by the District.

**Person** – a corporation, individual, organization, cooperative, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

**Piezometer well** – a well of a temporary nature constructed to monitor-well standards for the purpose of measuring water levels or used for the installation of a piezometer resulting in the determination of locations and depths of permanent monitor wells.

**Plugging a well** – an absolute sealing of the well bore, resulting in the permanent closure of a well in accordance with approved State and District standards.

**Pollution** – the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any reasonable purpose.

**Pre-exploration water quality data** – water quality information collected or obtained by a uranium exploration permittee pursuant to Texas Natural Resources Code Section 131.357(a)(1) and implementing regulations. This information must be provided to the District under Rule 9.1.C(1).

**Pre-mining water quality data** – water quality information collected or obtained by a uranium exploration permittee under Texas Natural Resources Code Section 131.357(a)(2) or by an area permit applicant under Texas Water Code Section 27.024(a), and implementing regulations of the Texas Railroad Commission and the Texas Commission on Environmental Quality. This information must be provided to the District under Rules 9.1.C(2) and 9.2.A(3).

**Presiding officer** – either the President of the Board, a Director, or the Hearings Examiner designated under Rule 8.5.G. to conduct a contested case hearing. Also refers to the person under Rule 8.6.F who is designated to conduct an enforcement hearing.

**Production capability or capacity** – the volume of water a well can produce as determined by either the rated pumping capability of the installed pump or as reasonably determined by the District.

**Public Water Supply Well** – a well used as the source of water for a public water system as defined in 30 Texas Administrative Code Section 290.38(47).

**Recharge** – the amount of water that infiltrates to the water table of an aquifer.

**Recovery well** – a well constructed for the purpose of recovering undesirable groundwater for treatment or removal of contamination.

**Region M and Region N Water Plans** – regional water plans under Texas Water Code Section 16.053, which are generated every five years by the two regional planning groups within which the District is located. The plans must be approved by the Texas Water Development Board.

**Regulated uranium exploration well** – a well that is subject to District Rules regarding registration, production, or reporting under Rule 9.1.A(3).

**Replacement well** – a well designed to replace a registered or permitted well that fulfills the requirements of Rule 3.8.G.

**Respondent** – an individual who receives a Notice of Violation or other correspondence from the District regarding the individual's non-compliance with District Rules or other law within the District's enforcement authority.

**Rules** – standards and regulations promulgated by the District.

**Sealing a well** – placing an official seal, tag, or label on a well or its equipment, to indicate that further pumping of groundwater, or operation of the well is unauthorized and will be in violation of District Rules.

**State of Texas Plugging Report** – the report that a person who plugs a well is required to complete under 16 Texas Administrative Code Section 76.700(2).



**State of Texas Well Report** – the report that every well driller who drills, completes, deepens, or alters a well is required to complete under the Texas Department of Licensing and Regulation Rules, as defined in 16 Texas Administrative Code Sections 76.10(45) and 76.700(1). Also commonly referred to as the driller’s log.

**Substantially altered well** – a non-exempt well the use or conditions of which have been changed in such a way as to require a major amendment or an exempt well the use or conditions of which have been changed in such a way as to require an operating permit.

**Temporary rig supply well** – a well supplying water to a rig actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission of Texas, including drilling or workover rigs. Exploration operations include well completion and workover, including hydraulic fracturing operations.

**Test well** – A well drilled to explore for groundwater.

**Uranium exploration activity** – the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a uranium deposit.

**Uranium exploration hole** – an uncased, uncompleted hole drilled for uranium exploration activity.

**Uranium exploration permit** – an exploration permit issued by the Texas Railroad Commission pursuant to Texas Natural Resources Code, Chapter 131, Subchapter I, as amended, authorizing the exploration for uranium.

**Uranium exploration permittee** – a person who holds a uranium exploration permit issued by the Texas Railroad Commission pursuant to Texas Natural Resources Code, Chapter 131, Subchapter I, as amended.

**Uranium exploration permit well information** – the information about cased uranium exploration wells that must be provided to the District pursuant to Texas Natural Resources Code Section 131.357(c) and Rule 9.1.D.

**Variance** – an authorized exception to requirements or provisions of the Rules granted by the District in accordance with Rule 1.7.

**Waste –**

- (1) The withdrawal of groundwater from a groundwater reservoir at a rate and in an amount that causes or threatens to cause intrusion into the reservoir of water unsuitable for agricultural, gardening, domestic, or livestock raising purposes.
- (2) The flowing or producing of wells from a groundwater reservoir if the water produced is not used for a beneficial purpose.
- (3) The escape of groundwater from one groundwater reservoir to any other reservoir or geologic strata that does not contain groundwater.
- (4) The pollution or harmful alteration of groundwater in a groundwater reservoir by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground.
- (5) Willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or order issued by the Texas Commission on Environmental Quality under Texas Water Code Chapter 26 "Water Quality Control."
- (6) Groundwater pumped for irrigation that escapes as irrigation tailwater onto land other than that of the owner of the well unless permission has been granted by the occupant of the land receiving the discharge.
- (7) Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste and unlawful to willfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.
- (8) Drilling or operating a well or wells without a required permit or producing groundwater in violation of a District Rule adopted under Texas Water Code Section 36.116(a)(2).

**Water well or well** – an artificial excavation constructed to explore for or produce groundwater. The term does not include a test or blast hole in a quarry or mine or a well or excavation constructed to explore for or produce oil, gas, or other minerals unless the hole is also used to produce groundwater; or an injection water source well associated with oil and gas activities that penetrates the base of usable quality water.

**Well** – see definition of water well.

**Well Owner** – a person who has the right to drill a well on a tract of land or to produce groundwater from the land, either by ownership, contract, lease, easement, or any other estate in the land.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

**Rule 3: REGISTRATION AND PERMITTING**

**3.1 Wells Subject to Operating Permits and Exemptions**

**A. Wells Exempt From Obtaining an Operating Permit (Exempt Wells)**

- (1) A well used solely for domestic or livestock use unless the well will be used to supply water for a subdivision of land for which a plat approval is required by Chapter 232, Local Government Code.
- (2) 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 located on the same lease or field on which the drilling rig is located or is in close proximity to the drilling rig.
- (3) A well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code (Texas Surface Coal Mining and Restoration Act), 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.
- (4) A well exempt under Rule 9: In Situ Uranium Mining Water Wells.
- (5) A well drilled and completed solely for purposes of aquifer testing, including a test well, or for monitoring water levels or water quality.
- (6) An otherwise exempt well remains exempt during the temporary use or sale of water for construction purposes during the duration of a specific project.

**B. Wells Requiring an Operating Permit (Non-Exempt Wells)**

- (1) A well that requires an operating permit under this Rule 3.1.B is referred to as a non-exempt well.

- (2) A well that does not qualify for an exemption under Rule 3.1.A shall obtain an operating permit under Rule 3.4.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **3.2 Required Registration of Wells**

- A.** All water wells must be registered with the District.
- B.** All water wells that were drilled prior to or on October 8, 2008 must be registered with the District no later than October 8, 2009. Such wells are referred to as existing wells.
- C.** Beginning on October 9, 2008, no water well shall be drilled or operated without first registering the proposed well with the District. Such wells are referred to as new wells.
- D.** At the time of registration, the District will determine whether the water well is a non-exempt well. A non-exempt well is required to obtain an operating permit. A non-exempt well shall not be drilled or operated prior to District approval of an operating permit, except as stated in Rule 3.4.D.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **3.3 Information Required for Registration**

- A.** Forms for registering wells are available from the District Office. If multiple wells are being registered at the same time by the same well owner, the District may establish an alternative method of registration, for example, submittal of an existing well database.
- B.** The following information is required to register a new or proposed well. For registration of an existing well, the owner shall provide as much of the following information as is reasonably available:
  - (1) Name, address, phone number, facsimile number, and e-mail address of the well owner;
  - (2) Name, address, phone number, facsimile number, and e-mail address of the person submitting the registration, if different from the well owner;

- (3) The well location by GPS and a signed statement by the applicant for registration that the location complies with the spacing requirements of District Rules 10.3 and 10.4, or that the applicant has been granted a variance under Rule 10.5. No statement is required for existing wells.
- (4) Casing size, estimated well depth, pump size, and production capability;
- (5) The type of use for water from the well based on the definitions in Rule 2; and
- (6) For new wells, as defined in Rule 2, the registration fee if one has been established under Rule 1. 8.

**C.** The District shall issue a temporary well number pending assignment of a State well number.

**D.** For new wells, if the District determines that the information is complete, that the applicant for registration has stated that the location of the proposed well complies with Rule 10.3 and 10.4 spacing requirements, or that the applicant has been granted a variance under Rule 10.5, that no operating permit is required, and that there are no unresolved District enforcement actions against the registrant, the District shall approve registration of the well. If the registration is for a new well, the registration will serve as authorization to drill and operate the well as described in the registration. Existing wells are not required to comply with Rule 10 spacing requirements.

**E.** If no operating permit is required, upon approval of the registration, the owner may drill the well. A copy of the approved registration must be on-site while the well is being drilled.

**F.** The District must be notified of any change in the information submitted in the registration prior to making the change to the well. Such changes are subject to Rule 3.8.

**G.** If the District determines that the well is a non-exempt well, the owner shall apply for an operating permit under Rule 3.4 prior to drilling or operating the well.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **3.4 Required Operating Permit for Non-Exempt Wells**

- A.** A non-exempt well is required to obtain an operating permit from the District.
- B.** Operating permits are issued without a termination date. However, all operating permits are subject to District Rules as they may be amended from time to time, which may include changes to perpetual term permits based on changing groundwater conditions in the District.
- C.** A non-exempt well that was drilled prior to or on October 8, 2008 must apply for an operating permit within 60 days of the date the well is registered with the District under Rule 3.2.B.
- D.** Beginning on October 9, 2008, a non-exempt well shall not be drilled, be operated, or produce water without first obtaining an operating permit from the District. An existing non-exempt well shall not be operated or produce water after the deadline established in Rule 3.4.C, unless the existing non-exempt well has obtained an operating permit or has filed an operating permit application and is diligently pursuing approval.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **3.5 Information Required in an Operating Permit Application**

An application for an operating permit shall be submitted on a form obtained from the District and shall be signed and sworn to by the well owner as required by Texas Water Code Section 36.113(b). A separate application is required for each well. The information listed in this Rule 3.5 shall be provided. On an application for an existing well, the owner shall provide as much of the following information as possible.

- A.** Name, mailing address, phone number, facsimile number, and e-mail address of the well owner;
- B.** Name, mailing address, phone number, facsimile number, and e-mail of the person submitting the permit application, if different from the well owner;
- C.** Name of the proposed project, if any;

- D.** Any previous or other name(s) that identifies the tract of land on which the well is located;
- E.** Location and property description of the proposed project, including a location map or property plat drawn on a scale that adequately details the well site, the property lines, the location of other existing wells, any existing or proposed wastewater systems, and other potential sources of contamination within 500 feet of the well showing compliance with Rule 10 spacing requirements.
- F.** A copy of the approved well registration;
- G.** The annual maximum production requested (in gallons per year or acre feet per year). For existing wells, include documentation showing the annual production from the well during each of the previous five years. See Rule 11.1. For new wells, provide documentation relating the requested production amount to contiguous acreage owned by the well owner or for which the well owner has groundwater production rights. See Rule 11.2.B.
- H.** A water conservation plan;
- I.** For new wells, as defined in Rule 2, the operating permit application fee established under Rule 1.8;
- J.** A sworn statement that the property serving as the basis for the production amount is not subject to permit for uranium mining or an aquifer exemption under 40 Code of Federal Regulations Section 144.7 and 30 Texas Administrative Code Section 331.13 (see Rule 11.2.C) and that the owner agrees to notify the District 60 days prior to any changes that would require a change in this sworn statement;
- K.** A sworn statement that the well owner agrees to notify the District of any changes in well condition or operations as required by Rule 3.8 and to cap or plug the well according to Rules 6.1 and 6.2 if the operation or condition of the well so warrants.
- L.** Any other information deemed necessary by the District to comply with the requirements of Texas Water Code Chapter 36, its enabling statutes, and general law.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*



### **3.6 Processing an Operating Permit Application**

#### **A. Administrative Completeness of Application**

In order to adequately address the purposes and requirements of Texas Water Code Chapter 36, the District's enabling statutes, general law, and District Rules, the District may require further clarification or additional documentation from the applicant. The applicant shall be notified in writing when the application has been reviewed and deemed administratively complete. No application shall be deemed administratively complete if there are unresolved District enforcement actions against the applicant or against the well. If an application remains administratively incomplete for more than 180 days following either the original application date or the date that the District notified the applicant of the need to submit additional clarification or documentation, the application shall expire.

#### **B. Decision on an Operating Permit Application**

The District will notify the applicant in writing when the application is deemed administratively complete. Within 60 days of the date on which the application is deemed administratively complete, the District will act according to Rule 8.3. The decision whether to approve the operating permit as requested in the application, approve the operating permit with terms other than those requested in the application, or deny the application shall be made using the process described in Rule 8.3. The Board or its designee shall make this decision based on the considerations in Rule 3.7.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **3.7 Considerations for Issuing an Operating Permit**

The District shall be guided by these Rules and Chapter 36, Texas Water Code in consideration of each application. The District shall consider the following, which include the considerations required by Texas Water Code Section 36.113(d):

**A.** Does the application conform to the requirements of Texas Water Code Chapter 36 and these Rules?

**B.** Will the use of water unreasonably affect existing groundwater and surface water resources or existing permit holders? For existing wells, a

permit establishing the production limits required under Rule 11.1 will fulfill this requirement.

**C.** Is the use of water considered beneficial use, as defined by Texas Water Code Section 36.001(9) and District Rule 2?

**D.** Is the use of water consistent with the District's approved groundwater management plan?

**E.** Has the applicant agreed to avoid waste and achieve water conservation?

**F.** Will the conditions and limitations in the permit prevent waste, achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, or lessen interference between wells?

**G.** Does the application include an acceptable water conservation plan?

**H.** Has the applicant agreed to use reasonable diligence to protect groundwater quality? For proposed wells, if the location complies with spacing Rule 10.3 and the well will be constructed according to the construction standards of Rule 4, this requirement is fulfilled. For existing wells, the District will evaluate the location based on Rule 10.3 and evaluate the well construction based on Rule 4 and may impose additional requirements designed to protect groundwater quality.

**I.** Has the applicant agreed to follow the District's rules on well plugging at the time of well closure?

**J.** Does the application provide sufficient documentation to support the requested production limit, including required information about in situ uranium mining, if applicable?

**K.** Are there any unresolved District enforcement actions against the applicant or against the well?

An operating permit shall require installation of a meter or other reliable water measuring device as required by Rule 5.2, and specify and authorize the annual maximum groundwater production from the well as provided by Rule 11.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **3.8 Change in Well Conditions or Operations, Permit Amendment and Revocation, Replacing a Well**

#### **A. Change in Well Conditions or Operations**

- (1) No person may take any of the following actions related to a well located in the District without notifying and receiving authorization from the District:
  - (a) change the type of use of a well from an exempt use to a non-exempt use;
  - (b) for all wells, change the pumping capacity that would change the spacing from property lines authorized under Rule 10.4; or
  - (c) plug a well.
- (2) Other than changes under Rule 3.8.A(1)(b), which require prior authorization, no person may alter the size or depth of a well, the well pump, or its pumping capacity without submitting a District notification form within 30 business days after the change is made.
- (3) Because production limits are based on contiguous acreage under Rule 11.2, any change in the status of the contiguous acreage upon which the production limit is based, including a change in conditions related to in situ uranium mining described in Rule 11.2.C, requires notification and an amendment to the operating permit.
- (4) Changes may be processed administratively, may require an amendment to an existing operating permit, may make an exempt well be required to obtain an operating permit, and may make a well subject to the production limits of Rule 11.
- (5) Changes that affect compliance with spacing requirements of Rule 10.4 will be denied unless a variance is obtained under Rule 10.5.

**B. Change in Use That Requires a Well to Have an Operating Permit**

An exempt well will lose its exemption and will require an operating permit if its use or conditions change in such a way that it no longer falls into an exempt well category under Rule 3.1.A. It is the responsibility of the owner of such a well to apply for an operating permit no later than 90 days prior to making the changes that render the well subject to this Rule.

**C. Change in Ownership**

Any change in ownership of a well shall be reported to the District by the purchaser on an approved form within 60 days after the change. For wells with an operating permit, failure to timely notify the District may result in the permit being revoked.

**D. Operating Permit Term**

Operating permits issued by the District are perpetual, unless otherwise specified by the District as a special permit condition. Such a special permit condition may include the need for additional data regarding the impact of the well on the aquifer or surrounding wells.

**E. Well Changes Requiring an Operating Permit Amendment**

- (1) An amendment to an operating permit is required for any change to the operation, use, or condition of a non-exempt well, including changing the production limit, the type of use of the well, the size or depth of a well, a well pump, or its pumping volume, and any change in the status of the contiguous acreage upon which the production limit is based, including a change in conditions related to in situ uranium mining described in Rule 11.2.C.
- (2) Amendments are characterized as major or minor according to the requirements of this Rule 3.8.E. Such characterization will determine the process involved for consideration and approval of an amendment.
- (3) Major amendment
  - (a) A major amendment to an operating permit for a non-exempt well is required to increase the production of groundwater or to increase the capability of a well to produce groundwater.

- (b) A major amendment is also required when a change in the status of the contiguous acreage upon which the production limit is based, including a change in conditions related to in situ uranium mining described in Rule 11.2.C requires a change in production limit.
  - (c) An application for a major amendment, on a form obtained from the District, must be submitted at least 90 days prior to the date the change is to take place. A major amendment application fee must also be submitted, if one has been established under Rule 1.8.
  - (d) The major amendment application will be processed according to Rule 3.6.
  - (e) No pump installer or water well driller shall make changes to a well if the owner has not applied for and obtained the appropriate authorization under this Rule.
- (4) Minor amendment
- (a) A minor amendment to an operating permit for a non-exempt well is required to change the type of use of a well; an alteration to the size or depth of a well, the well pump, or its pumping volume that does not increase the production amount or capability; or a change in the approved conservation plan.
  - (b) An application for a minor amendment, on a form obtained from the District, must be submitted at least 10 days prior to the date the change is to take place. A minor amendment application fee must also be submitted, if one has been established under Rule 1.8.
  - (c) The General Manager may process and approve a minor amendment.
  - (d) No pump installer or water well driller shall make changes to a well if the owner has not applied for and obtained the appropriate authorization under this Rule.

**F. Operating Permit Involuntary Amendment or Revocation**

- (1) An operating permit is subject to involuntary amendment or revocation for violation of District Rules; violation of the permit, including special permit conditions; violation of the provisions of Texas Water Code Chapter 36; waste of groundwater; or other actions that the District determines to be detrimental to the groundwater resources within the District. An involuntary amendment or revocation under this provision shall be approved by the District only after notice and hearing as provided in Rules 7.2 and 8.6.
- (2) When the District establishes production limits according to Rule 11.3.D, any permit that was issued using the interim method of Rule 11.3.B shall be subject to involuntary amendment to comply with the production limits established under Rule 11.3.D. This may involve either a conforming change in production limits or in associated acreage under Rule 11.2. An involuntary amendment under this provision shall be approved by the District only after the procedure provided in Rules 8.3 and 8.4.

**G. Replacing a Well**

- (1) In order to qualify as a replacement well, the well that is being replaced must be properly registered or have an operating permit and be in compliance with District Rules.
- (2) The replacement well must be no nearer to adjoining property lines than the well it is replacing, unless the replacement well is an exempt well and the owner of the replacement well complies with Rule 10.5.D.
- (3) The well may not have the capability of producing more water than the well it is replacing, unless the replacement well is an exempt well and the owner of the replacement well complies with Rule 10.5.D.
- (4) Prior to drilling a replacement well, the owner must submit a replacement well form to the District. If the General Manager determines that the well is a replacement well as described in this Rule 3.8.G, the District will make changes in the approved registration and operating permit, if any, authorizing drilling and operation of the replacement well.

Kenedy County Groundwater Conservation District

- (5) In case of emergency with the potential to affect human or livestock health or safety, a replacement well may be drilled and the required replacement well form must be submitted within 2 business days.
- (6) A well that has been replaced under this Rule 3.8.G must be plugged within 30 days.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended January 14, 2009, by Board Order; effective January 14, 2009.*

## **Rule 4: WELL CONSTRUCTION STANDARDS**

### **4.1 State Standards Applicable**

All new construction of wells and installation of pumps shall be in accordance with the Texas Occupations Code Chapter 1901, "Water Well Drillers" and Chapter 1902, "Water Well Pump Installers," as amended and the rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 76, as amended, and additional standards as required in this Rule. Wells except for those exempt from obtaining an operating permit under District Rules must also comply with the construction standards in Rule 4.2.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **4.2 Additional Well Construction Standards**

**A.** All public water supply wells must be completed using the engineer-designed criteria approved by the Texas Commission on Environmental Quality under 30 Texas Administrative Code Chapter 290.

**B.** All non-exempt wells that are not public water supply wells must be pressure cemented or grouted from the top of the production zone back to the surface. A geophysical or lithological log must be run during well construction.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **4.3 Watertight Sanitary Seal**

To prevent pollutants from entering the wellhead, all wells shall be completed with a watertight sanitary seal. Any existing well not meeting this requirement is required to comply with this Rule at the time the well head is next removed. Wells with odd-sized casing or those having well heads for which there is no factory made watertight sanitary seal available shall be completed or modified in such a manner that shall meet the intent of this Rule.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*



#### **4.4 Inspection Port**

All wells shall be equipped with an inspection port with a diameter of ¾-inch or greater to allow free and clear access to the water table for the purposes of measuring water levels or disinfecting a well. All wells shall be equipped with a faucet or hose bib at the wellhead. Control boxes, pipes, fittings, or other wellhead equipment shall not hinder access to the inspection port. Any existing well not meeting this requirement is required to comply with this Rule at the time the well head is next removed.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

#### **4.5 Responsibility for Compliance**

The person who performs work on the well or pump is responsible for compliance with Rule 4.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **Rule 5: REPORTING AND RECORDKEEPING**

### **5.1 Well Drilling, Completion, and Water Data Reporting**

**A.** Within 60 days from: (1) the cessation of drilling, for a well that will not be completed; (2) completion; (3) deepening; or (4) otherwise altering a well, a copy of the State of Texas Well Report shall be submitted to the District by the water well driller.

**B.** All geophysical or lithological well logs required under District Rules or State law shall be submitted to the District within 60 days from the date the log is run.

**C.** All water quality data collected on a non-exempt well shall be submitted to the District within 60 days from the date the data are collected.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **5.2 Annual Water Use Report**

The production from all wells required under Rule 3.4 to obtain an operating permit shall be recorded using a totalizing flow meter or other reliable water measuring device, installed at the well owner's expense. The well owner shall keep a record of monthly water production. The monthly water production records shall be submitted to the District on an annual basis on January 15<sup>th</sup> of each year for the previous 12 months, unless the District imposes alternate recordkeeping and reporting requirements in the operating permit for the well.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **5.3 Plugging Report**

Within 30 days after plugging the well, the person plugging the well shall submit to the District a copy of the State of Texas Plugging Report.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **5.4 Temporary Rig Supply Wells**

The production from all wells exempted under Rule 3.1.A(2) from obtaining an operating permit (temporary rig supply wells) shall be recorded using a meter or other reliable water measuring device. The meter or device shall be installed at the operator's expense. Exceptions to this requirement may be granted through the variance process as long as the operator can demonstrate an alternate method of determining and recording monthly water production. The operator shall keep a record of monthly water production. The monthly water production records shall be submitted to the District on an annual basis on January 15<sup>th</sup> of each year for the previous 12 months, or within 15 days of discontinuation of the well for this use, whichever is earlier. For purposes of this Rule 5.4, the well operator is the person holding the Railroad Commission oil or gas permit as described in Texas Water Code Section 36.117(b)(2).

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **5.5 In Situ Uranium Exploration, Mining, and Related Activities**

**A.** An entity owning or operating in situ uranium exploration, mining, or related activities shall comply with the reporting and recordkeeping requirements of Rule 9.

**B.** A map or legal description of any portion of the aquifer that becomes off limits for use as a drinking water source under the Safe Drinking Water Act and Texas Water Code chapter 27 aquifer exemption process of 40 Code of Federal Regulations Section 144.7(b) and 30 Texas Administrative Code Section 331.13 shall be submitted to the District within 30 days of approval of the aquifer exemption by the U.S. Environmental Protection Agency. While generally the mineral owner would be responsible for submitting this documentation, because under Rule 11.2.C(1) it adversely affects the surface owner's groundwater allocation, the surface owner is also responsible.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **5.6 Texas Surface Coal Mining and Restoration Act and Water Wells**

An entity holding a permit issued by the Railroad Commission under Texas Natural Resources Code, Chapter 134 (Texas Surface Coal Mining and

Kenedy County Groundwater Conservation District

Restoration Act) shall report monthly to the District on or before the 15<sup>th</sup> of each month:

- A.** The total amount of water withdrawn during the previous month;
- B.** The quantity of water for mining activities during the same period;  
and
- C.** The quantity of water withdrawn for other purposes during the same period.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

**Rule 6: PLUGGING, CAPPING, AND SEALING OF WELLS**

**6.1 Plugging Wells**

**A.** Not later than the 180<sup>th</sup> day after the date a landowner or other person who possesses a deteriorated or abandoned well learns of its condition and location, the well shall be plugged in accordance with the Rules of the Texas Department of Licensing and Regulation, 16 Texas Administrative Code, Chapter 76, as amended. 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 30<sup>th</sup> day after the date the well is plugged, a State of Texas Plugging Report shall be submitted to the District as required by Rule 5.3.

**B.** If the owner fails to plug the well in compliance with State law, the District must first take action under Rule 7.1 and:

- (1) following the procedures of Rule 7.4 (access to property), go on the land and 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 Texas Water Code Section 36.118; or
- (2) as authorized by Texas Occupations Code, Section 1901.256, otherwise enforce Texas Occupations Code Section 1901.255 related to landowners having an abandoned or deteriorated well located on their property.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

**6.2 Capping Wells**

A well that is open at the surface in a non-deteriorated condition must be capped to prevent waste, pollution, or prevent deterioration. The well shall remain capped until conditions that led to the capping are eliminated. If the owner fails to cap the well in compliance with District Rules, the District may do so after first taking action under Rule 7.1. Reasonable expenses incurred by the District in capping a well constitute a lien on the land on which the well is located pursuant to Texas Water Code Section 36.118.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **6.3 Sealing Wells**

- A.** Following the procedure of Rule 7, (enforcement procedure) the District may require the sealing of a well that is in violation of District Rules or that the District has prohibited from producing groundwater.
- B.** If the District believes that continued operation of a well may cause a threat of imminent endangerment to human health, safety, or the environment, the District may require the sealing of a well on an emergency basis. In such a case, the District shall provide an opportunity for notice and hearing under Rule 8.6 no later than the next regularly scheduled Board meeting.
- C.** If the District requires the sealing of a well and the owner fails to seal the well, the District may seal the well following the procedures of Texas Water Code Section 36.123 and Rule 7.4 (access to property).
- D.** A well shall be sealed by physical means and tagged to indicate that the well has been sealed as required by the District. The seal is intended to preclude operation of the well and identify unauthorized operation of the well.
- E.** Tampering with, altering, damaging, removing, or violating the seal of a sealed well in any way, or pumping groundwater from a well that has been sealed constitutes a violation of District Rules and subjects the person who performs that action, as well as the well owner to enforcement under District Rules.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **Rule 7: ENFORCEMENT**

### **7.1 Complaints and Investigations**

**A.** All complaints shall be reflected on a District complaint form. These forms are available at the District office and on its website. If a complaint is made verbally, by telephone, or in person, District personnel will ensure that the information is memorialized on a District complaint form. The complainant must inform the District if they want to qualify as an aggrieved party under the citizen suit provision of Texas Water Code Section 36.119. The District may initiate an investigation without receiving a complaint and shall follow the procedures of this Rule 7.

**B.** For purposes of this Rule 7.1 and Section 36.119, an aggrieved party is a landowner or other person who has a right to produce groundwater from land that is adjacent to the land on which the well subject to the complaint is located, or who owns or otherwise has a right to produce groundwater from land that lies within one-half mile of the subject well.

**C.** A complainant may ask to remain anonymous, unless they want to qualify as an aggrieved party under the citizen suit provision of Texas Water Code Section 36.119.

**D.** A District representative will investigate the complaint promptly and will memorialize his findings in a written investigation report.

**E.** A copy of the investigation report will be sent to the person about whom the complaint was made. If the complainant has provided his name and address, a copy of the investigation report will be sent to the complainant.

#### **F. Board Consideration of Investigation Reports**

(1) The investigation reports for all complaints must be presented to the Board for consideration not later than 90 days from the date of receipt of the complaint.

(2) Notice of the date, time, and location of the Board meeting at which the investigation report will be considered and a copy of the investigation report shall be mailed to the person about whom the complaint was made and to the

complainant by certified mail, return receipt requested, at least 20 days prior to the scheduled Board meeting.

- (3) At the Board meeting, the Board may decide that there was no violation and close the complaint file. If the Board decides that there has been a violation, it may direct the District staff to issue a notice of violation under Rule 7.2 or initiate civil enforcement under Rule 7.5.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **7.2 Notice of Violation**

The District will send a notice of violation to a person who is believed to be in violation of law, including violation of a District Rule, order, or permit. The notice shall include a copy of the investigation report. The notice of violation may require remedial action and may assess a penalty. The notice shall provide the opportunity for the respondent to take remedial action and to meet with the District regarding the alleged violation. The respondent will also be provided an opportunity for public hearing under Rule 8.6.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **7.3 Penalty Schedule**

The District may assess penalties for non-compliance with District Rules including failure to comply with conditions of a permit issued by the District. Penalties will be assessed in accordance with the following schedule. Penalties may include actual reasonable expenses of a successful enforcement action.

### Schedule of Penalties for Non-Compliance

<b>Non-Compliant Action</b>	<b>Minimum Penalty</b>
Drilling a well without District authorization	\$1,000.00
Producing water from a non-exempt well without an operating permit	\$1,000.00
Violation of District Rule or permit requirement	\$250.00
Exceeding production rate or volume specified in operating permit	\$1,000.00
Substantially altering an existing well prior to obtaining a permit or permit amendment	\$500.00

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*



## **7.4 Notice and Access to Property**

The District has authority under Texas Water Code Section 36.123 to enter any public or private property located within the District at any reasonable time for purposes of inspecting and investigating conditions relating to water quality, wells, or compliance with District Rules, regulations, permits, or orders. The District respects individual property rights and shall endeavor to minimize any inconvenience to property owners while conducting District business. The District shall notify, coordinate, and schedule well and property access in advance with the property owner, his agent, tenant, or other local contact. Notice is not required if prior written permission to enter land or access wells has been granted by the property owner, his agent, tenant, or other local contact. District employees or agents accessing public or private wells or property shall exhibit proper credentials upon request. District employees or agents acting under this authority shall observe all applicable rules and regulations concerning safety, internal security, and fire protection.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **7.5 Civil Enforcement**

**A.** As authorized by Texas Water Code Section 36.102, the violation of any District Rule may be subject to a civil penalty not to exceed \$10,000.00 per day per violation, and each day of a continuing violation constitutes a separate violation.

**B.** The Board may seek enforcement of such civil penalties by injunction, mandatory injunction, or other appropriate remedy through a suit filed in a court of competent jurisdiction.

**C.** If the District prevails in any suit to enforce its rules, the District may seek, and the court shall grant, recovery of attorney's fees, costs for expert witnesses, and any other costs incurred by the District before the court.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **Rule 8 PROCEDURAL RULES**

### **8.1 Hearing on Rules Other Than Emergency Rules**

**A.** Once the District has developed a proposal involving its Rules, other than Emergency Rules, the District will decide at which Board meeting the proposed Rules will be considered for action. The Board meeting at which the proposed Rules are considered under this Rule shall be considered the public hearing on the proposed Rules and fulfills the requirement, if any, for a public hearing.

**B.** Notice required by the Open Meetings Act shall be provided for the hearing.

**C.** In addition to the notice required by the Open Meetings Act, not later than the 20<sup>th</sup> day before the date of the hearing, notice shall be provided as follows:

- (1) Post notice in a place readily accessible to the public at the District office;
- (2) Provide notice to the county clerks of Brooks, Hidalgo, Jim Wells, Kenedy, Kleberg, Nueces, and Willacy counties;
- (3) Publish notice in one or more newspapers of general circulation in the county or counties in which the District is located; and
- (4) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.1.F. Failure to provide notice under this Rule 8.1.C(4) does not invalidate an action taken by the District at a rulemaking hearing.

**D.** Notice of the hearing on the proposed Rules required by Rule 8.1.C shall include:

- (1) A brief explanation of the subject of the rulemaking hearing, including a statement that the District's Board of Directors will consider changes to the District's Rules, which will serve as the public hearing on the matter.
- (2) The time, date, and location of the hearing.

- (3) The agenda of the hearing.
- (4) A statement that the proposed Rules are available to be reviewed or copied at the District Office prior to the hearing.
- (5) A statement that the District will accept written comments and give the deadline for submitting written comments.
- (6) A statement that oral public comment will be taken at the hearing.

**E.** Copies of the proposed Rules shall be available at the District Office during normal business hours at least 20 days prior to the hearing.

**F.** A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request.

**G.** To ensure that written comments about the proposed Rules will be considered by the Board, such written comments should be submitted to the District at least 5 days prior to the scheduled hearing.

**H.** Anyone interested in the proposal may attend the hearing and comment on the proposed Rules.

**I.** The District shall make and keep in its files a court reporter transcription or an audio or video recording of the hearing.

**J.** The Board shall issue a written order or resolution reflecting its decision. The proposed Rules that the Board has approved shall be an attachment to that written order or resolution.

**K.** The effective date of the written order or resolution shall be the date on which the President of the District signs the order or resolution. The order or resolution shall include a statement that the proposed Rules become effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final.

**L.** If in the course of the deliberation during the meeting, the Board decides it wants to substantially change the proposed Rules, the Board

shall “continue” or postpone the matter until a future Board meeting. Prior to consideration of the substantially changed proposed Rules, the District shall provide notice and opportunity for comment and hold a hearing under this Rule on the substantially changed proposed Rules. It is solely within the discretion of the Board what constitutes a substantial change to the proposed Rules requiring further notice and hearing.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **8.2 Adoption of Emergency Rules**

**A.** The District may adopt an emergency rule without following the notice and hearing provisions of Rule 8.1, if the Board:

- (1) Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days’ notice; and
- (2) Prepares a written statement of the reasons for its finding under Rule 8.2.A(1).

**B.** An emergency rule under this Rule 8.2 must be adopted at a meeting of the Board subject to the requirements of the Open Meetings Act. Notice required by the Open Meetings Act shall be provided.

**C.** Except as provided by Rule 8.2.D., a rule adopted under this Rule may not be effective for longer than 90 days.

**D.** If notice of a hearing under Rule 8.1 is given before the emergency rule expires under Rule 8.2.C., the emergency rule is effective for an additional 90 days.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **8.3 Actions On Operating Permits**

**A.** Within 60 days after the date it is deemed administratively complete by the District, an application under this Rule 8.3 shall be acted on by the District’s General Manager or set on a specific date for action at a meeting of the District Board.

**B.** An application for a non-exempt well shall be referred to the Board for action under Rule 8.4.

**C.** An application for a minor amendment to an operating permit under Rule 3.8.E(4) may be approved by the District's General Manager without further Board action. Denial of a minor amendment shall be referred to the Board for action under Rule 8.4.

**D.** An application for a major amendment to an operating permit under Rule 3.8.E(3) and an involuntary amendment proposed by the General Manager under Rule 3.8.F(2) shall be referred to the Board for action under Rule 8.4.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended January 14, 2009, by Board Order; effective January 14, 2009.*

## **8.4 Permit Actions by the Board**

**A.** In this Rule, "Applications" refers to applications referred to the Board for action under the requirements of Rule 8.3.

**B.** Within 60 days of the date on which the District determines that an Application is administratively complete, it shall be set on the agenda for Board action at a Board meeting. Such setting shall be no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by Rule 8.4.E.

**C.** An Application that is referred to the Board shall be considered by the Board within 95 days of the date on which the Application was determined to be administratively complete.

**D.** Notice required by the Open Meetings Act shall be provided for the meeting and shall include the name of the applicant and the address or approximate location of the well.

**E.** Notice of the Board meeting at which the Application will be considered shall be mailed to the applicant at least seven days prior to the scheduled meeting date. Such notice may be waived by the applicant.

**F.** Anyone interested in the Application may attend the meeting and make oral comments at the time designated for comments.

**G.** The Board, at its sole discretion, may administer an oath to the staff, the applicant, and anyone who makes oral comments on the Application.

**H.** The Board shall issue a written order or resolution reflecting its decision. If the Board approves the Application, the permit shall be an attachment to that written order or resolution. The Board's decision shall be made within 60 days after the Board meeting at which the Application was considered.

**I.** A request for contested case hearing, which will be conducted under Rule 8.5., shall be in writing and shall be made within 10 days after the Board's issuance of the written order or resolution reflecting its action on the Application. The following individuals may request a contested case hearing:

- (1) The applicant; or
- (2) A person who (a) has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority, that is not merely an interest common to members of the public; and (b) is affected by the Board's action on the Application.

**J.** If the District receives a written request for contested case hearing, the District shall schedule a pre-hearing conference at its next regularly scheduled Board meeting, in no event longer than 35 days after the date of the request. The pre-hearing conference may be held to consider any matter that may expedite the hearing or otherwise facilitate the hearing process, including, but not limited to:

- (1) whether a valid contested case hearing request has been submitted and if so, the designation of parties.
- (2) formulation and simplification of issues.
- (3) the hearing schedule, including any necessary discovery.

**K.** The effective date of the written order or resolution shall be 10 days after the date on which the President of the District signs the order or resolution, if no request for a contested case hearing under Rule 8.4.I. is received by the District. The order or resolution shall include a statement that the order or resolution and its attachment become effective and final within 10 days of that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final, unless there is a request for a contested case hearing.

**L.** If there is a timely filed request for a contested case hearing, a pre-hearing conference is held under Rule 8.4.J, and the Board determines that there will be no contested case hearing, the effective date of the written order shall be the date on which the Board denies the contested case hearing request.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008; amended January 14, 2009, by Board Order; effective January 14, 2009.*

## **8.5 Permit Actions Requiring a Contested Case Hearing**

**A.** Rule 8.5 applies only to Applications for which the District has received a timely filed request for a contested case hearing under Rule 8.4.I.

**B.** If the District receives a timely filed request for a contested case hearing under Rule 8.4.I., the Application shall be set for the initial hearing no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by this Rule 8.5. Setting of a pre-hearing conference under Rule 8.4.J. shall be considered the setting of the initial hearing.

**C.** Notice required by the Open Meetings Act shall be provided for the hearing if conducted by a quorum of the Board.

**D.** In addition to the notice required by the Open Meetings Act, not later than the 20th day before the date of the hearing, notice shall be provided as follows:

- (1) Post notice in a place readily accessible to the public at the District office;
- (2) Provide notice to the county clerk of each county in the District;
- (3) Mail notice to the applicant by regular mail;
- (4) Mail notice to the individual requesting a contested case hearing by regular mail; and
- (5) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.5.F. Failure to

provide notice under this Rule 8.5.D(5) does not invalidate an action taken by the District at contested case hearing.

- E.** Notice of the hearing on the Application shall include the following:
- (1) The name of the applicant;
  - (2) The address or approximate location of the well or proposed well;
  - (3) A brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
  - (4) The time, date and location of the hearing; and
  - (5) Any other information the District considers relevant and appropriate.
- F.** A person may submit to the District a written request for notice of a hearing on a permit or permit amendment. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a hearing in a later year, a person must submit a new request.
- G.** The hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a Hearings Examiner to preside at and conduct the hearing on the Application. The appointment of a Hearings Examiner shall be made in writing. If the hearing is conducted by a quorum of the Board, the President shall preside. If the President is not present, the Board shall select one of the Directors who are present to preside.
- H.** The presiding officer has the following authority and obligations:
- (1) May convene the hearing at the time and place specified in the notice;
  - (2) May set any necessary additional hearing dates;
  - (3) May designate the parties regarding a contested application;
  - (4) May establish the order for presentation of evidence;



- (5) May administer oaths to all persons presenting testimony;
- (6) May examine persons presenting testimony;
- (7) May ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
- (8) Shall admit relevant evidence and may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
- (9) May prescribe reasonable time limits for testimony and the presentation of evidence.
- (10) May allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.
- (11) May refer parties to an alternative dispute resolution (ADR) procedure on any matter at issue in the hearing, apportion costs for ADR, and appoint an impartial third party as provided by Section 2009.053 of the Government Code to facilitate that procedure; and
- (12) May continue a hearing from time to time and from place to place without providing notice under Rule 8.5.D. and E. If the continuance is not announced on the record at the hearing, the presiding officer shall provide notice of the continued hearing by regular mail to the parties. In any event, if the hearing is being conducted by a quorum of the Board, Open Meetings notice under Rule 8.5.C. shall be provided.

I. The presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to the contested case hearing and payment of an appropriate deposit, as set by the presiding officer, the hearing shall be transcribed by a court reporter. The costs of such court reporter may be assessed against the party requesting it or among the parties to the hearing. The presiding officer may exclude a party from

further participation in the hearing for failure to pay in a timely manner costs assessed against that party under this Rule 8.5.I.

**J.** If the Board has appointed a hearings examiner to be the presiding officer at the hearing, the hearings examiner shall submit a report to the Board not later than the 30<sup>th</sup> day after the date the hearing is concluded. A copy shall be provided to the applicant and each party to the hearing. The applicant and other parties to the hearing may submit to the Board written exceptions to the report within 10 days of issuance of the report. The report shall include:

- (1) A summary of the subject matter of the hearing;
- (2) A summary of the evidence received; and
- (3) The hearing examiner's recommendations for Board action on the subject matter of the hearing.

**K.** The Board shall issue a written order or resolution reflecting its decision, which shall be made at the hearing or at a meeting subject to the requirements of the Open Meetings Act. A copy of the permit shall be an attachment to that written order or resolution. The Board's decision shall be made within 60 days after the final hearing on the Application is concluded.

**L.** Request for rehearing or findings and conclusions shall be considered as follows:

- (1) Not later than the 20<sup>th</sup> day after the date of the Board's decision, an applicant or a party to a contested hearing may administratively appeal a decision of the Board on an Application by requesting written findings and conclusions or a rehearing before the Board.
- (2) On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on an Application. The board shall provide certified copies of the findings and conclusions to the person who requested them, and to each designated party, not later than the 35<sup>th</sup> day after the date the Board receives the request. The applicant or a party to the contested case hearing may request a rehearing before the Board not later than the 20<sup>th</sup> day after the date the Board issues the findings and conclusions.

- (3) A request for rehearing must be filed in the District office and must state the grounds for the request. The person requesting a rehearing must provide copies of the request to all parties to the hearing.
- (4) 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. Any action by the Board on a request for rehearing shall be made at a Board meeting subject to the Open Meetings Act.
- (5) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

**M.** A decision by the Board on an Application is final if:

- (1) A request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
- (2) A request for rehearing is filed on time, on the date:
  - (a) the Board denies the request for rehearing; or
  - (b) the Board renders a written decision after rehearing.

**N.** An applicant or a party to a contested hearing may file a suit against the District under Texas Water Code Section 36.251 to appeal a decision on an Application not later than the 60th day after the date on which the decision becomes final. A timely filed request for rehearing is a prerequisite to any such suit.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **8.6 Enforcement Hearing**

**A.** If the District receives a timely filed written request for hearing from a Respondent who has received a notice of violation from the District, the District shall decide at which Board meeting the enforcement action will be considered. The Board meeting at which the enforcement action is considered under this Rule shall be considered the public hearing on the matter and fulfills the requirement, if any, for a public hearing.

- B.** Notice required by the Open Meetings Act shall be provided for the meeting.
- C.** Notice of the enforcement hearing shall be mailed to the Respondent by certified mail, return receipt requested, at least ten days prior to the scheduled hearing date.
- D.** Anyone attending the meeting on the enforcement action may make oral comments at the time designated for comments.
- E.** The Board, at its sole discretion, may administer an oath to the staff, the Respondent, and anyone who makes oral comments on the enforcement action.
- F.** The hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a hearings examiner to preside at and conduct the enforcement hearing. Appointment of a hearings examiner shall be made in writing. If the hearing is conducted by a quorum of the Board, the President shall preside. If the President is not present, the Board shall select one of the Directors who are present to preside. If the matter is referred to a hearings examiner, upon completion of the hearing the hearings examiner shall submit a written recommendation to the Board of Directors.
- G.** At the close of the enforcement hearing, the Board of Directors shall make a decision on the issues before it. If that matter was referred for hearing, the Board of Directors is not required to approve the written recommendation submitted by the hearings examiner. The Board of Directors shall issue a written order or resolution reflecting its decision.
- H.** The effective date of the written order shall be the date on which the President of the District signs the order or resolution. The order or resolution shall include a statement that the order or resolution becomes effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **Rule 9 IN SITU URANIUM MINING WATER WELLS**

### **9.1 Exploration Activity**

#### **A. GCD Jurisdiction:**

- (1) Except as provided in Texas Natural Resources Code Section 131.354 and these Rules, the Texas Railroad Commission has exclusive jurisdiction and is solely responsible for regulation of all uranium exploration activities.
- (2) Cased uranium exploration wells subject to a uranium exploration permit used for exploration or for rig supply purposes are exempt from District regulation except as described in Rule 9.1.A(3).
- (3) If the cumulative amount of water produced from the cased uranium exploration wells located inside the area subject to the uranium exploration permit and completed under the uranium exploration permit exceeds 40 acre feet in one year:
  - (a) All wells described in Rule 9.1.A(3) used for monitoring purposes are subject to District Rules regarding registration of wells.
  - (b) All wells described in Rule 9.1.A(3) used for rig supply purposes are subject to District Rules regarding production and reporting.

#### **B. Monthly Production Report**

A uranium exploration permittee shall submit a monthly production report to the District as follows. The report shall include the total amount of water produced by each cased uranium exploration well used for monitoring or for rig supply and which is located inside the area subject to the uranium exploration permit. The report shall be submitted on the 15<sup>th</sup> of each month showing production during the previous month.

**C. Water Quality Reports and Well Logs**

**(1) Pre-Exploration Water Quality Report**

A uranium exploration permittee shall submit to the District pre-exploration water quality information as follows:

- (a) From each existing well, located in the District and in the area covered by the uranium exploration permit, which was tested before exploration; and
- (b) From the following wells, as applicable:
  - (i) If there are fewer than 10 existing wells located inside the permitted area, submit data for all 10 wells; or
  - (ii) If there at least 10 existing wells inside the permitted area, submit data for at least 10 existing wells that are distributed as evenly as possible throughout the permitted area.

**(2) Pre-Mining Water Quality Report**

A uranium exploration permittee shall submit to the District copies of all pre-mining water quality data as follows:

- (a) From each existing well in the District that the permittee tests during exploration; and
- (b) From completed cased uranium exploration wells subject to the permit.

**(3) Well Logs**

For each well located inside the area subject to the uranium exploration permit, the permittee shall submit to the District the State of Texas Well Report, as applicable, and all geophysical and lithological well logs. The permittee is not required to submit reports or logs that contain confidential information as described in Texas Natural Resources Code Section 131.048.

**(4) Deadline for Submittal**

The reports and records required under this Rule 9.1.C shall be submitted to the District within 100 days after the data are compiled.

**D. Well Information Report**

Within 60 days of completion of a cased uranium exploration well used for monitoring or for rig supply, which is located inside the area subject to a uranium exploration permit, the permittee shall submit to the District the following uranium exploration permit well information:

- (1) The permittee's name, address, and telephone number;
- (2) Well completion information including the State of Texas Water Well Driller Report, if any;
- (3) The location of the well giving latitude and longitude, including a legal description and the acreage of the property where the well is located;
- (4) Verification that the well will be used for an industrial purpose; and
- (5) The type and capacity of the pump used in the well.

**E. Production Limits**

With regard to a rig supply well subject to the District's production rules pursuant to NRC 131.354(c) and Rule 9.1.A(3)(b), the District shall use the number of acres described in the uranium exploration permit in calculating production limits.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

**9.2 Development of an Area Permit Application**

**A. Geologic, hydrologic, and water quality reporting**

Under Texas Water Code Chapter 27 and Texas Commission on Environmental Quality regulations, geologic, hydrologic, and water quality data are required as part of the application for an area permit. Once the area permit applicant has identified the proposed area permit boundary

and within 100 days after the data are compiled, the applicant shall submit the following information to the District:

- (1) information regarding wells encountered by the applicant during the development of the area permit application that are not recorded in the public record;
- (2) a map showing the locations of wells that are located within one-quarter mile of the location for the proposed area permit that are recorded in the public record;
- (3) all water quality data collected from area permit application wells prior to the beginning of mining activity; and
- (4) a record of strata, including the State of Texas Water Well Driller Report, if any, including the depth, thickness, and character of the different strata penetrated in drilling the well, except confidential information described by Texas Natural Resources Code Section 131.048.

#### **B. Monthly Production Reports**

An area permit applicant shall submit a monthly production report to the District as follows. The report shall include the total amount of water produced by each area permit application well. The report shall be submitted within 100 days of the end of each month showing production during the previous month.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **9.3 Activities Affecting Groundwater Allocation**

The holder of the aquifer exemption shall submit to the District a map or legal description of any portion of the aquifer that becomes off limits for use as a drinking water source under the Safe Drinking Water Act and Texas Water Code chapter 27 aquifer exemption process of 40 Code of Federal Regulations Section 144.7(b) and 30 Texas Administrative Code Section 331.13. The submittal is due within 30 days of approval, amendment, or removal of the aquifer exemption by the U.S. Environmental Protection Agency.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*



## **Rule 10 WELL SPACING**

### **10.1 Purpose**

The purpose of these well spacing requirements is to promote groundwater conservation, provide for long-term availability of groundwater resources, reduce localized depletion of groundwater, prevent interference between wells, and prevent the degradation of groundwater quality.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **10.2 Applicability**

The requirements of this Rule 10 apply to all new wells drilled within the District, except wells subject to Rule 9 and 13.2 or unless specifically noted in this Rule 10. As authorized by Texas Water Code Section 36.116, some of the required distances are more stringent than those required by 16 Texas Administrative Code Section 76.1000, as amended.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **10.3 Spacing from Potential Sources of Pollution**

**A.** All wells must comply with the location standards of 16 Texas Administrative Code Section 76.1000 and with the minimum required separation distance for on-site sewage facilities of 30 Texas Administrative Code Section 285.91(10), which dictate horizontal distance from potential sources of pollution. Section 76.1000 excludes monitoring wells, environmental soil borings, dewatering wells, piezometer wells, and recovery wells from these requirements. Such wells may be located where necessity dictates.

**B.** Public Water System Wells must comply with the 150-foot sanitary control easements as required by Title 30 Texas Administrative Code Chapter 290.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## 10.4 Spacing From Property Lines

**A.** All new wells shall be located a minimum horizontal distance from property lines as required by 16 Texas Administrative Code Section 76.1000, unless covered by the more stringent spacing requirements of this Rule 10.4. This requirement cannot be waived by the District.

**B.** All new water wells shall be located a minimum horizontal distance from property lines as specified in the following Table. Based on information obtained during registration or permitting of a new well regarding its location in reference to other wells, the District may increase the required spacing.

<b>Wells – Pumping Capacity (gallons per minute)</b>	<b>Distance of New Water Well from Property Lines (in feet)</b>
Less than or equal to 20 gpm	100
20 to 250 gpm	5 feet per every gallon per minute
Greater than 250 gpm	10 feet per every gallon per minute

**C.** Any subdivision of existing tracts of land shall be done in such a fashion that new property lines shall be located no closer than the spacing requirements of this Rule from any existing or proposed water well.

**D.** Any increase in pumping capacity must be approved by the District under Rule 3.8. A request to increase pumping capacity will only be granted if the well location will comply with the spacing requirements of this Rule 10.4 or if a spacing variance is granted under Rule 10.5.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## 10.5 Well Spacing Variance Procedures

**A.** The owner of a proposed new water well or someone desiring to subdivide existing tracts of land may apply for a variance to the spacing requirements of Rule 10.4.

**B.** A variance application shall be submitted to the District on a form furnished by the District. The application shall explain the circumstances justifying the variance. It shall be accompanied by a plat or sketch,

drawn to scale on one inch equaling two hundred yards, which shows the property lines in the immediate area and all wells within one-half mile of the proposed well site. The application shall also include the names and mailing addresses of all property owners adjoining the tract on which the well is to be located.

**C.** Notice and an opportunity for a hearing before the Board for such a variance shall be as follows:

- (1) The District shall mail notice to the applicant for the variance and to all property owners adjoining the tract on which the well is to be located at least 14 days prior to the Board meeting at which the variance will be considered by the Board.
- (2) The notice shall provide the proposed location of the well(s), the applicant's name and address, and the date, time, and location of the Board meeting.
- (3) The Board shall consider the variance at a Board meeting, which shall serve as the hearing on the variance. The requirements of Rule 8 do not apply to a hearing under this Rule 10.5.C.
- (4) In making its decision on the variance, the Board shall consider comments, if any, from adjoining, affected property owners; the peculiarities of the property shape; the local geology or hydrology; and any other information presented by the applicant.

**D.** If the owner obtains a waiver or easement of the property line distances from adjoining, affected property owners, no notice and opportunity for a hearing is required. The owner shall prepare a plat and legal description of the affected property, and such plat shall be signed and sealed by a Registered Professional Land Surveyor. The legal description, plat, and waiver shall be notarized, filed with the County Clerk of the county in which the two properties are located, and copies shall be submitted with the application for a variance to the District office prior to drilling the proposed water well or subdividing the land. Such a waiver or easement will affect the property of the owner granting it by causing the distance requirements from property lines to be adjusted inward on the property for which the waiver is granted. The District shall not accept reciprocal waivers or easements from adjoining property owners if the

Kenedy County Groundwater Conservation District

waivers or easements would involve the same portion of the adjoining properties.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **Rule 11 PRODUCTION LIMITS**

### **11.1 Existing Non-Exempt Wells**

- A.** An annual production limit will be included in the permit for an existing non-exempt well.
- B.** The annual production limit will be the highest annual production from the well during the five years prior to October 8, 2008, plus 25 %.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **11.2 New Non-Exempt Wells**

- A.** An annual production limit will be included in the permit for a new non-exempt well.
- B.** The production limit will be based on the number of contiguous acres either owned by the well owner or for which the well owner has groundwater production rights.
- C.** In determining the number of contiguous acres upon which the production limit will be based, the District shall consider the extent to which the property is subject to in situ uranium mining and shall calculate as follows:

- (1) If any portion of the aquifer becomes off limits for use as a drinking water source under the Safe Drinking Water Act and Texas Water Code chapter 27 aquifer exemption process of 40 Code of Federal Regulations Section 144.7(b) and 30 Texas Administrative Code Section 331.13, the total contiguous acreage shall be reduced by the surface acreage deemed off limits.
- (2) The total production limit shall be reduced by 80 acre-feet per production area per year during any period of in situ uranium mining on the contiguous acreage.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **11.3 Calculation of Production Limits Based on Acreage**

**A.** The production limits in effect at the time an application for an operating permit is deemed administratively complete, are the applicable production limits for the permit.

**B.** In the interim until the District has established the production limits under Rule 11.3.D, production limits for new non-exempt well permits shall be 0.75 acre-inch/acre/year.

**C.** When the District establishes production limits according to Rule 11.3.D, any permit that was issued using the interim method of Rule 11.3.B shall be subject to involuntary amendment under Rule 3.8.F(2) to comply with the production limits established under Rule 11.3.D. This may involve either a conforming change in production limits or in associated acreage under Rule 11.2.

**D.** Using the following formula, the District shall establish production limits based on acreage under Rule 11.2 within 180 days after a Managed Available Groundwater amount is issued by the Texas Water Development Board.

- (1) The most current Managed Available Groundwater amount calculated by the Texas Water Development Board;
- (2) Minus the District's calculated set-aside for exempt wells, which shall be based on the most recent approved Region M and Region N Water Plans;
- (3) Minus the District's calculated set-aside for existing non-exempt wells;
- (4) Divided by the number of acres in the District at the time the production limits are established by the District; and
- (5) Rounded to the nearest tenth of an acre-inch/acre.

**E.** Within 60 days of an annexation of territory into the District, the District will recalculate the production limits set under Rule 11.3.D.

**F.** Production limit calculations undertaken under Rules 11.3.D and E will result in a per acre - per year production limit, which will be adopted

as an amendment to Rule 11.3 during using the rulemaking procedure required by Rule 8.1.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended January 14, 2009 by Board Order; effective January 14, 2009.*

#### **11.4 Effect of Drought on Production Limits**

If the District declares emergency drought conditions in all or part of the District, the District may reduce production limits in the area affected by the drought on a pro rata basis during a period designated by the District.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

## **Rule 12 PROHIBITION AGAINST WASTE AND POLLUTION**

### **12.1 General Prohibition**

No person shall intentionally or negligently commit waste or pollution of the groundwater resources with the District.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **12.2 Wasteful Use**

Groundwater produced from within the District shall not be used in such a manner or under such conditions as to constitute waste as defined by District Rules.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **12.3 Wasteful Production**

Any person producing or using groundwater shall exercise due care in accordance with acceptable and approved methods, to stop and prevent waste of groundwater.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

### **12.4 Groundwater Pollution**

No person shall pollute or harmfully alter the character of the groundwater within the District by causing or allowing the introduction of undesirable water, pollutants, or other deleterious matter from another stratum, from the surface of the ground, or from the operation of a well. Injection activities that are in compliance with the Texas Commission on Environmental Quality regulatory requirements authorized by Texas Water Code chapter 27, for which the U.S. Environmental Protection Agency and the Texas Commission on Environmental Quality have approved the aquifer exemption specified in the federal Safe Drinking Water Act and codified in 40 Code of Federal Regulations, section 114.7(b) and 30 Texas Administrative Code, section 331.13, shall not constitute groundwater pollution under this Rule 12.4.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*



## **12.5 Orders to Prevent Waste or Pollution**

- A.** An order to prevent waste or pollution is generally processed as an enforcement matter under Rule 7.
- B.** If the District determines that an imminent peril to public health, safety, or welfare requires the immediate entry of an order to prohibit waste or pollution, the Board may issue an emergency temporary order.
- C.** An emergency temporary order may not be effective for longer than 90 days without further action of the Board.
- D.** If the District has identified a person responsible for the waste or pollution of groundwater and an emergency exists, initiation of an enforcement action shall take place within 14 days of the effective date of the emergency temporary order.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

**Rule 13: WATER WELLS ASSOCIATED WITH OIL, GAS, AND MINING  
ACTIVITIES OTHER THAN IN SITU URANIUM MINING**

**13.1 District Jurisdiction Over Water Wells Associated with Oil,  
Gas, and Mining Activities**

The District has authority over water wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

**13.2 Water Wells Associated with Mining Activities Authorized  
Under Texas Natural Resources Code, Chapter 134**

**A.** Water wells authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code (Texas Surface Coal Mining and Restoration Act) are exempt wells as provided in Rule 3.1.A(3).

**B.** If the withdrawals from a well exempted under this Rule 13.2 are no longer necessary for mining activities or are greater than the amount necessary for mining activities specified in the Railroad Commission permit, the well becomes a non-exempt well subject to the requirements of Rule 3.4 but is not subject to the spacing requirements of Rule 10.

**C.** An entity holding a permit issued by the Railroad Commission under Texas Natural Resources Code Chapter 134 that authorizes the drilling of a water well shall comply with the recordkeeping and reporting requirements of Rule 5.6.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008.*

**13.3 Water Wells Associated With Oil And Gas Activities**

**A. Temporary Rig Supply Well**

- (1) No permit is required for the drilling of a water well used solely to supply water for a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission if the water well is located on the same lease or field associated with the drilling rig.

- (2) In Rule 3.1.A(2) and this Rule 13.3, a rig that is actively engaged in drilling or exploration operations for an oil or gas well permitted by the Railroad Commission includes a drilling or workover rig. Exploration operations include well completion and workover, including hydraulic fracturing operations.
- (3) A well described in Rule 13.3.A.1 and 2 is referred to as a temporary rig supply well.
- (4) A temporary rig supply well must register with the District as provided in Rule 3.2.
- (5) A temporary rig supply well must comply with the well construction standards as provided in Rule 4.
- (6) The driller of a temporary rig supply well must submit to the District the drilling log as provided in Rule 5.1.A.
- (7) The production from a temporary rig supply well shall be recorded and reported as required in Rule 5.4.
- (8) A temporary rig supply well shall be plugged in accordance with Rule 6.1.

**B. Injection Water Source Well Permitted by Railroad Commission**

No District operating permit is required for an injection water source well associated with oil and gas activities that penetrates the base of usable quality water because such a well is required to obtain a permit from the Railroad Commission.

**C. Other Water Wells Associated with Oil and Gas Activities, Including Injection Water Source Wells**

- (1) A rig supply well that does not fall or no longer falls under the definition of a temporary rig supply well in Rule 13.3.A, must comply with all District Rules and must obtain an operating permit as required by Rule 3.4.
- (2) Except as provided in Rule 13.3.B, all other water wells associated with oil and gas activities, including an injection water source well drilled for hydrocarbon activities associated with an oil or gas well drilled after September 1, 1985 that

Kenedy County Groundwater Conservation District

does not penetrate the base of usable quality water must comply with all District Rules and must obtain an operating permit under Rule 3.4.

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