

**MINUTES OF
AUGUST 31, 2009
BOARD MEETING
CENTRAL TEXAS GROUNDWATER
CONSERVATION DISTRICT**

The Board of Directors of the Central Texas Groundwater Conservation District met in regular session Monday, August 31, 2009 at 6:00 p.m. in the District office located at 225 S. Pierce Street, Suite 104, Burnet, Texas.

The following persons were present:

Members Present

John Simmons, President

Wayne Brown, Vice President

Jerry Bostick, Secretary/Treasurer

Clyde Waters, Director

Todd Fox, Director

Staff and or Consultants Present

Richard Bowers, General Manager

Donnita Coats, Administrative Assistant

Tom Partridge, P.E.

Others present (who signed the attendance Record)

Nine Members of the Public

President Simmons declared a quorum present and called the Meeting to order at 6:00 p.m.

President Simmons stated that he believed that most of the people in attendance had an interest in agenda item 10: "Discussion and/or action on adopting the proposed Rules of the District that were considered in a public hearing on May 18, 2009, along with any changes or amendments to the proposed rules based upon comments received" Therefore, he wanted to move Agenda item 10 to agenda item number one.

President Simmons then provided the following comments:

"This entire debate revolves around one page in the Rules and only impacts large volume water producers. (That's 10% to 15% of the wells in the district) or those who think they may want to produce large volumes of water.

The fact of the matter is, as those familiar with the rules know well, the Board has already made so many changes in the rules over the past three years to provide protection for future well owners that there are not many remnants of "first in time, first in right" left in the rules. While some argue that the rules are difficult to understand, it boils down to this issue: What happens in the future when total pumping from the aquifers reaches a level that is beyond the water budget that we have to comply with by state law. Do we place more restrictive conditions on new wells at some point and protect the wells that are here or do we force all of the existing well owners to cut back their pumping as necessary to make way for the new guy? I and the majority of this Board had been arguing for the first approach, but the public outcry has been for the latter.

And, so I am offering some revisions to the proposed rules. First, I am offering a revision to our proposed rules that deletes the “First in time, first in right” language, and replaces it instead with the mandate that the District shall make way for new production in the future by proportionally reducing existing production. That change is in Rule 4.03. Second, I have included a change to the definition of “domestic use” from the rules of the groundwater district in Fredericksburg to carve out watering by automated irrigation systems as a domestic use for NEW users, and require those new users-meaning the owners of newly built homes or the new purchasers of existing homes – to get a permit from this District before they can irrigate with that automated system.

Only those two changes and changes to push back the initial filing deadline from January 1st of next year to June 1st and adjust other dates accordingly (because of our delay in adopting the proposed rules) are included in these changes.”

He then distributed a document with proposed changes to the proposed rules (copy attached) and opened the meeting up for discussion between the Board and the people in attendance.

Director Waters asked if he should put that in a form of a motion before the discussion?

President Simmons responded by stating that he did have a motion that may die for lack of a second or may receive a second and be voted down but he wanted the people in attendance to have the opportunity to openly discuss the proposed changes before he offered his motion.

The Board and people in attendance openly discussed the changes proposed in the document distributed by President Simmons as well as other issues brought up in regard to existing language in the draft rules. During the discussion the issue of grandfather use was being discussed. Director Fox stated that he wanted to make an amendment to the language.

At that time President Simmons then stated that he wanted to present his motion and any amendment could be offered at that time.

President Simmons then moved:

That the Board consider these rules, as revised to remove the remaining “first in time, first in right” provision, and finally adopt the same as the Rules of the Central Texas Groundwater Conservation District.

Second was by Jerry Bostick.

Todd Fox moved to amend the motion :

That historical usage data for grandfathered wells must represent usage prior to September 1, 2009 and could be determined from records for as far back as records exist; and to exempt grandfathered wells in place prior to September 1, 2009 from proportional cutbacks that allow new users in a management zone but not from drought restrictions.

Second by Clyde Waters.

President Simmons called for a roll call vote on the Amendment to the Motion. He then asked the Manager to call the roll.

President Simmons – Yes
Vice President Brown – Yes
Secretary/Treasurer Bostick – Yes
Director Fox – Yes
Director Waters – Yes

President Simmons declared the Amendment to the Motion carried.
5-Yes votes and 0 – No votes

President Simmons then called for a roll call vote on the Amended Motion.
He asked the Manager to call the roll.

President Simmons – Yes
Vice President Brown – No
Secretary/Treasurer Bostick – Yes
Director Fox – Yes
Director Waters – Yes

President Simmons declared the Amendment to the Motion carried.
4-Yes votes and 1 – No votes

President Simmons then moved to instruct the General Manager and legal council to prepare a resolution for execution by the District President and Secretary evidencing the adoption of the Rules and the legal basis for them.

Second by Todd Fox.

President Simmons then called for a roll call vote on Motion.
He asked the Manager to call the roll.

President Simmons – Yes
Vice President Brown – No
Secretary/Treasurer Bostick – Yes
Director Fox – Yes
Director Waters – Yes

President Simmons then asked the Directors to consider the Minutes of the Board Meeting held August 3, 2009.

Clyde Waters moved to:
Approve the Minutes of the August 3, 2009 Board Meeting as presented.
Second was by Jerry Bostick.
Vote on the motion carried.

President Simmons then asked the Board to consider the expenditures for August 2009.

Jerry Bostick moved to:
Approve the expenses for August 2009.
Second was by Todd Fox.
Vote on the motion carried.

President Simmons then asked the Board for consideration and/or action on amendments to the 2008-2009 Budget. Secretary/Treasurer Bostick informed the Board that the Budget Expense – Capitol Purchase/Monitor Well & MW Equipment was over budget. He proposed a transfer of \$35,000.00 from Reserves to Capitol Purchase/Monitor Well & MW Equipment and \$5,000.00 from Reserves to Contract Services/Technical Consultants. After Board discussion of proposed line item transfers,

Secretary/Treasurer Bostick moved to:

Transfer \$35,000.00 from the expense item Reserves to expense item Capital Purchase/Monitor Wells & MW Equipment and \$5,000.00 from expense item Reserves to Contract Services/Technical Consultant as line item transfers to the 2008-2009 Budget.

Second was by Todd Fox.

Vote on the motion carried.

4-Yes

1-No

All members voted.

President Simmons then asked for discussion and/or action on the proposed 2009-2010 Budget. Secretary/Treasurer Bostick reviewed the proposed budget prepared by himself and General Manager Bowers.

Secretary/Treasurer Bostick moved to adopt the proposed 2009-2010 Budget as presented of \$ 575,300.00.

Second was by Clyde Waters.

Vote on the motion carried.

President Simmons then asked for discussion and/or action on adoption of the Central Texas Groundwater Conservation District 2009 Tax Rate.

Secretary/Treasurer Bostick moved to adopt the Central Texas Groundwater Conservation District 2009 effective tax rate of 0.0131/\$100 valuation.

Second was by Clyde Waters.

Vote on the motion carried.

4-Yes

1-No

All members voted.

President Simmons then asked for discussion and/or action on engagement letter for the 2008-2009 Audit.

Secretary/Treasurer Bostick moved to approve Michael Warner and Associates, P.C. to do the 2008-2009 Audit for the District.

Second was by Wayne Brown.

Vote on the motion carried.

President Simmons then asked for consideration and/or action on changing the Regular Board Meeting dates. After discussion of possible alternative days and times, President Simmons declared that the Regular Board Meetings would remain on the first Monday of each month at 6:00 p.m.

President Simmons then asked the General Manager for an update on the Trinity aquifer report provided to the Texas Water Development Board.

General Manager Bowers reported that the report had been sent to Kevin Ward, Executive Administrator, Texas Water Development Board (TWDB) and reviewed the letter he sent with the report. He reported that he had spoken with Bill Hutchison, Director, Groundwater Resources, TWDB. The Manager stated that we possibly could hear from TWDB in two weeks depending on their schedule. The Manager also informed the Board that Director Hutchison suggested that we send a copy of the report to GMA 8. General Manager Bowers stated that he sent Cheryl Maxwell, Administrator for GMA 8, a copy of the report.

President Simmons then asked the General Manager for the Managers Report. General Manager Bowers reported that he had made a presentation at the Water Issues Meeting on August 28, 2009 summarizing the Trinity Aquifer Report sent to Texas Water Development Board.

President Simmons then asked for Director Comments.

Director Fox informed the Board that the water levels in the Granite Gravel aquifer were dropping consistently.

Director Brown, after reviewing the latest Lloyd Gosselink, Attorneys at Law invoice, asked who had requested updates for City of Del Rio and Edwards Aquifer Authority cases and if the District had received a copy of the updates. Director Brown requested to see a copy of updates before Lloyd Gosselink is compensated for them.

Director Waters stated a need for a procedure for Attorney contact with consistent control on who calls the District's attorney and when. Director Fox asked for the subject to appear on the next meeting agenda.

Director Waters stated the need for a policy that Monitor Wells drilled on CTGCD Directors or other public officials property should go before the Board for approval before agreements are signed or wells drilled. Director Simmons directed General Manager Bowers and Director Waters to work on a policy and present it to the Board at a future meeting.

President Simmons then asked the Board to identify any specific agenda items for the next/and or future Board Meeting.

- Possible support of Burnet County Household Waste Disposal Program
- District Policies and Procedures
- District Drought Management Plan
- Office Facilities Requirements and Plans Development
- Additional Staff Requirements
- Policy on Attorney Contact

President Simmons then set the next regular board meeting date for Monday, October 5, 2009 at 6:00 p.m. at the District Office.

Attachment: - Proposed changes to the Draft Rules presented by President Simmons.

President Simmons adjourned the meeting at 8:50 p.m.

John Simmons, President

Jerry Bostick, Secretary/Treasurer

Central Texas Groundwater Conservation District

DRAFT DISTRICT RULES

Effective , 2009

- (14) "Deteriorated well" means a well, the condition of which will cause or is likely to cause pollution of groundwater in the District.
- (15) "Dewatering well" means a well that is constructed to produce groundwater for the purpose of lowering the water table or potentiometric surface, or to relieve hydrostatic uplift, for mining, quarrying, or excavation purposes.
- (16) "Director" means a person who is elected and qualified to serve on the Board of Directors of the District as established by the District Act.
- (17) "District" means the Central Texas Groundwater Conservation District created in accordance with Section 59, Article XVI, Texas Constitution, Chapter 36, and the District Act.
- (18) "District Act" means Act of May 25, 2005, 79th Leg. R.S., ch. 855, 2005 Tex. Gen. Laws 2899, as may be amended from time to time.
- (19) "District office" means the office of the District located in Burnet, Burnet County, Texas. The location of the District office may be changed from time to time by the Board.
- (20) "Domestic use" means the use of groundwater by an individual or a household to support domestic activity. Such use may include water for drinking, washing, or culinary purposes; for essential irrigation of lawns, or of a family garden and/or orchard; for watering of 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. Domestic use does not include use by or for a public water system. Domestic use does not include water used for open-loop residential geothermal heating and cooling systems, but does include water used for closed-loop residential geothermal systems. Domestic use for essential irrigation of lawns or other landscaped areas does not include the irrigation of lawns or other landscaped areas by sprinkler or other irrigation system, whether above ground or below ground, permanent or temporary (other than hand-held hose or single sprinkler attached to a garden hose), for any irrigation system: (1) installed after the effective date, or (2) for which ownership of the well supplying groundwater to the system changes after the effective date. Any such well supplying water to an irrigation system that does not qualify as domestic use shall obtain a permit from the district prior to producing water from the well for such an irrigation system.
- (21) "Drilling Permit" means a permit required by the District to drill a well to conduct a pumping test as set forth in Section 3.61. Drilling Permits are required only for proposed wells with a maximum capacity as equipped of more than 50 gallons per minute or if the authorization to produce will be for 10 acre-feet or more per year.
- (22) "Emergency Permit" means a permit required by the District for emergency needs, as set forth under Section 3.65.

- (23) "Exempt well" means a new or an existing well that is exempt from permitting under Section 3.40.
- (24) "Existing well" means a well that was in existence or for which drilling commenced prior to the effective date.
- (25) "Effective date" means the date of original adoption of these Rules, ~~May 18~~September, 2009.
- (26) "General Manager" means the person employed by the Board to manage the employees and day-to-day operations and affairs of the District and whose title is "General Manager."
- (27) "Grandfathered Use Permit" means a type of permit that the District may issue to qualified Operating Permit holders that authorizes, under certain conditions, additional production based on Grandfathered Use.
- (28) "Grandfathered Use Period" means any time prior to the effective date.
- (29) "Grandfathered Use" is calculated by subtracting the annual amount of groundwater that a permittee is originally authorized by the District to produce from an existing well under the terms of an Operating Permit from the permittee's Maximum Grandfathered Use.
- (30) "Groundwater" means water percolating below the surface of the earth.
- (31) "Hearing Body" means the Board, a committee of the Board, and/or a Hearing Examiner serving in a quasi-judicial capacity at a hearing held under Chapter 36 and/or these Rules.
- (32) "Hearing Examiner" means a person appointed in writing by the Board to conduct a hearing or other proceeding and who has the authority granted to a Presiding Officer under these rules, except as that authority may be limited by the Board or pursuant to the appointment.
- (33) "Hydrogeologic Report" means a report detailing the results of a hydrogeologic investigation conducted pursuant to Section 3.63 that identifies the availability and quality of groundwater in a particular area and formation and the observed impacts of groundwater production on the surrounding environment, including impacts to nearby or adjacent wells.
- (34) "Landowner" means the person who holds possessory rights to the land surface or to the withdrawal of groundwater from wells located on the land surface.
- (35) "Leachate well" means a well used to remove contamination from soil or groundwater. The term does not include a dewatering well.

- (D) purpose of use;
 - (E) place of use; or
 - (F) maximum rate of withdrawal.
- (62) "Unused well" means a well that has been registered with the District, is not a deteriorated well, and contains the casing, gearhead, pump base, pump, pump column in good condition, as well as if applicable, the power unit, and that:
- (A) has not been operated for three (3) or more years; or
 - (B) has been capped. The term includes a well that has not been operated for three (3) or more years while the real property on which the Well was located was enrolled in a state or federal conservation program such as the Conservation Reserve Program (CRP).
- The term does not include a well in which any or all of the equipment has been removed for a reasonable amount of time for repair to the equipment.
- (63) "Verification Period" means ~~January~~June 1, 2010, to ~~January~~June 1, 2011.
- (64) "Waste" means one or more of the following:
- (A) withdrawal of groundwater from an aquifer at a rate and in an amount that causes or threatens to cause an intrusion into the aquifer of water unsuitable for agriculture, gardening, domestic, or stock raising purposes;
 - (B) the flowing or producing of wells from an aquifer if the water produced is not used for a beneficial purpose;
 - (C) escape of groundwater from an aquifer to any other reservoir or geologic stratum that does not contain groundwater;
 - (D) pollution or harmful alteration of groundwater in an aquifer by saltwater or by other deleterious matter admitted from another stratum or from the surface of the ground;
 - (E) willfully or negligently causing, suffering, or allowing groundwater to escape into any river, creek, natural watercourse, depression, lake, reservoir, drain, sewer, street, highway, road, or road ditch, or onto any land other than that of the owner of the well unless such discharge is authorized by permit, rule, or other order issued by the Texas Commission on Environmental Quality under Chapter 26, Texas Water Code;

CHAPTER 3
PERMITS AND REGISTRATIONS

SUBCHAPTER A. General Provisions Applicable to All Permits and Registrations

§ 3.01 Activities Prohibited Without Prior Authorization

- (a) No person may:
- (1) drill a well without first obtaining from the District a permit or other express written authorization to drill, or unless otherwise expressly authorized by these Rules;
 - (2) alter the size of a well or pump such that it would bring that well into the jurisdiction of the District, or would disqualify the well from a permitting exemption, without first obtaining a permit from the District;
 - (3) substantially alter the size of a well or pump without first obtaining a permit, permit amendment, or other express written authorization from the District; or
 - (4) produce water from any non-exempt well after without first having obtained from the District a valid Operating Permit or amendment thereto, Grandfathered Use Permit, or Emergency Permit that authorizes the withdrawal of the amount produced.
- (b) No well may be operated unless the well is registered with the District, or unless otherwise expressly authorized in these Rules.
- (c) For existing wells, Subsections (a)(2) and (a)(3) are effective on the effective date, and Subsection (a)(4) is effective on ~~January~~June 1, 2010. For new wells, Subsection (a) is effective in its entirety on the effective date.
- (d) A violation of any of the prohibitions in Subsection (a) or (b) occurs on the first day that the prohibited drilling, alteration, operation or production begins, and continues each day thereafter as a separate violation until cessation of the prohibited conduct, or until the necessary authorization from the District is formally granted by the Board.

§ 3.02 Permits Issued by District

- (a) An Operating Permit is required for drilling, substantially altering, operating, or producing groundwater from any non-exempt well.
- (b) The District must include the following in each permit it issues:
- (1) the name of the person to whom the permit is issued;

- (14) any additional information required for a Grandfathered Use Permit under Section 3.53; and
 - (15) any other information deemed necessary by the Board that relates to the purposes of the District.
- (d) An application for a permit issued by the District cannot be deemed administratively complete until the applicant has submitted any administrative fees or well report deposits required by the District for permit applications under Chapter 12.
 - (e) An application may be rejected as administratively incomplete if the District finds that substantive information required by the permit application is missing, false, or incorrect.
 - (f) An application is administratively complete when it meets all requirements set forth under Chapter 36, the District Act, and the District Rules.
 - (g) The General Manager will determine whether an application for a permit issued by the District is administratively complete.

§ 3.22 Considerations for Granting or Denying a Permit Application

- (a) Before granting or denying a permit application, the Board shall consider whether the application conforms to the requirements prescribed by Chapter 36, the District Act, the Management Plan, and the District Rules, including without limitation:
 - (1) the criteria under Section 36.113, Water Code;
 - (2) whether the proposed use of water unreasonably affects surrounding landowners;
 - (3) whether the amount of groundwater requested in the application would exceed the Available Sustainable Yield of the formation, or formation subdivision, within the management zone in which the well will be completed;
 - (4) the amount of time expected to lapse, if any, between the application date and the date that the applicant can put the requested water to a beneficial use;
 - (5) whether the applicant commits to placing the water produced under the requested permit to a beneficial use;
 - (6) the spacing and completion requirements of Chapter 6;
 - (7) whether any special conditions should be included, as described under Sections 3.03(c), ~~4.03~~, or otherwise;

- (9) any other information deemed necessary by the Board that relates to the purposes of the District.
- (b) For purposes of determining applicable well spacing and permitting requirements, the information included in a timely filed, administratively complete application for well registration may be used as evidence that the well existed before the effective date.
- (c) Upon receipt of the well report required by Section ~~3.703.703.703.70~~, a registration shall be perpetual in nature, subject to enforcement and/or cancellation for violation of these Rules.

§ 3.31 Deadlines for Registration

- (a) An application for registration for each existing, non-exempt well must be filed with the District by no later than ~~January~~ June 1, 2010.
- (b) The owner of an existing well that is exempt under Section 3.40 must register the well with the District on or before the first anniversary of the effective date.
- (c) No new well may be drilled or completed until the proposed new well has first been registered with the District.
- (d) No enforcement action may be initiated by the District against any person who fails to register an existing, exempt well in accordance with this section. However, the failure to timely register an existing, exempt well will waive all protections against well interference that are provided in Chapter 6 for the period of time between the first anniversary of the effective date and the date the well is finally registered with the District. A failure to timely register an existing, exempt well also waives the eligibility for any special notice afforded to registered well owners pursuant to these rules.

[Sections 3.32 – 3.39 reserved for expansion]

SUBCHAPTER D. Exemptions from Permitting

§ 3.40 Permitting Exemptions

- (a) No permit is required for the following:
 - (1) the operation of an existing well that is:
 - (A) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater per 24-hour interval; and

SUBCHAPTER E. Authorization for Production from Existing Wells

§ 3.50 Operating Permits

- (a) The owner of each existing, non-exempt well that produced or beneficially used groundwater at any time prior to the effective date must apply to the District for an Operating Permit on or before ~~January~~June 1, 2010, to continue operating the well after that date.
- (b) In addition to the application requirements set forth in Section 3.21, an Operating Permit application for an existing well must also include the following information:
- (1) the year that the well was drilled;
 - (2) the purpose for which the well was originally drilled;
 - (3) all purposes that water produced from the well was used for prior to the effective date;
 - (4) documentation demonstrating the annual production history of the well for at least the last ten calendar years of the Grandfathered Use Period;
 - (5) the Maximum Grandfathered Use of the well or well system and the calendar year during which it took place;
 - (6) all information requested by the District in a Declaration of Grandfathered Use form, which shall be prescribed and provided by the District; and
 - (7) any other information determined necessary by the Board that relates to the purposes of the District.
- (c) The Presiding Officer or the Board may require an applicant for an Operating Permit for an existing well to conduct an aquifer test, and submit a hydrogeologic report describing the results of the test, in the manner generally set forth under Section 3.63, if:
- (1) the application requests authorization to produce more than 10 acre-feet per year, or the well that is the subject of the application has a maximum production capacity of more than 50 gallons per minute; and
 - (2) a contested case hearing has been granted on the application pursuant to Section 7.61.
- (d) If an aquifer test and accompanying hydrogeologic report is ordered under Subsection (c), the Presiding Officer or Board may require in its order that notice of the test be given, and the Presiding Officer or Board must specify therein which requirements set forth

under Section 3.63 the applicant must adhere to in conducting the test or developing the report.

- (e) Subject to the considerations listed in Section 3.22, and any limitations or conditions imposed on the permit application pursuant to that section, an application for an Operating Permit submitted under this section shall not be unreasonably denied by the District.
- (f) No water may be produced from an existing, non-exempt well that is required to be metered under Section 11.01 after ~~January~~June 1, 2010, unless the well is equipped with a properly installed, fully functional flow meter.
- (g) An Operating Permit authorizes the holder to produce groundwater only in accordance with the terms of the permit and these Rules.

§ 3.51 Reporting Requirements for Metered Existing Wells

Beginning no later than February 15, 2011, and each February 15 thereafter, each applicant or holder of an Operating Permit authorizing production from an existing well that is required to be metered under Section 11.01 must, on a form provided by the District, submit a report of the following:

- (1) the name of the permit holder;
- (2) the well numbers associated with each permit held;
- (3) the total amount of groundwater produced by each well or well system during each month of the previous calendar year;
- (4) the purposes for which the water was used;
- (5) the place the water was used;
- (6) the amount and source of any surface water used; and
- (7) any other germane information requested by the District.

§ 3.52 Existing, Non -exempt Wells Used for Domestic, Livestock or Poultry Purposes

- (a) Notwithstanding anything to the contrary in these rules, no applicant for an Operating Permit for an existing well that is used solely for domestic, livestock, or poultry use, but that is not exempt under Section 3.40, may be required:

- (1) to demonstrate its Maximum Grandfathered Use as a condition to permit issuance; or
 - (2) to provide the information required in Section 3.50(b)(4)-(6) in the permit application.
- (b) For each well described in Subsection (a), the Board, at its sole discretion, may issue a permit that limits production generally to only the amount of water that can be used beneficially for the specified purpose of use, instead of limiting production based on a quantified annual production authorization. This subsection does not prohibit the District from limiting production from such a well in the future during drought conditions, or otherwise to carry out the purposes of the District.

§ 3.53 Grandfathered Use Permits

- (a) The owner of any existing, non-exempt well that was used to produce groundwater at any time during the Grandfathered Use Period may apply to the District for a Grandfathered Use Permit if:
- (1) the owner timely files an application for an Operating Permit for the same well; and
 - (2) the Maximum Grandfathered Use from the well exceeds the maximum amount of groundwater that the owner could be authorized to produce under an Operating Permit, based on the applicable water allocation limits for Operating Permits in Chapter 5 of these rules.
- (b) In determining the extent to which a person may be eligible for production authorization based on Grandfathered Use, the person should compare the quantity of Contiguous Controlled Acres at the well site, as set forth under Section 5.02(c) and (d), with the person's Maximum Grandfathered Use. If the quantity of contiguously owned or leased surface acreage would support an application for authorized groundwater production under an Operating Permit that equals or exceeds the Maximum Grandfathered Use, the well owner may only apply for an Operating Permit. If the Maximum Grandfathered Use exceeds the amount of groundwater that could be issued under an Operating Permit, based upon the quantity of Contiguous Controlled Acres, then the well owner may pursue an Operating Permit for the amount groundwater supported by the quantity of surface acreage under Section 5.02(c) and (d), and, in addition, may apply for a Grandfathered Use Permit.
- (c) Applications for Grandfathered Use Permits must be filed with the District no later than January June 1, 2010.
- (d) The failure of any person to file an application for a Grandfathered Use Permit by January June 1, 2010, is a waiver of any claim such person may have had for authorization to produce water based on the person's Grandfathered Use.

- (e) In addition to the information required under Section 3.21, an application for a Grandfathered Use Permit must include the following:
 - (1) a copy of the Operating Permit application associated with the Grandfathered Use Permit application;
 - (2) the amount of production authorization proposed under the requested Grandfathered Use Permit, stated in an annual volume; and
 - (3) any other information determined necessary by the Board that relates to the purposes of the District.
- (f) No later than ~~February 15~~ May 1, 2011, each applicant requesting a Grandfathered Use Permit for a well that is required to be metered under Section 11.01 must supplement the application with a record of monthly meter readings from the well for each month of the Verification Period.
- (g) Notwithstanding Section 3.20, an application for a Grandfathered Use Permit will be processed by the District concurrently with the associated application for Operating Permit.
- (h) An applicant for an Operating Permit for an existing well, or for a Grandfathered Use Permit, shall amend the applicant's application(s) to include any new information, or to update information that the applicant has determined to be inaccurate or incorrect, on or before ~~February 15~~ May 1, 2011.
- (i) The District will begin its review and determination of the Maximum Grandfathered Use for each application filed pursuant to this section after ~~February 15~~ May 1, 2011, as set forth in Chapter 7A of these rules.
- (j) An applicant requesting a Grandfathered Use Permit may apply for a production authorization in an amount less than the applicant's Maximum Grandfathered Use.
- (k) The District shall, to the extent possible without impairing the attainment of applicable desired future conditions, issue all uncontested Operating Permits for existing wells and Grandfathered Use Permits.
- (l) Failure to install a meter by ~~January~~ June 1, 2010, if one is required under Section 11.01, shall be grounds for the District to deny the permit application and/or pursue enforcement action for violation of the District's rules.
- (m) An application for a Grandfathered Use Permit cannot be deemed administratively complete without the information required by this section, Section 3.21, and Section 7A.2. For an application related to a well that is required to be metered under Section 11.01, the General Manager may withhold a determination of administrative

completeness until the applicant has completed and submitted the reports required under Subsection (f) for groundwater that was produced during the Verification Period.

§ 3.54 Interim Production Authorization

- (a) Between ~~January~~ June 1, 2010, and the date of final issuance or denial of an application for an Operating Permit or Grandfathered Use Permit for an existing, non-exempt well, the applicant may withdraw and beneficially use an annual volume of water not to exceed the Maximum Grandfathered Use listed in the application(s), subject to Chapter 5 of these Rules.
- (b) This interim authorization by rule based on the information included in the application(s), or most recent amendment thereto, shall constitute the applicant's interim permit to operate and produce groundwater from the well identified in the application for purposes of Chapter 36 until final Board action on the application(s).
- (c) The interim production authorized by this section may be limited by the Board, following an interlocutory hearing on the matter, if the Board concludes that the production unreasonably affects surrounding landowners.
- (d) Notwithstanding any other provision of this section to the contrary, if the application for an Operating Permit for an existing well or the application for a Grandfathered Use Permit is contested and remains contested one year after the date of publication of the Proposed Operating Permit or Proposed Grandfathered Use Permit, the Board may limit the amount of water that the applicant is authorized to produce in the interim until the Board has issued a final decision on the application(s). Such an interim production limitation shall be established by the Board only after an expedited interlocutory hearing before the Board to be initiated by motion of the General Manager.
- (e) An applicant who withdraws more water from a well than the amount claimed as the Maximum Grandfathered Use in the permit application(s) for the well, or most recent amendment thereto, will be subject to enforcement for violation of the District Rules.

§ 3.55 Exception to Verification Period Requirement

- (a) An applicant for an Operating Permit for an existing well or a Grandfathered Use Permit who has records of metered groundwater production documenting all of the applicant's Maximum Grandfathered Use during the calendar year for which the applicant is claiming Maximum Grandfathered Use may elect to have the District proceed with processing the permit application(s) under Chapter 7A of these rules before the end of the Verification Period.
- (b) Each applicant seeking an expedited review under Subsection (a) must submit a written request for expedited review prior to ~~January~~ June 1, 2010.

- (c) Each Sustainable Yield calculation published by the District must be such that a calculation of zero (0) acre feet per year for the same formation within every designated zone would accommodate all estimated current exempt uses, plus the additional exempt uses anticipated during the review period, while allowing attainment of applicable desired future conditions.

§ 4.03 Consideration of Permit Applications in Formations or Management Zones With No Available Sustainable Yield

- (a) ~~When considering any application for a permit in a formation, or formation subdivision, within a management zone that, if granted in the amount requested, would result in an Available Sustainable Yield for the formation or formation subdivision of zero (0) acre-feet per year or less, the Board shall order that production from any existing non-exempt or exempt well within the appropriate area of the proposed new well be reduced proportionally as necessary to allow for the additional production and applicant must, in addition to satisfying all applicable permitting requirements in Chapter 3, demonstrate whether the requested production, if granted, would impair the District's efforts to achieve all applicable desired future conditions.~~
- (b) ~~The Board shall, in addition to the considerations in Chapter 3, give heightened scrutiny to a permit application that would result in an Available Sustainable Yield for the formation or formation subdivision within a management zone of zero (0) acre feet per year or less. The Board may impose additional conditions on the granting of the permit, including requiring the permit applicant to install one or more monitoring wells at a location or locations to be determined by the Board so that actual aquifer conditions in the vicinity of the production well can be monitored over time and compared to the actual achievement of all applicable desired future conditions. The Board shall also give such heightened scrutiny to any permit application that proposes a well not located in a designated management zone and that will be completed in an aquifer or formation for which there would be zero (0) acre feet per year or less of Available Sustainable Yield if granted, and may impose additional conditions on such permit application as described under this subsection or as otherwise necessary to achieve all applicable desired future conditions.~~
- (c) ~~The Board may subject any permit issued to applicants who are required to make a showing under Subsection (a) to special conditions that are designed to ensure that the permitted withdrawals will not impair the District's ability to achieve applicable desired future conditions, including, without limitation:~~
- ~~(1) requiring the installation or acquisition of monitoring wells in sufficient number and placement to allow the District to monitor the effects of the production activity;~~
 - ~~(2) special production limitations; and~~

~~(3) — special production reporting requirements.~~

§ 4.04 Proportional Adjustments of Permitted Production Authorization

- (a) If the Available Sustainable Yield for any formation, or formation subdivision, within a management zone reaches a volume that is less than zero (0), the Board may order that all permitted or exempt withdrawals authorized from the formation or formation subdivision within the zone be reduced proportionally so that the volume of Available Sustainable Yield will be equal to or greater than zero (0) acre-feet per year or as otherwise necessary to achieve attainment of applicable desired future conditions.
- (b) When establishing proportional adjustment regulations for a zone that contemplate the reduction of authorized production, the Board may consider the time reasonably necessary for water users to secure alternate sources of water, including surface water, by economically feasible means and may incorporate those time considerations in the adoption and implementation of the proportional adjustment regulations. The Board may also include provisions in the proportional adjustment regulations that engender or facilitate cooperative arrangements between permittees within a zone to diminish the impacts to the permittees in complying with the regulations.

CHAPTER 5 **REGULATION OF PRODUCTION**

§ 5.01 Interim and Permanent Production Limits for Existing Wells Eligible for Operating and Grandfathered Use Permits

- (a) The maximum annual quantity of groundwater that may be withdrawn by an applicant for an Operating Permit for an existing non-exempt well, or withdrawn in total by an applicant for both an Operating Permit and a Grandfathered Use Permit, during the time between the effective date and the issuance or denial of the permit or permits shall be the amount specified in the applications or most recent amendment thereto as the Maximum Grandfathered Use.
- (b) The maximum annual quantity of groundwater that may be withdrawn under an Operating Permit for an existing non-exempt well or a Grandfathered Use Permit issued by the District shall be no greater than the amount specified in the terms of the permit, subject to any production restrictions ordered by the Board pursuant to Chapters 3 or 4 of these Rules. The Board shall limit the maximum annual quantity of groundwater that may be withdrawn under a Grandfathered Use Permit to an amount equal to or less than the amount determined by the board, after a hearing on the application, to be the Maximum Grandfathered Use, subject to the considerations set forth under Section 3.22 and Chapter 4 of these rules, including without limitation limiting the amount if the Board determines that the withdrawal would unreasonably affect surrounding landowners.

CHAPTER 11
METERING

§ 11.01 Water Meter Required

- (a) Meters are not required for the following wells under these Rules:
- (1) an existing well which is used solely for domestic, livestock, or poultry use, regardless of the size or capacity of the well;
 - (2) an existing well which is used for purposes of use other than domestic, livestock, or poultry use if the well does not have the capacity, as equipped, to produce more than 50 gallons per minute; and
 - (3) a new well which is used solely for domestic, livestock, or poultry use if the well does not have the capacity, as equipped, to produce more than 25,000 gallons of water per 24-hour interval, regardless of the size of the tract upon which the well is located.
- (b) Meters are required for the following wells under these Rules:
- (1) an existing well which has the capacity, as equipped, to produce 50 gallons per minute or more that is used in whole or in part for purposes of use other than domestic, livestock, or poultry use;
 - (2) a new well which has the capacity, as equipped, to produce 25,000 gallons per 24-hour interval or more that is used solely for domestic, livestock, or poultry use;
 - (3) a new well which has the capacity, as equipped, to produce 25,000 gallons per 24-hour interval or more that is used in whole or in part for purposes of use other than domestic, livestock, or poultry use; and
 - (4) a well of any capacity that is involved in the transport of any groundwater for use outside of the District for any activity for which a fee that is based on the amount of groundwater transported is required to be calculated under these Rules.
- (b) The owner of a well required to be metered under this Section shall equip the well with a flow measurement device meeting the specifications of these Rules and shall operate the meter on the well to measure the flow rate and cumulative amount of groundwater withdrawn from the well.
- (c) The owner of an existing well that is required to install a meter under this Section shall install the meter prior to producing groundwater from the well after ~~January~~June 1, 2010.