

## § 5.02 Production Limitations for Operating Permits

- (a) In order to accomplish the purposes of Chapter 36 and these Rules, and achieve the goals of the Management Plan, including achievement of the desired future conditions of the aquifers, the District shall establish production limitations for all permits and may amend such limitations at some time before or after the Verification Period, as applicable, based upon the District's determination of claims of Maximum Grandfathered Use under Chapter 3 and water availability under Chapter 4 of these rules.
- (b) The maximum annual quantity of groundwater that may be withdrawn under an Operating Permit for a new well shall be no greater than the amount specified in the terms thereof, subject to any production restrictions ordered by the Board pursuant to Chapters 3 or 4.
- (c) Subject to subsections (i) and (j) below, No Operating Permit shall be issued by the Board that authorizes the production of groundwater in an annual amount that exceeds the lesser of the following:
  - (1) the amount of water determined by the Board after considering the factors enumerated in Section 3.22, and applicable considerations in Chapter 3, Subchapters E and F, and Chapter 4; or
  - (2) except as provided for in Subsection (i), an annual amount of groundwater equal to:
    - (i) 1 acre-foot per Contiguous Controlled Acre for wells completed in the Ellenburger-San Saba Aquifer, or
    - (ii) 1/2 acre-foot per Contiguous Controlled Acre for wells completed in any aquifer other than the Ellenburger-San Saba Aquifer.
  - (3) For purposes of Subsection (c)(2), the Ellenburger-San Saba Aquifer is the aquifer described in the District Management Plan.

### Historical and Administrative Notes

The default production limit set forth under Subsection (c)(2) was established by the Board after careful deliberation using the best science and information presently available, as a reasonable balance between:

- (1) The amount of groundwater that could be expected to be assigned to each surface acre located over an aquifer under a modified correlative rights approach after considering the lateral extent of the surface area of the aquifers in the District and dividing that surface area by the availability of groundwater within each aquifer, as set forth in the District Management Plan and after considering estimates of exempt use and the available Managed Available Groundwater and desired future

conditions for each aquifer, which results in an acre-foot per surface acre allocation that is only a small fraction of one acre-foot of groundwater per surface acre per year, even in areas of land overlying more than one aquifer, which fraction is so small that if adopted by the Board as a production limitation would prohibit virtually any reasonable use of groundwater by any landowner in the District. The Board increased the production limit for the Ellenburger-San Saba Aquifer in recognition of the modelled available groundwater (MAG) for this aquifer differs from and is substantially greater than the MAG for other aquifers within the District; and

- (2) The amount of groundwater needed per surface acre of land to allow reasonable beneficial use of groundwater without waste, encourage conservation, and support continued economic growth in the District.

Thus, the limit set forth under Subsection (c)(2) is one determined by the Board in light of the best information presently available to be substantially greater than the actual amount of groundwater that a surface acre of land would be assigned under the modified correlative rights approach described above for each and every aquifer in the District for which a desired future condition has been established, but nonetheless a reasonable amount to promote continued use and development of the groundwater resource while encouraging conservation and avoidance of waste.

In establishing this maximum production limitation, the Board carefully considered the diverse nature of the aquifers in the District and the wide discrepancies in the physical ability to produce groundwater from different areas and aquifers of the District, the limited groundwater availability nature has provided in this semi-arid region of Texas, the rights of property owners in the District, and the guarantees provided in these Rules to all property owners in the District that they are at least entitled to produce groundwater sufficient to support human and animal life on all tracts of land existing in the District as of the original date of adoption of these Rules. The Board recognizes that the water use in the Ellenburger-San Saba Aquifer differs from and is substantially greater than for the other aquifers in the District.

Notwithstanding the foregoing, the Board is committed to continue to develop and receive science, data, and information on the diverse groundwater resources in the District and pursue groundwater management strategies that are supported by such science, data, and information while carrying out the District's statutory obligations and pursuing the goals and objectives in the District Management Plan. In light of that commitment, the Board has adopted the process described under Subsections (i) and (j) to allow for the consideration by the Board of new science and data on particular aquifers or subdivisions thereof and the establishment of special production regulations in an aquifer or management zone where necessary and appropriate based upon such science and data.