

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

Effective January 20, 2016

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**RULE REVISION RECORD**

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

Date Adopted	Effective Date	Affected Rules
<b>Oct. 8, 2008</b>	<b>Oct. 8, 2008</b>	<b>Original Rules</b>
<b>Jan. 14, 2009</b>	<b>Jan. 14, 2009</b>	<b>Amendment Rules 3.8, 8.3, 8.4, and 11.3</b>
<b>July 25, 2012</b>	<b>July 25, 2012</b>	<b>Amendments, Including Repeals and New Provisions</b>
<b>January 20, 2016</b>	<b>January 20, 2016</b>	<b>Amendment Rules 1.3, 1.5, 2, 3.1, 3.8, 7.5, 8.3, 8.4, 8.6, 8.8</b>

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**TABLE OF CONTENTS**

Table of Contents 2

Rule 1: GENERAL PROVISIONS .....	5
1.1 Authority to Promulgate Rules.....	5
1.2 District Boundaries.....	5
1.3 Purpose of the Rules .....	6
1.4 Effective Date .....	7
1.5 Action on Rules .....	7
1.6 Regulatory Compliance .....	8
1.7 Variances.....	8
1.8 Administrative Fees.....	8
1.9 Annexations.....	9
Rule 2: DEFINITIONS.....	10
Rule 3: REGISTRATION AND PERMITTING .....	27
3.1 Wells Subject to Operating Permits and Exemptions .....	27
3.2 Required Registration of Wells.....	28
3.3 Information Required for Registration .....	29
3.4 Required Operating Permit for Non-Exempt Wells .....	31
3.5 Information Required in an Operating Permit Application .....	32
3.6 Processing an Operating Permit Application and Issuance of Permit.....	33
3.7 Considerations for Issuing an Operating Permit.....	35
3.8 Change in Well Conditions or Operations, Permit Amendment and Revocation, Replacing a Well.....	37
Rule 4: WELL CONSTRUCTION STANDARDS .....	44
4.1 State Standards Applicable .....	44
4.2 Additional Well Construction Standards.....	44
4.3 Watertight Sanitary Seal.....	44
4.4 Access for Testing .....	45
4.5 Depth of Well.....	45
4.6 Responsibility for Compliance.....	45
Rule 5: REPORTING AND RECORDKEEPING .....	46
5.1 Well Drilling, Completion, and Water Data Reporting .....	46
5.2 Annual Water Production Report for Non-Exempt Wells .....	46
5.3 Plugging Report .....	47
5.4 Annual Water Production Report for Exempt Oil and Gas Water Wells .....	47
5.5 Water Wells Associated with Uranium Exploration and Mining.....	47
5.6 Texas Surface Coal Mining and Restoration Act and Water Wells.....	48
5.7 Water Pollution Event Reporting .....	49
Rule 6: PLUGGING, CAPPING, AND SEALING OF WELLS .....	50

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

6.1	<i>Plugging Water Wells</i> .....	50
6.2	<i>Capping Water Wells</i> .....	50
6.3	<i>Sealing Wells</i> .....	51
Rule 7:	ENFORCEMENT .....	52
7.1	<i>Complaints and Investigations</i> .....	52
7.2	<i>Notice of Violation</i> .....	53
7.3	<i>Penalty Schedule</i> .....	53
7.4	<i>Notice and Access to Property</i> .....	54
7.5	<i>Civil Enforcement</i> .....	55
Rule 8:	PROCEDURAL RULES.....	56
8.1	<i>Hearing on Rules Other Than Emergency Rules</i> .....	56
8.2	<i>Adoption of Emergency Rules</i> .....	58
8.3	<i>Actions On Operating Permits</i> .....	59
8.4	<i>Public Hearing on Operating Permit Applications</i> .....	59
8.5	<i>Contested Case Hearings on Permitted Actions</i> .....	62
8.6	<i>Contested Case Hearing Referred to SOAH</i> .....	67
8.7	<i>Enforcement Hearing</i> .....	69
8.8	<i>Procedures for Joint Planning</i> .....	70
Rule 9:	WATER WELLS ASSOCIATED WITH URANIUM EXPLORATION AND MINING.....	74
9.1	<i>Uranium Exploration Activities</i> .....	74
9.2	<i>Development of an Area Permit Application</i> .....	77
9.3	<i>Activities Affecting Groundwater Allocation</i> .....	78
Rule 10:	WELL SPACING .....	79
10.1	<i>Purpose</i> .....	79
10.2	<i>Applicability</i> .....	79
10.3	<i>Spacing from Potential Sources of Pollution</i> .....	79
10.4	<i>Spacing From Property Lines</i> .....	80
10.5	<i>Well Spacing Variance Procedures</i> .....	80
Rule 11:	PRODUCTION LIMITS.....	82
11.1	<i>Existing Non-Exempt Wells</i> .....	82
11.2	<i>New Non-Exempt Wells</i> .....	82
11.3	<i>Calculation of Production Limits Based on Acreage</i> .....	83
11.4	<i>Effect of Drought on Production Limits</i> .....	84
Rule 12:	PROHIBITION AGAINST WASTE AND POLLUTION.....	85
12.1	<i>General Prohibition</i> .....	85
12.2	<i>Wasteful Use</i> .....	85
12.3	<i>Wasteful Production</i> .....	85
12.4	<i>Groundwater Pollution</i> .....	85
12.5	<i>Orders to Prevent Waste or Pollution</i> .....	86

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

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

13.1	<i>District Jurisdiction over Water Wells Associated with Oil, Gas, and Mining Activities</i> .....	87
13.2	<i>Water Wells Associated with Mining Activities Authorized Under Texas Natural Resources Code, Chapter 134</i> .....	87
13.3	<i>Water Wells Associated With Oil and Gas Activities</i> .....	88

## **RULE 1: GENERAL PROVISIONS**

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

**A.** The Kenedy County Groundwater Conservation District is a political subdivision of the State of Texas. The District was created by the 78th Legislature (2003) by House Bill 3374, subject to voter approval. House Bill 3374 gives 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. Senate Bill 2570, enacted by the 81st Legislature (2009), amended the District's Enabling Legislation.

**B.** 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.

**C.** 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **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 available at the District Office and on the District website.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

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

**A.** 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, in order to control subsidence, prevent degradation of water quality, and to prevent Waste, while recognizing the ownership and rights of the owners of the land and their lessees and assigns in Groundwater. Consistent with Texas Water Code section 36.0015, the District through these Rules will manage Groundwater in a manner that protects property rights, balances the conservation and development of Groundwater to meet the needs of this state, and uses the best available science in the conservation and development of groundwater.

**B.** The District recognizes that a landowner owns the Groundwater below the surface of his land as real property and has any other right recognized under common law. This entitles the landowner, his lessees, heirs, or assigns, to drill for and produce the Groundwater without causing Waste or malicious drainage of other property or negligently causing subsidence, but it does not give them the right to capture a specific amount of Groundwater and does not affect any defenses to liability under the rule of capture.

**C.** While the District does not have the authority to deprive or divest a landowner, his lessees, heirs, or assigns of the Groundwater ownership and rights described in Rule 1.3.B, the District does have the authority to adopt and enforce Rules:

- (1) to limit or prohibit the drilling of a Well if the location does not comply with minimum spacing or tract size requirements adopted by the District;
- (2) to regulate Groundwater production as authorized under Texas Water Code Chapter 36 or a special law governing the District; and
- (3) to allocate to each landowner a proportionate share of available Groundwater for production from an aquifer based on the number of acres owned.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**D.** 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. Amended July 25, 2012, by Board Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

### **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.

**C.** In adopting, amending, or revoking a rule, the District must:

- (1) consider all Groundwater needs and uses;
- (2) develop Rules that are fair and impartial;
- (3) consider the Groundwater ownership rights described in Texas Water Code 36.002 and District Rule 1.3.B;
- (4) consistent with the objectives of Section 59, Article XVI of the Texas Constitution, consider the public interest in Conservation, preservation, protection, recharging and prevention of Waste of Groundwater; and controlling subsidence;

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (5) consider the goals of the District's Management Plan; and
- (6) not discriminate between land that is irrigated for production and land that was irrigated for production and enrolled or participating in a federal Conservation program.
- (7) protect property rights, balance the conservation and development of groundwater to meet the needs of this state, and use the best available science in the conservation and development of groundwater.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012. Amended January 20, 2016 by Board Order; effective January 20, 2016.*

## **1.6 Regulatory Compliance**

All Wells located within the District, Owners and Operators 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

## **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. Such Fees shall 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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

Schedule set by the Board. If the Board adopts a Fee Schedule, a copy will be available at the District Office and on the District website.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **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 an owner of land not already in 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;
- (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. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

## **RULE 2: DEFINITIONS**

**Abandoned Oil and Gas Well** - an artificial penetration into or through water-bearing strata for the purpose of exploring for or producing oil or gas, which the Railroad Commission deems as being abandoned.

**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 that has been Capped.

**Active Well** - a non-Deteriorated Well containing any of the following: the casing, pump, or pump column in good condition and providing a water supply for a Beneficial Use.

**Administratively Complete Application** - an Operating 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.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**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);
- (6) raising or keeping equine animals; and
- (7) operating a confined animal feeding operation under a permit issued by the Texas Commission on Environmental Quality.

**Agricultural Well** - a Water Well used as a water supply for an Agricultural Use or Purpose.

**Annual Water Production Report for Non-Exempt Wells** - a District form required to be completed and submitted under Rule 5.2.

**Annual Water Production Report for Exempt Oil and Gas Water Supply Wells** - a District form required to be completed and submitted under Rule 5.4.

**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 for or used for drinking water purposes.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**Area Permit** – a Class III Injection Well Permit issued pursuant to Texas Water Code Section 27.011 and 30 Texas Administrative Code Chapter 331 for In Situ Mining of Uranium that authorizes the construction and operation of production and Monitoring Wells used in operations and restoration associated with In Situ Mining of Uranium. It may authorize two or more similar Class III Injection Wells within a specified area for In Situ 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 for In Situ Mining of Uranium under Texas Water Code Chapter 27 and 30 Texas Administrative Code Chapter 331.

**Area Permit Registered Well** – a Well that is used during the development of an Area Permit Application to obtain required pre-Mining geologic, hydrologic, and water quality information. The Well must be registered with the Texas Commission on Environmental Quality under Texas Water Code Section 27.023(b) and 30 Texas Administrative Code 331.221.

**Area Permit Registered Well Production Report** - a report required under Texas Water Code 27.024(a)(4), 30 Texas Administrative Code 331.223, and District Rule 9.2.B.

**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.

**Best Available Science** – as used in Rule 1.3, conclusions that are logically and reasonably derived using statistical or quantitative data, techniques, analyses, and studies that are publicly available to reviewing scientists and can be employed to address a specific scientific question.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**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 per square inch and constructed in such a way that the covering cannot be easily removed by hand.

**Cased Exploration Completion Report** - Railroad Commission Form SMRD-8U.

**Cased Uranium Exploration Well** – a cased Well subject to a Uranium Exploration Permit.

**Cased Well Production Report** - a monthly report required under District Rule 9.1.B, which includes the total amount of water produced by each Cased Uranium Exploration Well used for Monitoring or for Rig Supply and that is located in the area subject to the Uranium Exploration Permit.

**Certificate of Production Based on Acreage** - documentation reflecting the Production Limit under an Operating Permit including the acreage upon which the Production Limit is based, as provided in Rules 3.6.C and 11.2.

**Class III Injection Well** - Injection Wells used for the extraction of minerals, including solution mining of uranium.

**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, Oil and Gas, Temporary Rig Supply, Oil or Gas Secondary Recovery Supply, or Irrigation Uses.

**Commercial Well** - a Water Well used as a water supply for a Commercial Use or Purpose.

**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 the required District authorization or producing Groundwater in violation of a District Rule adopted under Texas Water Code Section 36.116(a)(2).

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**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.

**Confidential Information** – in the context of District Rules 9.1.C(4) and 9.2.A(4) information submitted to the Texas Railroad Commission that has been deemed not essential for public review as determined by the Texas Railroad Commission under Natural Resources Code section 131.048 and 16 Texas Administrative Code section 11.74.

**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** – an Operating Permit hearing requested as authorized by Rule 8.5.A, which is noticed and conducted according to the procedures of Rule 8.5 and as applicable, Rule 8.6.

**Contested Case Hearing Fee Deposit** - Under Texas Water Code 36.416(c) and District Rule 8.6.C, the amount required to be provided to the District by a Person who submits a SOAH Hearing Request.

**Contested Case Hearing Request** - A written request asking that the District convene a Contested Case Hearing, made within 20 days of issuance of an order or resolution under Rule 8.4.H ruling on an Operating Permit Application.

**DFC Hearing Summary Report** - the report required by Texas Water Code section 36.108(d-2), which includes a summary of relevant comments received on GMA-16's proposed DFC, any suggested revisions to the proposed DFC, and the basis for the revisions.

**DFC Explanatory Report** - the report prepared by the GCDs in GMA-16 after final adoption of the DFC, as required by Texas Water Code 36.108(d-4).

**Depth to the Bottom of the Screen** - distance from the surface to the deepest point at which water can enter the Well, expressed in feet.

**Desired Future Conditions (DFC)** - a quantitative description, adopted in accordance with Texas Water Code section 36.108, of the desired condition of the Groundwater resources in a GMA at one or more specified future times.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**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.

**District Well Number** – a four digit number assigned to each Water Well at the time it is registered with the District. The District Well Number is reflected in the Well Registration Certificate.

**Domestic Use or Purpose** - 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. This includes non-Commercial temporary lodging for purposes of recreational enjoyment. Domestic use does not include water used to support activities for which a Person is being paid or for which the product of the activity is sold.

**Domestic Well** - a Water Well used as a water supply for a Domestic Use or Purpose. A Public Water Supply Well is not a Domestic Well.

**Driller's Log** - see definition of State of Texas Well Report.

**Electric Log** - a record of certain electrical characteristics (such as resistivity and conductivity) of formations traversed by the borehole. It is made to identify the formations, determine the nature and amount of fluids they contain, and estimate their depth. It is a type of Geophysical Log.

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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**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.A and as may be amended or codified.

**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 8.7.

**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 does not include any Well that is used in conjunction with the production of oil, gas, or any other minerals.

**Exempt Oil and Gas Water Supply Well** – a Temporary Rig Supply Well or a Secondary Recovery Supply Well.

**Exempt Oil and Gas Water Supply Well Production Report** - a District form required to be completed and submitted under Rule 5.4.B.

**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.

**Exploration Groundwater Quality Information** – Groundwater quality information collected or obtained by a Uranium Exploration Permittee pursuant to Texas Natural Resources Code Section 131.357 and 16 Texas Administrative Code 11.141. This information must be provided to the District under Rule 9.1.C.

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

**GMA-16 Joint Planning Committee** - the group comprised of all GCDs in GMA-16 organized for the purposes required under Texas Water Code section 36.108, including adoption of a DFC.

**Geophysical Log** – physical measurements of various geophysical properties of subsurface rock formations. The Log is made by instruments lowered into the borehole and can be open borehole. An Electric Log is one category of Geophysical Log.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**Groundwater or Underground Water** – water percolating beneath the earth's surface, except the underflow of rivers, streams and lakes, which is considered State water under Texas Water Code 11.021(a).

**Groundwater Conservation District (GCD)** - a governmental entity formed by special legislation or through a petition to the Texas Commission on Environmental Quality with the power and duties to manage Groundwater resources within its boundaries.

**Hearings Examiner** – a Person, other than a District Director, appointed by the Board to conduct a hearing on a permit, rule, or Enforcement Action.

**Inactive Well** - a Well that must be Capped or Plugged under District Rule 4.

**Industrial Use or Purpose** - Groundwater 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. Water used in the Oil and Gas industry, other than for Temporary Rig Supply or Secondary Recovery Supply as defined in this District Rule 2, is considered Industrial Use or Purpose.

**Industrial Well** - a Water Well used as a water supply for an Industrial Use or Purpose.

**In Situ Mining of Uranium** - the use of an injection Well for recovery of uranium.

**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.

**Involuntary Amendment** - the Amendment of an Operating Permit initiated by the District under Rule 3.8.F.

**Irrigation Use or Purpose** - the use of Groundwater for watering crops, trees, and pasture land and golf courses and parks that do not receive water through a municipal distribution system. Watering crops or pasture for Livestock Use is considered an Irrigation Use, except to the extent it falls within the definition of Domestic Use.

**Irrigation Well** - a Water Well used as a water supply for an Irrigation Use or Purpose.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**Joint Planning** - the process required under Texas Water Code Section 36.108 during which Groundwater Conservation Districts wholly or partially within GMA-16 conduct Groundwater resource planning, including adopting a DFC.

**Lift Method** - methods of developing Injection or Recovery Wells associated with In Situ Uranium Mining, which must be appropriate for local conditions. Well development removes remaining drilling mud, cuttings, and fine particles (i.e., silt and clay) from inside the Well, the screen, and the surrounding gravel/sand pack.

**Lithological Log** – a graphic representation of geological formations being drilled through and drawn on a log called a mud log. As cuttings are circulated out of the borehole, they are sampled and examined to create the mud log or Lithological Log.

**Livestock Use or Purpose** – 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, but is Industrial Use. Livestock Use includes watering livestock that are kept for pleasure, recreational use, or Commercial Use, but does not include the use of water at confined animal feeding operations permitted by the Texas Commission on Environmental Quality.

**Livestock Well** - a Water Well used as a water supply for a Livestock Use or Purpose.

**Major Amendment** – a change made to an Operating Permit reflecting an increase in the production of Groundwater or in the capability of a Well to produce Groundwater, or other change in a Permitted Well as described in 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).

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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**Minor Amendment** – a change made to an Operating Permit reflecting a change in the type of use of a Well; the size or Depth of a Well, including Depth to the Bottom of the Screen, the Well pump, or its pumping volume that does not increase the production amount or capability; or a change to the approved Conservation and drought contingency plan, or other change in a Permitted Well as described in Rule 3.8.E(4).

**Modeled Available Groundwater** - the amount of water calculated by the Texas Water Development Board under Texas Water Code 36.1084(b) based upon the Desired Future Condition(s) adopted by the Groundwater Conservation Districts in a Groundwater Management Area and is one of the elements to be considered by a district when making permitting decisions.

**Monitoring Use or Purpose** - to measure the level, quality, quantity, or movement of subsurface water.

**Monitoring Well** – a Well used to measure or Monitor the level, quality, quantity, or movement of subsurface water.

**New Well** – a Well drilled after October 8, 2008 or an Existing Well that has been changed after October 8, 2008 in such a manner that the Well requires an Operating Permit or a Major Amendment.

**Non-Exempt Well** – a Well that requires 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.

**Oil and Gas Use or Purpose** - the use of Groundwater for cooling water or boiler water at gas plants; use as solution of underground salt in mining brine or hydrocarbon storage cavern creation; hydrostatic test water for pipelines and tanks; rig wash water; coolant for internal combustion engines for rigs, compressors, and other equipment; for sanitary purposes; for laboratory purposes; or any other use by an oil or gas company, excluding Commercial Use or Purpose or Use for Temporary Rig Supply or Oil or Gas Secondary Recovery Supply.

**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.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**Operating Permit** – an authorization issued by the District under Rule 3, which allows a Non-Exempt Well to be drilled and operated, producing Groundwater.

**P-13** - Railroad Commission form, "Application of Landowner to Condition an Abandoned Well for Fresh Water Production," used to comply with Railroad Commission Rule 3.14.

**Party in Contested Case Hearing** – the applicant and any other Person designated as a party by the Presiding Officer under Rule 8.5.B.

**Permit Amendment** – approval required for a change to the operation, use, or condition of a Well with an Operating Permit. Permit Amendments are either Minor Amendments or Major Amendments, as described in Rule 3.8.E.

**Permittee or Permit Holder** – 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 used to measure water levels or used to install a piezometer to determine the appropriate location and Depth of permanent Monitor Well.

**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-mining Water Quality Information** – water quality information collected or obtained by an Area Permit Applicant under Texas Water Code Section 27.024(a), and 30 Texas Administrative Code Chapter 331 and to be reported to the District under 30 Texas Administrative Code 331.223(a)(3) and District Rule 9.2.A(3).

**Preliminary Hearing** - the hearing held under Rules 8.5.C through 8.5.F to consider issues relevant to a Contested Case Hearing Request. It is considered to be

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

the beginning of a Contested Case Hearing unless it results in a finding that no person requesting a Contested Case Hearing has standing or that no justiciable issue related to the application has been raised.

**Presiding Officer** – either the President of the Board, a Director, or the Hearings Examiner designated under Rule 8.5.H. to conduct a Contested Case Hearing. Also refers to the Person under Rule 8.7.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.

**Production Limit** - a numerical limitation on the annual amount of Groundwater authorized to be produced under an Operating Permit. The Production Limit is generally expressed in acre-feet per year or gallons per year and is calculated as provided in Rule 11.

**Public Hearing** - a District Board Meeting that, at a minimum, has been noticed under the Open Meetings Act, at which the District Board considers a matter and provides an opportunity for the public to comment on that matter.

**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.

**Regional Water Planning Areas** – areas established by the Texas Water Development Board under Texas Water Code Section 16.053. Planning groups in these areas generate Regional Water Plans every five years as required by Texas Water Code Section 16.053.

**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.

**Registration of a Well or Well Registration** - the process required for all Wells in the District under Rule 3.2 whereby the District maintains an inventory of Wells and determines if a Well requires an Operating Permit.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**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.

**Rig Supply Use or Purpose** - supplying water to a rig actively engaged in drilling or exploration operations for minerals or oil or gas.

**Rig Supply Well** - a Water Well used as a water supply for a Rig Supply Use or Purpose.

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

**SOAH Contested Case Hearing** - a Contested Case Hearing administered by the State Office of Administrative Hearings because of a request made under Texas Water Code 36.416(b).

**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.

**Secondary Recovery Supply Well** – a Well supplying water for Secondary Recovery of Oil or Gas. A Well is considered to be a Secondary Recovery Supply Well during any period that water from the Well is used solely or partially for this purpose. A type of Exempt Oil and Gas Water Supply Well. Does not include Uses that qualify as Oil and Gas Uses.

**State Office of Administrative Hearings (SOAH)** - the executive branch State agency with jurisdiction to hold Contested Case Hearings for administrative agencies and for Groundwater Conservation Districts as provided in Texas Water Code Chapter 36 and District Rule 8.6.

**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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

Administrative Code Sections 76.10(45) and 76.700(1). Also commonly referred to as the Driller's Log or Well 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. A Well is considered to be a Temporary Rig Supply Well during any period that water from the Well is used solely or partially for this purpose. If the source of water for this use is a stock tank and the source of water for the stock tank is a Well, during the period of such use, the stock tank Well is considered to be a Temporary Rig Supply Well. A type of Exempt Oil and Gas Water Supply Well. Does not include Uses that qualify as Oil and Gas Uses.

**Test Well** – A Well drilled to explore for Groundwater.

**Uncontested Matter or Uncontested Permit Application** - an Application under District Rule 8.3 that (1) is decided by the District's General Manager or (2) is referred to the Board of Directors for consideration under Rule 8.4 and for which no Request for Contested Case Hearing is submitted under Rule 8.5.A.

**Uranium Exploration Activities** – 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 Permit** – a Permit issued by the Railroad Commission of Texas pursuant to Texas Natural Resources Code, Chapter 131, Subchapter I, as amended, and 16 Texas Administrative Code, Chapter 11, Subchapter C, as amended, authorizing the exploration for uranium.

**Uranium Exploration Permittee or Permit Holder** – a Person who holds a Uranium Exploration Permit.

**Uranium Exploration Permit Year** - the initial year during which a Uranium Exploration Permit is in effect and every additional year it remains in effect under a renewal.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

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

**WGS 84 Coordinates** - The most common geodetic system upon which latitude and longitude values can be based. This is the most common global coordinate system used by, and often the default system on, all GPS equipment. Same as WGS 84 Decimal Degrees.

**WGS 84 Decimal Degrees** - See WGS 84 Coordinates.

**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) With regard to water from an artesian Well, the following also is considered Waste. 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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

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 Pollution Event** - the discovery of a spill or release of contaminants into the environment that is required by State law to be reported to the Texas Commission on Environmental Quality or the Railroad Commission of Texas because of its potential or actual Pollution of surface water or Groundwater.

**Water Table** - the surface between the vadose zone and the saturated zone. That surface of unconfined Groundwater at which the pressure is equal to that of the atmosphere.

**Water Well or Well** - an artificial excavation constructed to explore for or produce Groundwater or test or monitor Groundwater quality. 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 or an injection water source Well associated with Oil and Gas activities that penetrates the base of usable quality water. It also includes an Abandoned Oil or Gas Well that can be conditioned for usable quality Groundwater production.

**Water Wells Associated with Uranium Exploration and Mining** - Water Wells subject to District Rule 9.

**Well** - see definition of Water Well.

**Well Depth** - Distance from the surface to the bottom of the borehole, expressed in feet.

**Well Log** - see definition of State of Texas Well Report.

**Well Operator** - a Person who has the right to produce or use Groundwater, but who does not own the Well.

**Well Owner** - a Person who has the right to drill a Well and to produce or use Groundwater and who owns the Well once drilled.

**Well Registration Certificate** - a document issued to the Well Owner when a Water Well is Registered with the District. The Well Registration Certificate includes the District Well Number, the WGS 84 Decimal Degrees GPS co-ordinates of the Well, and Well Owner's name, and the Well Owner's name for the Well.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

## **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 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. Under District Rules, these Wells are referred to as Temporary Rig Supply Wells and are a type of Exempt Oil and Gas Water Supply Well.
- (3) A Well used to supply water for Secondary Recovery of Oil or Gas. Under District Rules, these Wells are referred to as Secondary Recovery Supply Wells and are a type of Exempt Oil and Gas Water Supply Well.
- (4) 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.
- (5) A Well Exempt under Rule 9: Water Wells Associated With Uranium Exploration and Mining.
- (6) A Well drilled and Completed solely for purposes of aquifer testing, including a Test Well, or for monitoring water levels or water quality.
- (7) An otherwise Exempt Well remains exempt during the temporary use or sale of water for construction purposes during the duration of a specific project.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (8) An otherwise Exempt Well remains exempt during the temporary use or sale of water for Exempt Oil and Gas Water Supply Use, but water produced for that purpose must be metered and reported, as required by Rule 5.4.

**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) An Operating Permit must be obtained under Rule 3.4 for a Well that does not qualify for an exemption under Rule 3.1.A or a Well that was exempt under Rule 3.1.A(1) if the Groundwater withdrawal is no longer used solely for domestic use or to provide water for livestock or poultry.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

**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.** As part of the District's continuing effort to ensure the quality of its Groundwater by including in its database as much information as possible related to artificial penetrations into or through water-bearing strata, the District requires Registration of Abandoned Oil and Gas Wells as set out in this Rule 3.2.D. Ownership of these Abandoned Oil and Gas Wells generally has been transferred to the landowner. This transfer may or may not be evidenced by submittal of a P-13 to the Railroad Commission.

- (1) When the Owner of an Oil or Gas Well Abandoned prior to or on October 8, 2008, becomes aware of its existence and

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

locates the Abandoned Oil or Gas Well, the Owner must register it with the District by January 25, 2013 or within six months after locating the Abandoned Oil and Gas Well. It will be considered an Existing Well and if it is not being used as a Water Well, it must be Capped or Plugged as required in Rule 6.

- (2) After July 25, 2012, if an Abandoned Oil or Gas Well will be conditioned for usable quality water production, the Well Owner must register the Well with the District prior to submitting to the Railroad Commission, Form P-13, "Application of Landowner to Condition an Abandoned Well for Fresh Water Production." It will be considered to be a New Water Well.
- (3) A Water Well that is the subject of a P-13 that was filed with the Railroad Commission prior to July 25, 2012 but has not been registered with the District as of that date, must be registered by January 25, 2013.
- (4) If a P-13 Well is not equipped to produce water, it must be registered as an Inactive Well and must be Capped under the requirements of District Rule 6.2 until such time as it becomes operational. The District must be notified when it becomes operational, as required by Rule 3.8.A(2).

**E.** At the time of Registration, the District will determine whether the Water Well is a Non-Exempt Well. An Operating Permit must be obtained for a Non-Exempt Well. 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

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

**A.** Well Registration Application forms are available at the District Office and on the District website. 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 the Well Owner's existing Well database.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**B.** The following information is required to register a New or proposed Well. For Registration of an Existing Well, the Well 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. This Person will be considered to be the Well Owner's Agent.
- (3) The Well location in WGS 84 Decimal Degrees co-ordinate system and a signed statement by the Registration Applicant 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, Depth to the Bottom of the Screen, pump size, and Production Capability.
- (5) The Type of Use for water from the Well based on the definitions in Rule 2.
- (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 District Well Number.

**D.** For New Wells, if the District determines that the information is complete, that the Registration Applicant 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. The District will issue a Well Registration Certificate to the Well Owner.

**E.** For Existing Wells, if the District determines that the essential information is complete, that no Operating Permit is required, and that there are no unresolved District Enforcement Actions against the Registrant,

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

the District shall approve Registration of the Well. Existing Wells are not required to comply with Rule 10 spacing requirements. The District will issue a Well Registration Certificate to the Well Owner.

**F.** If no Operating Permit is required, upon approval of the Registration the Well Owner may drill the Well. A copy of the approved Well Registration Application and Well Registration Certificate must be on-site while the Well is being drilled.

**G.** If the Well has not been drilled within 180 days of approval of the Registration and issuance of the Well Registration Certificate, the Registration and Certificate will be voided by the District.

**H.** If the District determines that the Well is a Non-Exempt Well, the Well Owner shall obtain 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

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

**A.** An Operating Permit is required for drilling and operating a Non-Exempt Well.

**B.** Operating Permits generally 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 unless an Operating Permit has been obtained 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 is covered by an Operating Permit or an Operating Permit Application has been filed and approval is diligently being pursued.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **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). Generally, a separate application is required for each Well, unless more than one Well will be covered by the same Production Limit. An Application covering a New Well or Wells shall include all of the information listed in this Rule 3.5. On an Application covering an Existing Well, the Well 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. This Person will be considered to be the Well Owner's Agent.
- C.** Location and property description of the proposed project, including a location map or property plat. The map or plat must include the name of the county, must have a direction indicator, and must identify the scale of the map. The map or plat must be drawn on a scale that adequately details the Well site, the property lines, the location of other 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.
- D.** A copy of the Well Registration Certificate and approved Well Registration Application. If the Well or Wells to be covered by the Operating Permit were registered as part of a multi-Well Registration, the Application must include a completed Well Registration Application for each covered Well.
- E.** The annual maximum production requested (in gallons per year or acre feet per year). For an Existing Well, include documentation showing the annual production from the Well during each of the previous five years. See Rule 11.1. For a New Well, 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.
- F.** A water Conservation plan.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- G.** For New Wells, as defined in Rule 2, the Operating Permit Application Fee established under Rule 1.8, if any.
- H.** 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 Well Owner agrees to notify the District 60 days prior to any changes that would require a change in this sworn statement.
- I.** 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.
- J.** 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **3.6 Processing an Operating Permit Application and Issuance of Permit**

#### **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 will 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.

**C. Contents of an Operating Permit**

An Operating Permit will include the following, in addition to any other conditions set by the District:

- (1) A requirement that a meter or other reliable water measuring device under Rule 5.2, be installed within 60 days after the effective date of the Permit and that the District be notified within 30 days of installation.
- (2) The authorized annual maximum Groundwater production from the Well as provided by Rule 11. For New Wells, the Permit will include a Certificate of Production Based on Acreage, which will reflect the annual maximum Groundwater production.
- (3) An approved map or drawing showing the Well site and the following features, if any, within 500 feet of the Well site: the property lines, the location of other Wells, existing or proposed wastewater systems, and other potential sources of contamination.
- (4) An approved Conservation Plan.
- (5) Special Permit Conditions.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **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 and will manage total Groundwater production on a long-term basis to achieve the applicable Desired Future Condition that has been adopted for the District. The District shall consider the following, which include the considerations required by Texas Water Code Section 36.113(d) and 36.1132(b):

- 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 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 a proposed Well, 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 an Existing Well, 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.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- 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?
- L.** Is the requested production amount, when considered in conjunction with the Managed Available Groundwater or Modeled Available Groundwater, whichever is applicable, consistent with achieving the Desired Future Condition applicable to the Well location and production zone?
- M.** Is the requested production amount, when considered in conjunction with the Texas Water Development Board's estimate of current and projected amount of Groundwater produced under exemptions granted by District Rules and Texas Water Code section 36.117, consistent with achieving the Desired Future Condition applicable to the Well location and production zone?
- N.** Is the requested production amount, when considered in conjunction with the amount of Groundwater authorized under Operating Permits previously issued by the District, consistent with achieving the Desired Future Condition applicable to the Well location and production zone?
- O.** Is the requested production amount, when considered in conjunction with the amount of Groundwater actually being produced under Operating Permits previously issued by the District, consistent with achieving the Desired Future Condition applicable to the Well location and production zone?
- P.** Is the requested production amount, when considered in conjunction with yearly precipitation and production patterns, consistent with achieving the Desired Future Condition applicable to the Well location and production zone?

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **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 the District in writing 14 days prior to the making the change. The Change in Well Conditions or Operations form is available at the District Office and on the District website.
  - (a) Change the Type of Use of a Well from an Exempt Use to a Non-Exempt Use. This change requires District authorization prior to making the change under Rule 3.8.B.
  - (b) For all Wells, a change in the pumping capacity that would change the spacing from property lines authorized under Rule 10.4. This change requires District authorization prior to making the change.
  - (c) Plugging a Well. This change does not require District authorization; however, prior notification is required. A Plugging Report must be submitted as required by Rule 5.3.
  - (d) Change or add Exempt Oil and Gas Water Supply Use to a Water Well registered with the District for other Use. This change does not require District authorization; however, prior notification is required. The notification must include the date of the expected change and the estimated duration of the change. For purposes of this Rule 3.8.A(1)(d), the Well Operator is responsible for notifying the District. For purposes of this requirement, 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). The water produced for this purpose must be metered, recorded, and reported as required by Rule 5.4. The District will not issue an amended Certificate of Registration for such changed use unless the changed use is expected to be permanent and is the sole use of the Water Well.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (2) Other than changes under Rule 3.8.A(1)(b), which require prior notification, a Person shall not alter the size or Depth of a Well, Depth to the Bottom of the Screen, the Well pump, or its pumping capacity without submitting a Change in Well Conditions or Operations 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 in an Operating Permit is based, including a change in conditions related to In Situ Uranium Mining described in Rule 11.2.C, requires prior notification to the District and an Amendment to the Operating Permit or issuance of an updated Certificate of Production Based on Acreage.
- (4) The Person who submits the Change in Well Conditions or Operations form will be notified by the District within 5 business days whether the change will be processed administratively; will require an Amendment to an existing Operating Permit; will make an Exempt Well be required to obtain an Operating Permit; or will 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 Well 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 Well Ownership**

Any change in ownership of a Well shall be reported by submitting a Change in Ownership form to the District within 60 days after the change. The form is available at the District office and on the District website. The form must be signed by the original Well Owner and the new Well Owner and must be submitted by the new Well Owner. For a Well with an

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

Operating Permit, failure to timely notify the District may result in the Permit being revoked.

**D. Operating Permit Term**

- (1) Operating Permits issued by the District are perpetual, unless an expiration date is 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.
- (2) If an Operating Permit has been issued with an expiration date as authorized under District Rule 3.8.D(1), renewal of the Permit is required as follows:
  - (a) The District shall renew or approve an Application to renew if the Application is submitted at least 90 days prior to the expiration date and the permittee is not requesting a change that would require an Amendment under Rule 3.8.E, however,
  - (b) The District is not required to renew an Operating Permit under this Rule 3.8.D(2) if
    - (i) the Applicant is delinquent paying a fee required by the District,
    - (ii) is subject to a pending enforcement action for a substantive violation of a District Permit, Order or Rule, or
    - (iii) has not paid a civil penalty or otherwise failed to comply with an order resulting from a final adjudication of a violation if a District Permit, Order or Rule.
  - (c) If a District is not required to renew an Operating Permit under Rule 3.8.D(2)(b)(ii), the Permit remains in effect until the final settlement or adjudication on the matter of the substantive violation.

**E. Well Changes That Require an Amendment to an Operating Permit**

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (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, Depth to the Bottom of the Screen, 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 Well Owner has not applied for and obtained the appropriate authorization under this Rule.
- (4) Minor Amendment

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (a) A Minor Amendment to an Operating Permit for a Non-Exempt Well is required to change the Type of Use of a Well; to alter the size or Depth of a Well or Depth to the Bottom of the Screen, the Well pump, or its pumping volume that does not increase the production amount or capability; or a change in the approved Water 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 Well Owner has not applied for and obtained the appropriate authorization under this Rule.
- (5) Current Permit to Remain in Effect

If an Application for an Amendment to an Operating Permit is timely filed, the Permit as it exists at the time the Application is filed, remains in effect until the conclusion of the Permit Amendment process or final settlement or adjudication on the matter of whether the change to the Permit requires an Amendment, whichever is later.

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

- (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 8.7.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (2) When the District establishes Production Limits according to Rule 11.3.D, any Operating 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, except that there is no opportunity for a Contested Case Hearing. The conforming amendment becomes effective on issuance of an executed Board order.
- (3) An Operating Permit is subject to Involuntary Amendment if the Board finds that changes in the law or in the Groundwater resources within the District necessitate such an Amendment. An Involuntary Amendment under this provision shall be approved by the District only after the procedure provided in Rules 8.3 and 8.4.
- (4) If the District initiates an amendment to an Operating Permit, the Permit as it existed before the Involuntary Amendment process remains in effect until the conclusion of the process under 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.
- (3) The Replacement 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.
- (4) Prior to drilling a Replacement Well, the Well Owner must submit a Replacement Well Application to the District. The Replacement Well Application form is available at the District

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

Office and on the District website. 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, as applicable, authorizing drilling and operation of the Replacement Well.

- (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 Application 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 and the Plugging Report must be submitted to the District as required under Rule 5.3.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended January 14, 2009, by Board Order; effective January 14, 2009. Amended July 25, 2012 by Board Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

## **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 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 wellheads 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 Access for Testing**

All Wells must allow access to the Water Table for the purposes of measuring water levels or disinfecting the Well. All New Wells shall be equipped with a faucet or hose bib at the wellhead.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

#### **4.5 Depth of Well**

A Well Owner who drills a Well after July 25, 2012 and does not ensure that it is completed to a minimum Well Depth of 500 feet, cannot rely on that Well as the basis for seeking Party status to request a Contested Case Hearing on an Operating Permit. This minimum depth is based on the Desired Future Condition adopted by the District under Texas Water Code 36.108 et seq.

*Adopted July 25, 2012, by Board Order; effective July 25, 2012.*

#### **4.6 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. Renumbered July 25, 2012, by Board Order, effective July 25, 2012*

## **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 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 raw water quality data collected on water from a Non-Exempt Well shall be submitted to the District within 60 days from the date the data are collected.

**D.** If raw water quality data are collected during drilling a New Exempt Well, such data shall be submitted to the District within 60 days from the date the data are collected or within 10 days from receiving the lab report.

**E.** A Railroad Commission Form P-13, "Application of Landowner to Condition an Abandoned Well for Fresh Water Production," shall be submitted to the District within 30 days of receipt of Railroad Commission approval of the application. This must be submitted by either the Well Owner or Operator, whichever has received the Railroad Commission approval notice.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **5.2 Annual Water Production Report for Non-Exempt Wells**

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 31st 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **5.3 Plugging Report**

Within 30 days after Plugging a 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 Annual Water Production Report for Exempt Oil and Gas Water Wells**

**A.** The production from all Wells Exempted under Rules 3.1.A(2) and (3) from obtaining an Operating Permit (Exempt Oil and Gas Water Supply Wells) shall be recorded using a meter or other reliable water measuring device. The meter or device shall be installed at the Well Operator's expense.

**B.** The Well Operator, as defined in Rule 5.4.C, shall keep a record of water production being used for Exempt Oil and Gas Water Supply Purposes. On January 31st of each year, the Well Operator shall submit to the District an Annual Water Production Report for Exempt Oil and Gas Water Supply Wells reflecting water production during the previous calendar year. The Report must be submitted as long as the Well is reflected in District records as being used for Exempt Oil and Gas Water Supply Purposes, even if no production for this purpose has occurred during the previous year. In such a case the Report would show no production for this purpose during that year. , The reporting form is available at the District Office and on the District website.

**C.** 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **5.5 Water Wells Associated with Uranium Exploration and Mining**

**A.** A Person who applies for or obtains authorization for Uranium Exploration, Mining, or related activities shall comply with the reporting and recordkeeping requirements of Rule 9.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**B.** The holder of an 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. A submittal is due within 30 days of approval, amendment, and removal of the Aquifer Exemption by the U.S. Environmental Protection Agency. The holder of the Aquifer Exemption is responsible for submitting this documentation. Additionally, because under Rule 11.2.C(1) an Aquifer Exemption affects the landowner's Groundwater allocation, the landowner is also responsible for this submittal.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

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

**A.** An entity holding a permit issued by the Railroad Commission under Texas Natural Resources Code, Chapter 134 (Texas Surface Coal Mining and Restoration Act) shall report monthly to the District on or before the last day of each month:

- (1) The total amount of water withdrawn during the previous month;
- (2) The quantity of water for mining activities during the same period; and
- (3) The quantity of water withdrawn for other purposes during the same period.

**B.** An entity holding a permit issued by the Railroad Commission under Texas Natural Resources Code, Chapter 134 (Texas Surface Coal Mining and Restoration Act) shall comply with Rules 5.1.A and B.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **5.7 Water Pollution Event Reporting**

Any Person required under State law to report a Water Pollution Event to the Texas Commission on Environmental Quality or to the Railroad Commission of Texas shall send a copy of the initial written report regarding the event to the District and to the surface landowner at the same time that they send the report to the State agency.

*Adopted July 25, 2012, by Board Order; effective July 25, 2012.*

## **RULE 6: PLUGGING, CAPPING, AND SEALING OF WELLS**

### **6.1 *Plugging Water Wells***

**A.** Not later than the 180<sup>th</sup> day after the date a landowner learns of the condition and location of a Deteriorated or Abandoned Water Well located on his land, or a Water Well Owner learns of its Deteriorated condition 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 or the Well Owner 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 Well is not Plugged in compliance with State law, the District may take action under Rule 7 as authorized by Texas Occupations Code, Section 1901.256, otherwise enforce Texas Occupations Code Section 1901.255 related to a Landowner or Well Owner possessing an Abandoned or Deteriorated Well.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **6.2 *Capping Water 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 Well 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 8.7 no later than the next regularly scheduled Board meeting.

**C.** If the District requires the Sealing of a Well and the Well 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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

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 8.7.

*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.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

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
Making changes to an Existing Well or its Operation prior to obtaining pre-authorization required by Rule 3.8	\$500.00

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

#### **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.
- 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, in the interests of justice and as provided in subsection E of this Rule, recovery of attorney's Fees, costs for expert witnesses, and any other costs incurred by the District before the court.
- D.** In an Enforcement Action by the District against any Person that is a governmental entity for a violation of District Rules, the limits on the amount of Fees, costs, and penalties that a district may impose under Sections 36.122, 36.205, or 36.102 or under a special law governing a GCD, constitute a limit of liability of the governmental entity for the violation. The District is not prohibited the recovery of Fees and costs under District Rule 7.5.C in an action against any Person that is a governmental entity.
- E.** If the District prevails on some, but not all, of the issues in a suit described in subsection C of this Rule, the court shall award attorney's fees and costs only for those issues on which the District prevails and the District has the burden of segregating the attorney's fees and costs in order for the court to make an award.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

## **RULE 8: PROCEDURAL RULES**

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

**A.** All proposed changes to District Rules must comply with District Rule 1.5. 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 Public 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.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

“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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

## **8.2 Adoption of Emergency Rules**

**A.** The District may adopt an Emergency Rule, consistent with District Rule 1.5, 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **8.3 Actions On Operating Permits [Texas Water Code § 36.114(b)]**

**A.** Within 60 days after the date it is deemed Administratively Complete by the District, an Application for an Operating Permit 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, which is considered a Public Hearing under Texas Water Code sections 36.402 and 36.403.

**B.** An Application for an Operating Permit for a Non-Exempt Well requesting production of less than 500 acre-feet per year may be approved by the District's General Manager without further Board action. Denial of such an Application shall be referred to the Board for action under Rule 8.4. An Application for an Operating Permit for a Non-Exempt Well requesting production of 500 acre-feet per year or more, 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.

**E.** An Application to renew an Operating Permit issued with a Special Condition setting a permit term or permit expiration date under Rule 3.8.D may be approved by the District's General Manager without further Board action. Denial of a renewal 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. Amended July 25, 2012 by Board Order; effective July 25, 2012. Amended January 20, 2016 by Board Order; effective January 20, 2016.*

### **8.4 Public Hearing on Operating Permit Applications**

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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**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 a Public Hearing at a Board meeting. This setting serves to fulfill the requirement of Texas Water Code 36.114(e). 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.C. This Public Hearing must be held within 35 days after the setting of the date.

**C.** Notice of the Public 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 Public Hearing; and
- (5) Any other information the District considers relevant and appropriate.

**D.** In addition to the notice required by the Open Meetings Act, not later than the 10th day before the date of the Public 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) Provide notice by mail, facsimile, or electronic mail to any Person who has requested notice under Rule 8.4.E. Failure to provide notice under this Rule 8.4.D(4) does not invalidate an action taken by the District at the Public Hearing.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- E.** A Person may submit to the District a written request for notice of a Public 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 Public Hearing in a later year, a Person must submit a new request.
- 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 on the Application. It may grant the Application, grant the Application with special conditions, or deny the Application. If the Board approves the Operating Permit or Permit Amendment, 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.** The effective date of the Board's written order or resolution reflecting its decision on the Application under Rule 8.4.H shall be 21 days after the date on which the President of the District signs the order or resolution, if no Contested Case Hearing Request under Rule 8.5.A is received by the District or if the Contested Case Hearing Fee Deposit described in Rule 8.6.C is not submitted to the District by the deadline prescribed in the Board order under Rule 8.6.C. The order or resolution shall include a statement that the order or resolution and its attachment become effective and final within 21 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 Contested Case Hearing Request.
- J.** If after a Preliminary Hearing the Board determines that there will be no Contested Case Hearing, the effective date of the Board's written order or resolution reflecting its decision on the Application under Rule 8.4.H shall be the date on which the Board signs a written order or resolution under 8.5.F denying the Contested Case Hearing Request. 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. Amended January 14, 2009, by Board Order; effective January 14, 2009. Amended July 25, 2012 by Board*

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

*Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

## **8.5 Contested Case Hearings on Permitting Actions**

**A.** A Request for Contested Case Hearing on the Board's decision on an Application under Rule 8.4.H must be in writing and must be received by the District not later than 20 days after the date on which the President of the District signs the order or resolution under Rule 8.4.H. If a Contested Case Hearing requester intends to request that the Hearing be sent to the State Office of Administrative Hearings, as authorized by Texas Water Code 36.416(b) and District Rule 8.6, the request must be included in the Request for Contested Case Hearing, or it is waived.

**B.** The following individuals who submit a Contested Case Hearing Request may be named Parties at the Preliminary 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 under Rule 8.4.H.

**C.** If the District receives a written Contested Case Hearing Request during the period required under District Rule 8.5.A the District shall schedule a Preliminary Hearing no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by this Rule 8.5.

**D.** If the Preliminary Hearing is conducted by a quorum of the Board, notice required by the Open Meetings Act shall be provided. Additionally, at least 10 days prior to the Preliminary Hearing, the District shall mail notice to the applicant and to all persons requesting a Contested Case Hearing.

**E.** The Preliminary Hearing may be conducted by a quorum of the Board; an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

related to the hearing; or an administrative law judge at the State Office of Administrative Hearings under Texas Water Code § 36.416 and District Rule 8.6. In any event, the Board shall make the final determination as to whether any person requesting the Contested Case Hearing has standing to make that request and whether a justiciable issue related to the application has been raised.

**F.** At the Preliminary Hearing any matter that may expedite the hearing or otherwise facilitate the hearing process may be considered, including,

- (1) whether a valid Contested Case Hearing Request has been submitted and if so, the designation of Parties. If the District's decision on an Application is opposed by one or more individuals requesting a Contested Case Hearing, the General Manager is automatically a Party.
- (2) if a request under District Rule 8.5.A has been made to send the Contested Case Hearing to the State Office of Administrative Hearings, the amount of the Contested Case Hearing Fee Deposit under Texas Water Code section 36.416(c).
- (3) if a request under District Rule 8.5.A has been made to send the Contested Case Hearing to the State Office of Administrative Hearings, the location of the hearing either in Travis County, Texas, or as described in Texas Water Code 36.403(c).
- (4) formulation and simplification of issues.
- (5) the hearing schedule, including any necessary discovery.

**G.** The Board's decisions made during the Preliminary Hearing will be in the form of a written order. If the Board determines that there will be a Contested Case Hearing, the written order shall also specify, if applicable, a ten (10) day deadline to submit to the District the required Contested Case Hearing Fee Deposit under Texas Water Code section 36.416(c). The ten day deadline shall run from the date of the written order. If the Contested Case Hearing Fee Deposit is not submitted to the District by the deadline, the Contested Case Hearing Request is considered withdrawn and the Board's decision on the Application under Rule 8.4.H becomes final under the terms of Rule 8.4.I.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**H.** The Contested Case Hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a hearing examiner to preside at and conduct the hearing on the Application. In the alternative, a hearing may be held by the State Office of Administrative Hearings under District Rule 8.6. The appointment of a hearing 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.

**I.** 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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

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. 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 shall be provided.
- (13) May exercise the procedural rules under District Rules 8.4 and 8.5;
- (14) May apportion among the Parties the costs related to:
  - (a) a contract for the services of a Presiding Officer; and
  - (b) the preparation of the official hearing record.

**J.** 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.J.

**K.** If the Board has appointed a hearing examiner to be the Presiding Officer at the hearing, the hearing examiner shall submit a Proposal for Decision to the Board not later than the 30<sup>th</sup> day after the date the evidentiary 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 Proposal for Decision within 10 days of issuance of the Proposal for Decision. The Proposal for Decision 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.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**L.** The Board shall consider the Proposal for Decision at a Board meeting held after the deadline for written exceptions to the Proposal for Decision has passed. This Board meeting shall be the final hearing as contemplated by Texas Water Code section 36.410(f). Additional evidence may not be presented during the final hearing. The Parties may present oral argument at the final hearing to summarize the evidence, present legal argument, or argue an exception to the Proposal for Decision. A final hearing may be continued as provided by Texas Water Code section 36.409 and Rule 8.5.I(12).

**M.** 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.

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

- (1) Not later than the 20th 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 35th 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 20th 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.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (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.

**O.** 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.

**P.** 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. Amended July 25, 2012, by Board Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

## **8.6 Contested Case Hearing Referred to SOAH**

**A.** If the Board determines that a Contested Case Hearing will be held, a request by the Applicant or other Party was timely filed under District Rule 8.5.A, and the Contested Case Hearing Deposit Fee was timely received by the District under District Rule 8.5.F, the District shall contract with the State Office of Administrative Hearings to conduct the hearing.

**B.** The Contested Case Hearing shall be conducted in Travis County or at the District Office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**C.** The Party requesting the hearing before SOAH shall pay all costs associated with the contract for the hearing and shall deposit with the District an amount sufficient to pay the contract amount. This Contested Case Hearing Deposit Fee shall be received by the District within 10 days of issuance of the order or resolution under District Rule 8.5.G. At the conclusion of the Contested Case Hearing, the District shall refund any excess money to the paying Party. All other costs may be assessed as authorized by Texas Water Code Chapter 36 or District Rules.

**D.** The hearing shall be conducted as provided in District Rule 8.5, to the extent District Rule 8.5 does not conflict with subchapters C, D, and F of the Texas Government Code, Chapter 2011 and the procedural rules of the State Office of Administrative Hearings.

**E.** An administrative law judge who conducts a contested case hearing shall consider applicable District Rules or policies in conducting the hearing, which shall be provided to the judge by the District.

**F.** The District order or resolution under District Rule 8.5.G shall control on the issues addressed in that order.

**G.** The District Board has the authority to make a final decision on consideration of a Proposal for Decision issued by an administrative law judge from the State Office of Administrative Hearings. The Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the judge, only if the Board determines:

- (1) that the judge did not properly apply or interpret applicable law, District Rules, or written policies provided under Rule 8.6.E, or prior District administrative decisions;
- (2) that a prior District administrative decision on which the judge relied is incorrect or should be changed; or
- (3) that a technical error in a finding of fact should be changed.

*Adopted July 25, 2012, by Board Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

### **8.7 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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

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. Renumbered July 25, 2012, by Board Order; effective July 25, 2012.*

## **8.8 Procedures for Joint Planning**

### **A. Notice and Public Hearing on Proposed Relevant DFCs**

- (1) When the GMA-16 Joint Planning Committee mails a copy of the proposed Desired Future Conditions proposed under Texas Water Code 36.108(d), a 90-day comment period begins.
- (2) During the public comment period, the District shall post notice and hold a Public Hearing on any proposed DFCs relevant to the District.
- (3) During the public comment period, the District shall make available in the District Office a copy of the proposed DFC and any supporting materials, such as the documentation of factors considered under Texas Water Code 36.108(d) and Groundwater availability model run results.
- (4) At least 10 days before a hearing on the proposed Desired Future Conditions proposed by the GMA-16 Joint Planning Committee under Texas Water Code 36.108(d), the District must post notice of Public Hearing on the proposed DFC that includes the following:
  - (a) the proposed Desired Future Conditions and a list of any other agenda items;
  - (b) the date, time, and location of the Public Hearing;
  - (c) the name, telephone number, and address of the Person to whom questions or requests for additional information may be submitted;
  - (d) the names of the other districts in GMA-16; and
  - (e) information on how the public may submit comments

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (5) The notice must be:
  - (a) posted in a place readily accessible to the public at the District Office;
  - (b) provided to the county clerk of each county in the District;
  - (c) published in one or more newspapers of general circulation in the counties in which the District is located;
  - (d) provided by mail, facsimile, or electronic mail to any Person who has requested notice under District Rule 8.1.F;
  - (e) make available a copy of the proposed Desired Future Conditions at a place accessible to the public during normal business hours and on the District website.
- (6) Anyone interested in the proposal may submit written comments about the proposal to the District at least 5 days prior to the scheduled hearing at which the proposal will be considered by the Board.
- (7) Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.
- (8) The District shall make and keep in its files an audio recording of the hearing.
- (9) The Board shall issue a written order or resolution reflecting its decision. The proposal that the Board has approved shall be an attachment to that written order or resolution.
- (10) After the Public Hearing, the District shall compile for consideration at the next GMA-16 Joint Planning meeting a summary of relevant comments received, any suggested revisions to the proposed Desired Future Conditions, and the basis for the revisions.
- (11) The District shall submit the DFC Hearing Summary Report to GMA-16 no later than the end of the 90-day public comment period.

**B. District Adoption of the DFCs**

- (1) As soon as possible after the District receives the DFC Resolution and Explanatory Report, the District shall adopt the DFCs in the Resolution and Report that apply to the District.
- (2) The notice and hearing provisions of District Rule .A(2) - (9) apply to the District's adoption of the DFCs.

**C. Appeal of a DFC**

- (1) If the District receives, within 120 days from the District's adoption of a DFC under District Rule 8.8.B, a petition from an affected person appealing the reasonableness of a DFC, the District shall take the following actions.
  - (a) Submit a copy of the petition to the Texas Water Development Board within 10 days of receipt.
  - (b) Within 60 days of receipt, submit a copy of the petition to SOAH and contract with SOAH to conduct a contested case hearing on the petition, as provided by Texas Water Code section 36.1083.
- (2) During the period between receipt of a petition described in subsection (1) of this Rule 8.8.C and receipt of the Texas Water Development Board study required under Texas Water Code section 36.1083(e), the District may enter into mediation with the petitioner to resolve the issues raised in the petition.
- (3) If there is no resolution of the petition, the District shall provide at least 10 days prior to the SOAH hearing:
  - (a) general notice of the SOAH hearing following the requirements of District Rule 8.8.A; and
  - (b) notice of the SOAH hearing mailed to the petitioner; any person who has requested notice; each nonparty groundwater conservation district and regional water planning group located in the same groundwater management area as the District; the Texas Water Development Board; and the Texas Commission on Environmental Quality.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (c) notice under District Rule 8.8(3)(a) and (b) shall include the following information:
  - (i) a statement of the time, place, and nature of the hearing;
  - (ii) a statement of the legal authority and jurisdiction under which the hearing is to be held, citing specifically to 1 Texas Administrative Code Chapter 155;
  - (iii) a reference to the particular sections of the statutes and rules involved; and
  - (iv) a short, plain statement of the matters asserted.
- (4) The petitioner shall pay the costs associated with the SOAH contract and prior to the beginning of the SOAH hearing shall deposit with the District an amount sufficient to pay the contract amount, such amount to be set by the District on a case-by-case basis depending on the SOAH contract for each petition hearing.
- (5) SOAH may apportion costs among the parties to the petition hearing and the District will implement such apportionment, including refund of any excess deposit money to the petitioner.
- (6) On receipt of SOAH's findings of fact and conclusions of law in a proposal for decision on the petition, the District shall issue a final order stating the District's decision on the petition, including findings of fact and conclusions of law. The District may change a finding of fact or conclusion of law made by SOAH, or may vacate or modify an order issued by SOAH, as provided by District Rule 8.6.G.
- (7) If the District vacates or modifies the proposal for decision, the District shall issue a report describing in detail the District's reasons for disagreement with SOAH's findings of fact and conclusions of law. The report shall provide the policy, scientific, and technical justifications for the District's decision.

*Adopted July 25, 2012, by Board Order; effective July 25, 2012. Amended January 20, 2016, by Board Order; effective January 20, 2016.*

## **RULE 9: WATER WELLS ASSOCIATED WITH URANIUM EXPLORATION AND MINING**

### **9.1 Uranium Exploration Activities**

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

- (1) Except as provided in Texas Natural Resources Code Section 131.354, 16 Texas Administrative Code Section 11.140, 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.
- (4) **Production Limits**

With regard to a Rig Supply Well subject to the District's production Rules pursuant to Natural Resources Code 131.354(c), 16 TAC 11.140(d), 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 under District Rule 11.

**B. Cased Well Production Report**

A Uranium Exploration Permittee shall submit a monthly Cased Well Production Report to the District as described in this Rule 9.1.B. The Report shall include the total amount of water produced by each Cased Uranium Exploration Well used for Monitoring or for Rig Supply and that is located inside the area subject to the Uranium Exploration Permit. The report shall be submitted within 30 days from the end of each month showing production during the previous month. The monthly reports are required until the end of the Uranium Exploration Permit Year, even if production temporarily ceases. The Cased Well Production Report form is available at the District Office and on the District website. The following information must be provided:

- (1) Well identification to correspond with information provided to the Railroad Commission on Form SMRD-8U (Cased Exploration Completion Report);
- (2) amount of water produced reported in gallons and acre-feet; and
- (3) monthly production data and cumulative data for the Uranium Exploration Permit Year.

**C. Groundwater Quality and Well Information**

- (1) At least 15 days prior to commencement of drilling, a Uranium Exploration Permittee shall obtain Groundwater samples for analysis in accordance with this subsection. Within 90 days of receiving the laboratory analysis data, the Permittee shall provide to the District Exploration Groundwater Quality Information as follows:
  - (a) from each Water Well located in the District that is tested by the Permittee before exploration; and
  - (b) from the following Wells, as applicable:
    - (i) if there are fewer than 10 Water Wells located inside the approved exploration area, from each Well located inside the approved exploration area; or

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (ii) if there are at least 10 Water Wells located inside the approved exploration area, from 10 Water Wells that are distributed as evenly as possible throughout that area.
- (2) Within 90 days of receiving the laboratory analysis data, a Permittee shall provide to the District Exploration Groundwater Quality Information obtained during exploration within the District as follows:
  - (a) from each Water Well that the Permittee tests during exploration; and
  - (b) from each Cased Exploration Well completed under the Uranium Exploration Permit.
- (3) Each Permittee shall conform the Exploration Groundwater Quality Information required under subsections (1) and (2) of this Rule 9.1.C to the requirements of 16 Texas Administrative Code section 11.142.
- (4) Each Uranium Exploration Permittee that installs Cased Exploration Wells shall provide to the District, within 60 days of the installation, the following information:
  - (a) the Permittee's name, address, and telephone number; and
  - (b) the following information for each Cased Exploration Well in the District:
    - (i) Well Completion information;
    - (ii) the State of Texas Well Report, and all Geophysical and Lithological Well Logs, except any Confidential Information as defined in these Rules;
    - (iii) the location of the Well in WGS 84 Coordinates, including a legal description and the acreage of the property where the Well is located;
    - (iv) verification that the Well will be used for an Industrial Purpose; and

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (v) the type and capacity of the pump used in the Well.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

## **9.2 Development of an Area Permit Application**

### **A. Reporting Data to District**

If in an Area Permit Application, the proposed Area Permit Boundary is wholly or partially within the District, the Area Permit Applicant shall provide to the District the information required by this Rule 9.2.A. This information must be provided to the District no later than 90 days after the Area Permit Applicant receives the final information.

- (1) The Area Permit Applicant shall provide Information regarding Water Wells that are not recorded in the public record when such Water Wells are encountered during the development of the Area Permit Application, including:
  - (a) the location of each Water Well in WGS 84 Coordinates;
  - (b) the name, address, telephone number, and email address of the Water Well Owner; and
  - (c) all other available information for the Water Well, including Depth, completion method, completion interval, water quality information, and Lift Method.
- (2) A map showing the locations, including the WGS 84 Coordinates, of all Water Wells that are recorded in the public record and that are inside the proposed Permit Area Boundary and within one-quarter mile outside of the proposed Area Permit Boundary;
- (3) Pre-Mining Water Quality Information collected from Area Permit Registered Wells; and
- (4) a record of strata as described in 30 Texas Administrative Code 331.224 for each Area Permit Registered Well, except for Confidential Information, as defined in these Rules.

**B. Area Permit Registered Well Production Report**

An Area Permit Applicant shall submit a monthly Area Permit Registered Well Production Report to the District as follows. The Report shall include the total amount of water produced by each Area Permit Registered Well. The Report shall be submitted within 30 days of the end of each month showing production during the previous month. The Area Permit Registered Well Production Report form is available at the District Office and on the District website.

**C. Reporting an Excursion in a Designated Monitor Well**

A copy of the written notification of an excursion in a designated Monitoring Well, required under 30 Texas Administrative Code 331.106(1), shall be submitted to the District at the same time it is sent to the Texas Commission on Environmental Quality.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

**9.3 Activities Affecting Groundwater Allocation**

The holder of an 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. A submittal is due within 30 days of approval, amendment, and removal of the Aquifer Exemption by the U.S. Environmental Protection Agency. The holder of the Aquifer Exemption is responsible for submitting this documentation. Additionally, because under Rule 11.2.C(1) it affects the landowner's Groundwater allocation, the landowner is also responsible.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

## **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 13.3.B 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 obtained from 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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

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 Well 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 Well 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 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 % or reasonable amount for purpose of Beneficial Use of Groundwater without Waste, based on information submitted with the application, plus 25 %.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **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 or Modeled Available Groundwater amount, whichever is applicable, is issued by the Texas Water Development Board.

- (1) The most current Managed Available Groundwater amount or Modeled Available Groundwater amount, whichever is applicable, 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.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

**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 using the rulemaking procedure required by Rule 8.1.

**G.** Based on the Managed Available Groundwater amount calculated by the Texas Water Development Board to achieve the Desired Future Condition adopted by GMA-16 on August 30, 2010, and calculated using the formula required by Rule 11.3.D, Production Limits for New Non-Exempt Well permits shall be 0.6 acre-inch/acre/year for applications submitted to the District after July 25, 2012.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

#### **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. Water Pollution Events must be reported to the District as required by Rule 5.7.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **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***

- A.** The District has authority over Water Wells used to supply water for activities related to the exploration or production of hydrocarbons or minerals.
- B.** The District has authority over Abandoned Oil or Gas Wells conditioned for usable quality water production.

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

***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(4). Such Wells must register with the District as provided in Rule 3.2.A.
- 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. Amended July 25, 2012, by Board Order; effective July 25, 2012.*

### **13.3 *Water Wells Associated With Oil and Gas Activities***

#### **A. Exempt Oil and Gas Water Supply Wells (Temporary Rig Supply Wells and Secondary Recovery Supply Wells)**

- (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 or is in close proximity to the drilling rig. Under District Rules, these Wells are referred to as Temporary Rig Supply Wells or Exempt Oil and Gas Water Supply Wells.
- (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) No permit is required for the drilling of a Water Well used solely to supply water for Secondary Recovery of Oil or Gas. Under District Rules, these Wells are referred to as Secondary Recovery Supply Wells or Exempt Oil and Gas Water Supply Wells.
- (4) Under District Rule 3.1.A(2) and (3) and this Rule 13.3, a Well is considered to be an Exempt Oil and Gas Water Supply Well during any period that water from the Well is used solely or partially for Temporary Rig Supply or Secondary Recovery supply purposes.
- (5) For purposes of this Rule 13.3, 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).
- (6) The Well Operator must register an Exempt Oil and Gas Water Supply Well with the District as provided in Rule 3.2. When registering a Well that will be used solely as an Exempt Oil and Gas Water Supply Well, the use shall be indicated on the Registration Application and the Well Registration Certificate shall reflect that use.

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

- (7) The Well Operator as defined in this Rule 13.3, must notify the District of changes in use to or from an Exempt Oil and Gas Water Supply Well, as provided in Rule 3.8.A(1)(d). If water from an Existing Well that was previously registered for a different purpose will be used as an Exempt Oil and Gas Water Supply Source, prior to that change in use, the Well Operator shall submit written notification to the District as required by District Rule 3.8.A(1)(d). The Well Operator shall provide the anticipated beginning and ending dates of such water use.
- (8) An Exempt Oil and Gas Water Well must comply with the Well construction standards as provided in Rule 4 and the Well spacing requirements of Rule 10.
- (9) The driller of an Exempt Oil and Gas Water Supply Well must submit to the District the Well Log as provided in Rule 5.1.A and the Geophysical, Electric, and Lithological Logs as provided in Rule 5.1.B.
- (10) The production from an Exempt Oil and Gas Water Supply Well shall be recorded and reported as required in Rule 5.4.
- (11) An Exempt Oil and Gas Water 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) An Exempt Oil and Gas Water Supply Well that does not fall or no longer falls under the definition of a Temporary Rig Supply Well or Secondary Recovery supply Well in Rule 13.3.A, must comply with all District Rules, which may include obtaining an Operating Permit under 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

Kenedy County Groundwater Conservation District Rules  
January 20, 2016

with an Oil or Gas Well drilled after September 1, 1985 that does not penetrate the base of usable quality water, must comply with all District Rules, which may include obtaining an Operating Permit under Rule 3.4.

**D. Abandoned Oil or Gas Wells Conditioned for Usable Quality Water Production**

- (1) When an Abandoned Oil or Gas Well will be conditioned for usable quality water production, the Well Owner or Operator must register the Well with the District prior to submitting to the Railroad Commission, Form P-13, "Application of Landowner to Condition an Abandoned Well for Fresh Water Production," as required by District Rule 3.2.D.
- (2) If the Water Well is not equipped to produce water, it will be registered as an Inactive Well and must be Capped as required by District Rule 6.2. When the Inactive Well is equipped to produce water, the Well Owner must notify the District of the change in status as required by District Rule 3.8.A(1)(d) and 3.8.A(2).
- (3) As required by 5.1.D, a Railroad Commission Form P-13, "Application of Landowner to Condition an Abandoned Well for Fresh Water Production," shall be submitted to the District within 30 days of receipt of Railroad Commission approval of the application. This must be submitted by either the Well Owner or Operator, whichever has received the Railroad Commission approval notice

*Adopted October 8, 2008, by Board Order; effective October 8, 2008. Amended July 25, 2012, by Board Order; effective July 25, 2012.*