

Uvalde County Underground Water Conservation District
Proposed Rule Amendments for Public Comment
Public Hearing to held on October 19, 2009

Public Comment Period will close at the end of the Public Hearing, unless it is extended at that time by the Presiding Officer.

The public may file written comments on the following proposed amendments to the District's rules before the close of the Public Hearing to be held on October 19, 2009. In addition, oral comments may be presented at the Public Hearing.

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**12.2 Production Limitations.**

(f) Production allocations made by the District shall be reduced to the extent that another permitting authority has granted, or in the future grants, groundwater or surface water withdrawal rights that, in the view of the Board, are duplicative (in terms of location of use or nature of use) of the withdrawal rights granted or to be granted by the District. The District shall exercise continuing jurisdiction over existing production allocations and shall reduce such allocations when new circumstances, including new conveyances of groundwater or surface water withdrawal rights, require such reduction to be made.

(f)(g) A person is entitled to a permit to withdraw groundwater in the amounts designated in this Rule so long as the person satisfies the requirements of conditions of this Rule and any other part of the rules of the District or Chapter 36, Texas Water Code, governing the issuance of groundwater withdrawal permits by the District.

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6.1715.5 Transfer of Ownership of a Well Withdrawal Permit. A well withdrawal permit is transferrable. If a holder of a well withdrawal permit sells or transfers the well and associated well withdrawal permit to another person, notification of the change in ownership must be made within 30 calendar days of the change in ownership of the permit and the well. Upon such notification and demonstration of the change in ownership, the General Manager will cancel the original well withdrawal permit and re-issue the well withdrawal permit in the name of the new owner without notice, hearing, or further action by the Board.

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**Revise Rule 18.1 as follows:**

18.1 **Notice of Protests.** A person desiring to protest an application for a permit subject to the notice requirements of Rule 17, ~~shall~~ do so by filing a notice of intent to protest in accordance with Rule 17.1(b)(4) or by filing a written notice of protest with the District on or before the date on which such application has been set for consideration. A person desiring to protest any other matter before the Board may do so by filing a written notice of protest with the District on or before the date on which such ~~application or~~ matter has been set for consideration.

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19.4 **Notice of Hearing.**

- (a) If the Board or general manager schedules a hearing on an application for a permit or permit amendment, the general manager shall give notice of the hearing as provided by this Rule.

19.7 **Designation of Parties.**

- (a) Parties to a hearing will be designated on the first day of the hearing, or at such other times as the Presiding Officer Board or Hearings Officer determines. The General Manager and the applicant for a permit are automatically designated parties. A hearing requestor and any other person appearing on the first day of the hearing or such other time, as determined by the Presiding Officer or Hearings Officer, may be designated parties upon a demonstration that he/she is an affected person, as defined in Rule 1.3.
- (b) Subject to the discretion and orders of the Presiding Officer Board or Hearings Officer, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.

19.10 **Hearing Procedures.**

- (b) The Presiding Officer or Hearings Officer may:
 - (3) designate the parties ~~to a contested application;~~
- (d) The Presiding Officer or Hearings Officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the Presiding Officer or Hearings Officer no later than the tenth (10th) day after the date of the hearing. A person who files additional written materials with the Presiding Officer or Hearings Officer under this subsection must also provide the material, no later than the tenth (10th) day after the date of the hearing, to every person who provided comments on an ~~uncontested~~ application or every party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the Presiding Officer or Hearings Officer no later than the tenth (10th) day after the date the material was received.
- (e) At any time before the Board takes final action on a permit application or permit amendment application, ~~the District may authorize~~ the Presiding Officer or Hearings Officer, at the Presiding Officer or Hearings Officer's discretion, may ~~to~~ issue an order:
 - (1) referring parties to a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing;

- (2) determining how the costs of the procedure should be apportioned among the parties; or
- (3) appointing an impartial third party as provided by Section 2009.053, Government Code, to facilitate the alternative dispute resolution procedure.

19.13 Testimony.

- (a) The Presiding Officer Board or Hearings Officer may compel any testimony that is necessary, helpful, or appropriate to the hearing. The Presiding Officer Board or Hearings Officer may issue subpoenas to compel the testimony of any person and the production of any tangible thing in the manner provided by the Texas Rules of Civil Procedure.
- (b) Testimony may be received in written form, so long as the interests of the parties will not be substantially prejudiced. The written testimony of a witness shall be in ~~either narrative or~~ question and answer form, and may be submitted into evidence upon the witness being sworn in and identifying the testimony as being a true and accurate record of what their testimony would be if given orally. The witness will be subject to clarifying questions and cross-examination, and the prepared testimony will be subject to objection.

19.14 Failure to Attend Hearing. If, after receiving notice of a hearing, a party fails to appear in person or by representative on the day and time set for hearing, the Presiding Officer or hHearings oOfficer may proceed in that party's absence and take such action as is authorized by these rules, including issuing a report under Rule 19.20~~proposal for decision~~ or order unfavorable to the party failing to appear.

19.15 Hearing Officer Jurisdiction. The Presiding Officer or hHearing oOfficer shall exercise reasonable control over the mode and order of presenting preliminary matters, pending motions, opening statements, witness testimony and other evidence, oral or written closing argument, and other processes in the hearing.

19.16 Burden of Proof. The burden of proof will be on the Applicant to present evidence showing that the requested permit should be issued under applicable legal principles ~~in these rules.~~

19.17 Record of Hearing.

- (b) If a hearing is informally resolved so that it is no longer uncontested, the Presiding Officer or Hearings Officer may substitute minutes or the report required under Rule 19.20(a) in place of a record of the hearing.

19.20 Report.

- (a) Except as provided by subsection (e), the Presiding Officer or Hearings Officer shall submit a report to the Board no later than the thirtieth (30th) day after the date a hearing is concluded. The report shall be similar in content and form to a

proposal for decision under the Administrative Procedures Act, Chapter 2001, Texas Government Code.

19.21 **Board Action.**

- (a) The Board shall act on a permit or permit amendment application no later than the sixtieth (60th) day after the date the final hearing in the application is concluded.
- (b) The General Manager will schedule the application that is the subject of the hearing for consideration on the Board's open meeting agenda no later than 60 days following the close of the hearing. Any report issued under Rule 19.20, exceptions, replies or proposed findings of fact may be considered at that time.
- (c) The parties to the proceeding may answer questions from the Board, and if desired by the Board, present oral argument. The Hearing Officer or Presiding Officer shall also be present to summarize the report and answer questions from the Board.
- (d) The Board may accept the report, reject the report and issue a different or modified decision, or remand the matter for an additional hearing on new issues or to take additional evidence. A decision by the Board may contain findings of fact and conclusions of law, separately stated, explaining its decision.

19.22 **Request for Findings of Fact and Conclusions of Law.** If the Board order does not already contain findings of fact and conclusions of law, On receipt of a timely written request, the Board shall make written findings and conclusions regarding the decision of the Board on the application for a permit or permit amendment. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments on the application or each designated party, no later than the thirty-fifth (35th) day after the date the Board receives the request. A person who receives a certified copy of the findings and conclusions from the Board may request a rehearing before the Board no later than the twentieth (20th) day after the date the Board issues the findings and conclusions.

19.23 **Exhaustion of Remedies and Motions for Rehearing.**

- (a) An Applicant in a contested or uncontested hearing on an application or a party to a contested hearing may seek judicial review of a decision of the Board on an application for a permit or permit amendment by first exhausting all administrative remedies by requesting written findings of fact and conclusions of law, if the Board order does not already contain such findings or conclusions, or a rehearing before the Board no later than the twentieth (20th) day after the date of notification of the Board's decision on the application. A party or a person is presumed to be notified of the decision or order on the date that the decision is mailed by first-class mail.
- (b) A person who receives a certified copy of the findings and conclusions from the Board under Rule 19.22 may request a rehearing before the Board no later than

the twentieth (20th) day after the date the person is notified of the Board's issuance of the findings and conclusions.

- (cb) A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the person requesting a rehearing must provide copies of the request to all parties to the hearing. If the original hearing was not contested, the person requesting a rehearing must provide copies to the applicant, the general manager and all persons commenting on the application.
- (d) A reply to a motion for rehearing may be filed within thirty (30) days after the date the responding parties receives a copy of the motion for hearing.
- (e) The motion for rehearing shall be scheduled by the general manager for consideration during a board meeting. A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The Board may reopen the hearing to the extent it is deemed necessary.
- (fe) If the Board grants a request for rehearing, the Board shall schedule the rehearing no later than the forty-fifth (45th) day after the date the request is granted.
- (gd) The failure of the Board to grant or deny a request for rehearing before the ninety-first (91st) day after the date the request is submitted is a denial of the request.

19.25 Reconsideration of Final Decision. The Board may reconsider any matter within its authority, on its own motion or upon the motion of an affected party, if materially changed circumstances exist or upon discovery of new or different conditions or facts after the hearing or decision on such matter. If the Board should decide to reconsider a matter or after having announced a ruling or decision, or after having finally granted or denied an application, it shall give notice to the persons who were proper parties to the original action, and such persons shall be entitled to a hearing therein if they file a request within fifteen days from the date of the mailing of such notice.

Renumber the remaining sections in Rule 19 to accommodate the addition of new Rule 19.25.

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**21.3 Rulemaking Hearing Procedure.**

- (g) The ~~Board~~District may use an informal conference or advisory committee to obtain the opinions and advice of interested persons about contemplated rules; ~~and may~~ The Board President shall appoint the chair and members of advisory committees, which may consist of experts, interested persons, Board Members or other public representatives to advise the ~~Board~~District about contemplated rules.

21.5 **Appeal of District Rules.** A judicial review of any decision of the Board on a rulemaking matter may be sought in accordance with the provisions of Subchapter H, Judicial Review, Chapter 36, Texas Water Code. ~~sought by first exhausting administrative remedies by requesting a rehearing. Such request for rehearing shall be received by the Board within twenty (20) calendar days of the Board's decision. Such a request for rehearing must be filed at the District office in writing and must state clear and concise grounds for the request. A request for rehearing is mandatory before any review may be brought. If no request for rehearing is made within the specified time, or upon the Board's denial of all requests for rehearing, or upon rendering a decision after rehearing, the Board's decision shall be deemed final. If a request for rehearing is granted by the Board, the date of the rehearing will be within ninety (90) calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or deny a request for rehearing within ninety (90) calendar days of receipt will be deemed a denial of the request.~~

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Rule 24.6 – This revision is proposed to reinstate provisions to the bylaws related to appointment of advisory committees that were inadvertently dropped in the last set of rule revisions.

24.6 **Advisory Committees.**

- (a) Appointments. The Board President may establish advisory committees for formulation of policy recommendations to the Board or for such other purposes as the Board may designate. The Board President shall designate the members of the committee and the committee Chair. All meetings of such advisory committees shall be open to the public.