

Proposed Rule Managing Groundwater Production to Achieve Desired Future Conditions

- The Board has previously established desired future conditions (DFCs) for the Sparta, Queen City, Carrizo, Calvert Bluff, Simsboro, Hooper, Yegua and Jackson aquifers.
- The Texas Water Development Board has established the modeled available groundwater (MAG) for each of these aquifers based on the DFCs set by the District.
- In 2011 the Texas Legislature enacted S. B. 737 amending Chapter 36, Texas Water Code to require that the management of groundwater production to achieve the DFCs be done “in issuing permits”. In 2013 the Board amended its rules to incorporate the legislature’s mandate, but did not adopt a means of implementation.
 - The Board may impose more stringent conditions on new permit applications and permit amendment applications to increase use by historic users if the restrictions apply to all subsequent applications for new permits and amendments.¹
 - Existing non-historic use operating permits have a term of five years. At the end of the term, those permits must be re-issued to be renewed.
 - Historic Use permits previously issued by the District are not subject to renewal. Therefore they are not subject to being re-issued like regular operating permits with a five year term.
 - When the District issued Historic use permits, it granted a right that can only be modified by amendment and only for specific reasons. Due process and the District rules require that this be done through a contested case hearing.

¹ 36.113(e) The district may impose more restrictive permit conditions on new permit applications and permit amendment applications to increase use by historic users if the limitations: (1) apply to all subsequent new permit applications and permit amendment applications to increase use by historic users, regardless of type or location of use; (2) bear a reasonable relationship to the existing district management plan; and (3) are reasonably necessary to protect existing use

- This proposed rule would clarify how the Board will implement its commitment to achieve the DFC.
- The Board would annually review a written report prepared by its General Manager and hydrologist providing information on the current and projected status of the DFCs and relevant information related to groundwater production.
- If the Board determines that groundwater production on a long term basis will cause one or more of the DFCs to be exceeded, it will give notice and call a public hearing to consider appropriate action. (*Appropriate action could include more study of aquifer conditions and/or production amounts, changes in the DFCs and/or MAGs, or production reductions.*)
- Following a public hearing, if the Board determines that a reduction in groundwater production is needed to achieve one or more of the DFCs it will adopt a resolution applying reductions. These will apply immediately to permits that were issued after _____ 201_, but would be phased in for non-historic use operating permits and then, if determined to be necessary, to historic use permits. The reduction would be applied to the permit authorized production rate.

- Authorized annual production under Permits issued after _____, 201_ would be reduced immediately by 15%.

- Authorized annual production under existing Operating Permits other than Historic Use permits would be reduced 10% upon renewal. Because non-historic Operating Permits have a term of 5 years, approximately 20% of those permits would be reduced each year.

- If the Board determines, after implementing the production reductions to permits issued after _____, 201_ and existing non-historic use Operating Permits, that additional production reductions are required in order to ensure that the desired future conditions are met it would initiate one or more proceedings to amend all Historic Use permits to reduce authorized production by up to 5%. In making its final decision on these amendments, the Board would consider the historic users efforts to implement water conservation, the service needs or service area of a retail water utility, the District's

Management Plan and applicable Regional Water Plan and any other factors that the public interest requires.

- This approach would make all permits potentially subject to a reduction in order to ensure that the DFCs are met, but would protect Historic Use to maximum extent practicable because it defers cutting their production authorization until reductions have been made to non-historic permits and because it takes into considerations factors authorized by Texas Water Code Chapter 36 in determining the amount by which Historic Use permits should be reduced.

- This approach would allow the District to apply reductions to all permitted wells over a period of 6-7 years. During that time the District will continue its annual review of the current and projected status of the DFCs and the effect of its resolution reducing production. The District will be able to assess how its production reductions are impacting total groundwater production and the aquifer's response. This will allow the District to "fine tune" its production reductions in order to achieve the DFC while minimizing the adverse impact on permittees. This rule provides notice of a public hearing to all potentially affected permit holders and the public to ensure transparency and due process in the implementation of any production reduction.

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Rule 8.3. PERMITTING OF NON-EXEMPT WELL

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(i) Permits Based on Modeled Available Groundwater

- (1) A district, to the extent possible, shall issue permits up to the point that the total volume of exempt and permitted groundwater production will achieve an applicable desired future condition under Section 36.108.
- (2) In issuing permits, the district shall manage total groundwater production on a long-term basis to achieve an applicable desired future condition and consider:
 - (A) The modeled available groundwater determined by the Texas Water Development Board;
 - (B) The Texas Water Development Board's estimate of the current and projected amount of groundwater produced under exemptions granted by district rules and Section 36.117;
 - (C) The amount of groundwater authorized under permits previously issued by the district;
 - (D) A reasonable estimate of the amount of groundwater that is actually produced under permits issued by the district; and
 - (E) Yearly precipitation and production patterns.
- (3) In order to ensure that desired future conditions are achieved, the General Manager and the District's hydrologist shall annually present to the Board at a scheduled meeting a written report summarizing the current and projected status of the desired future conditions adopted by the District. This report will provide the information described in Rule 8.3 (i) (2) (A)-(E) above, as well as information on current and projected average aquifer drawdown for each aquifer with a desired future condition. If the Board determines that total groundwater production on a long term basis from one or more aquifers may cause one or more of the

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desired future conditions not to be achieved, it shall call a public hearing to consider appropriate action. Not later than the 20th day before the date of this hearing notice shall be published in a newspaper of general circulation in each county within the District and mailed to each owner of a permitted or registered well within the aquifer for which the hearing has been called.

- (4) If, after public hearing, the Board determines that a reduction in groundwater production from one or more aquifers is needed to achieve the applicable desired future condition, it shall adopt a resolution setting forth the basis for its actions and implement the following reductions in annual groundwater production:
- (A) For new Operating Permits, or amendments of Operating Permits authorizing an increase in production, issued by the District after _____ 201 , the amount of groundwater authorized to be produced under the permit shall be reduced fifteen percent (15%) on an annual basis effective immediately.
- (B) Existing Operating Permits other than Historic Use Permits were issued by the District with a five year term. Such Operating Permits are subject to renewal provided a timely and appropriate permit renewal application has been filed. Upon renewal of such Operating Permits the amount of groundwater authorized for production shall be reduced 10% on an annual basis.
- (C) Historic Use Permits were issued by the District pursuant to its first set of rules recognizing the District's commitment to protect historic use to the maximum extent practicable. Historic use permits authorize production of a specified annual amount of groundwater for the life of the well so long as the water is used for its specified beneficial purpose. Historic Use permits are not subject to renewal. However, Historic Use permits are subject to amendment for limited grounds specified in the District's rules including minimizing as far as practicable the drawdown of the water table or the reduction of artesian pressure. If, after implementing the reductions in groundwater production under Rule 8.3 (i) (4) (A)-(B) the Board determines that additional reductions in groundwater production are required in order to ensure that the desired future conditions are achieved, it shall initiate one or more proceedings to amend each

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historic use permit within the relevant aquifer to reduce the amount of groundwater authorized for production by up to 5% on an annual basis. In determining the amount of reduction in authorized annual groundwater production under a Historic Use permit the District will consider the efforts of the permit holder to implement water conservation measures, the service needs or service area of a retail water utility, the District's Management Plan and the applicable Regional Water Plan and any other factors that the public interest shall require.

- (5) If the Board adopts a resolution under Rule 8.3 (i)(4), it shall thereafter annually review at a meeting of the Board the report summarizing the current and projected status of the desired future conditions and the effect of its actions implementing reductions in groundwater production. Notice of such review shall be published in a newspaper of general circulation in each county within the District and mailed to each owner of a well that was subject to a production reduction not later than 20th day before the meeting. Based on the Board's review of the report and the effect of its Resolution, the Board will determine whether total groundwater production on a long term basis may cause the desired future condition not be achieved. Based on its determination the Board may take appropriate action to:
- (A) Apply successive reductions in groundwater production in the manner set out in Rule 8.3 (i) (4) (A)-(C);
 - (B) Maintain the reductions in groundwater production previously applied;
 - (C) Restore groundwater production, in part or in whole, to each permittee on the same pro rata basis by which it was reduced.

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