
***PERMIAN BASIN UNDERGROUND WATER
CONSERVATION DISTRICT***

***excerpt of
RULES***

Proposed Amendments to Rules
(Set for Public Hearing on November 30, 2023)

Proposed additions reflected in [underlined text](#), and proposed deletions reflected in [strike out](#).

*FOR CONVENIENCE OF REVIEW, ONLY THOSE RULES THAT ARE PROPOSED TO BE
AMENDED OR REPEALED OR THAT ARE HELPFUL AND PROVIDE CONTEXT TO
THE PROPOSED AMENDMENTS OR REPEAL HAVE BEEN INCLUDED IN THIS
EXCERPT.*

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PROPOSED AMENDMENT #1

Objective: To create a permit exemption for a temporary use water well used for drilling a permitted groundwater production well permitted by the District (required by SB 1746, 88th Leg., Regular Session).

Proposed Rule: Rule 3B(a) is proposed to be amended as follows:

RULE 3B PERMIT EXCLUSIONS AND EXEMPTIONS

- (a) The District's permit requirements in these rules do not apply to:
- (1) drilling or operating a well used solely for domestic use or for providing water for livestock or poultry if the well is:
 - (A) located or to be located on a tract of land larger than 10 acres; and
 - (B) drilled, completed, or equipped so that it is incapable of producing more than 25,000 gallons of groundwater a day;
 - (2) drilling 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 of Texas provided that the person holding the permit is responsible for drilling and operating the water well and the water well is located on the same lease or field associated with the drilling rig; or
 - (3) drilling a water well authorized under a permit issued by the Railroad Commission of Texas under Chapter 134, Natural Resources Code, or for production from the to the extent the withdrawals are required for mining activities regardless of any subsequent use of the water.
 - (4) drilling a water well for temporary use to supply water to a rig that is actively engaged in drilling a groundwater production well permitted by the District except that this exemption may not exceed 180 (one hundred eighty) calendar days but may be extended until the groundwater production well is complete.
 - (54) a well used for an ASR Project, except as provided under District Rule;
 - (65) monitoring wells;
 - (76) leachate wells; and
 - (87) dewatering wells.

PROPOSED AMENDMENT #2

Objective: To provide notice that a continuance for a permit hearing may not exceed the time limit for the issuance of a final decision under Section 36.4165, Texas Water Code (180 days) pursuant to HB 1971 (88th Leg., Regular Session).

Proposed Rule: Rule 17(d) is proposed to be modified as follows:

RULE 17 PERMIT HEARINGS

- (d) The Board shall conduct an evidentiary hearing on a permit or permit amendment application if a party appears to protest that applications or if the General Manager proposes to deny an application in whole or in part, unless the applicant or other party in a contested hearing requests the District to contract with SOAH to conduct the evidentiary hearing. If no one appears at the initial, preliminary hearing and the General Manager proposes to grant the application, the permit or permit amendment application is considered to be uncontested, and the General Manager may act on the permit application without conducting an evidentiary hearing on the application. Unless one of the parties in a contested hearing requests a continuance and demonstrates good cause for the continuance, the Board may conduct the preliminary and evidentiary hearings on the same date. [A continuance may not exceed the time limit for the issuance of a final decision under Section 36.4165 of the Texas Water Code.](#)

PROPOSED AMENDMENT #3

Objective: To provide notice that the Board is required to consolidate requests for rehearing filed by multiple parties to the contested case hearing pursuant to HB 1971 (88th Leg., Regular Session).

Proposed Rule: Rule 14(c) is proposed to be modified as follows:

RULE 14 REHEARING AND APPEAL

- (c) If the Board grants a request for rehearing, the Board shall, after proper notice, schedule the rehearing not later than the 45th calendar day after the date the request is granted. The failure of the Board to grant or deny a request for rehearing before the 91st calendar day after the date the request is submitted is a denial of the request. [The Board shall consolidate requests for rehearing filed by multiple parties to the contested case hearing but only one rehearing may be considered per matter.](#)

PROPOSED AMENDMENT #4

Objective: HB 1971 (88th Leg., Regular Session) amended Chapter 36 to expedite the process by which a Board must issue a final decision in a contested case hearing. The following proposed amendments update the District's Rules accordingly and expressly reserve the Board's authority to remand portions of an Administrative Law Judge's (ALJ) proposed final decision (PFD) in light of changes made by HB 1971.

Proposed Rule: Rule 17(h) is proposed to be modified as follows:

RULE 17 PERMIT HEARINGS

- (h) HEARINGS CONDUCTED BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS: If timely requested by the applicant or other party to a contested hearing in accordance with this rule, the District shall contract with SOAH to conduct the hearing on the application. All hearings that are required to be held by SOAH shall be conducted as follows:
- (1) The Board shall determine whether the hearing will be held in Travis County or at the District Office or other regular meeting place of the Board, after considering the interests and convenience of the parties, and the expense of a contract with SOAH.
 - (2) The party requesting that the hearing be conducted by SOAH shall pay all costs associated with the contract for the hearing and shall make a deposit with the District in an amount that is sufficient to pay the estimated contract amount before the hearing begins. If the total cost for the contract exceeds the amount deposited by the paying party at the conclusion of the hearing, the party that requested the hearing shall pay the remaining amount due to pay the final price of the contract. If there are unused funds remaining from the deposit at the conclusion of the hearing, the unused funds shall be refunded to the paying party.
 - (3) Upon execution of a contract with SOAH and receipt of the deposit from the appropriate party or parties, the District's Presiding Officer shall refer the application in accordance with the contract. The Presiding Officer's referral shall be in writing and shall include procedures established by the Presiding Officer; a copy of the permit application, all evidence admitted at the preliminary hearing, the District's rules and other relevant policies and precedents, the District Management Plan, and the District's enabling act; and guidance and the District's interpretation regarding its regulations, permitting criteria, and other relevant law to be addressed in a Proposal for Decision and Findings of Fact and Conclusions of Law to be prepared by SOAH. The District or Presiding Officer may not attempt to influence the Finding of Facts or the Administrative Law Judge's application of the law in a contested

case except by proper evidence and legal argument. SOAH may certify one or more questions to the District's Board seeking the District Board's guidance on District precedent or the District Board's interpretation of its regulations or other relevant law, in which case the District's Board shall reply to SOAH in writing.

- (4) A hearing conducted under this rule is governed by SOAH's procedural rules, in Subchapters C, D, and F, Chapter 2001, Texas Government Code; and, to the extent, not inconsistent with these provisions, any procedures established by the Presiding Officer.
- (5) The District's Board shall conduct a hearing within 45 calendar days of receipt of the Proposal for Decision and Findings of Fact and Conclusions of Law issued by SOAH, and shall act on the application at this hearing or no later than 60 calendar days after the date that the Board's final hearing on the application is concluded in a manner consistent with § 2001.058 of the Texas Government Code. At least 10 calendar days prior to this hearing, the Presiding Officer shall provide written notice to the parties of the time and place of the Board's hearing under this subsection by mail and facsimile, for each party with a facsimile number.
- (6) The Board may [remand an issue germane to the application or the proposed findings of fact and conclusions of law](#), 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 Administrative Law Judge, only if the Board determines:
 - (A) that the Administrative Law Judge did not properly apply or interpret applicable law, District rules, written policies, or prior administrative decisions;
 - (B) that a prior administrative decision on which the Administrative Law Judge relied is incorrect or should be changed; or
 - (C) that a technical error in a finding of fact should be changed.
- (7) [A final decision issued by the Board must be in writing and must either adopt the findings of fact and conclusions of law as proposed by the Administrative Law Judge or include revised findings of fact and conclusions of law consistent with District Rule 17\(h\)\(6\).](#)
- (8) [Notwithstanding any other rule, for hearings conducted by the State Office of Administrative Hearings, the Board shall issue a final decision not later than the 180th calendar day after the date of receipt of the final proposal for decision from State Office of Administrative Hearings. The deadline may be extended if all parties agree to the extension.](#)

- (9) Notwithstanding any other rule, if a motion for rehearing is filed and granted by the Board under Section 36.412 of the Texas Water Code, the Board shall make a final decision on the application not later than the 90th calendar day after the date of the decision by the Board that was subject to the motion for rehearing.

- (10) Notwithstanding any other rule, the Board is considered to have adopted the final proposed for decision of the Administrative Law Judge as a final order on the 181st calendar day after the date the Administrative Law Judge issued the final proposed for decision if the Board has not issued a final decision by:
 - (A) adopting the findings of fact and conclusions of law as proposed by the Administrative Law Judge; or
 - (B) issuing revised findings of fact and conclusions of law as set forth in this rule and the Texas Water Code.

- (11) A proposed final decision adopted under District Rule 17(h)(8) is final, immediately appealable, and not subject to a request for rehearing.

PROPOSED AMENDMENT #5

Objective: To create a process for a person with a real property interest in groundwater located within the District to petition the District to modify or adopt a District rule (required by HB 2443, 88th Leg., Regular Session), including the procedure for submission, consideration, and disposition of the petition.

Proposed Rule: The following language is proposed to be added as Rule 18(g):

RULE 18 RULEMAKING HEARINGS

(g) **PETITION TO MODIFY OR ADOPT A DISTRICT RULE:** A person with a real property interest in groundwater located within the District's jurisdictional boundaries may file a petition with the District to request the adoption or modification of a rule.

(1) **Petitions under this rule must be submitted in writing on the Petition to Adopt or Modify Rules Form appended to these rules to the District office and must comply with the following requirements:**

(A) **A separate petition must be filed for each general topic proposed to be addressed by a rule modification or change;**

(B) Each petition must be signed and state the full name of each person signing the petition and the person's contact information, including phone number, physical address, mailing address, and email address, if any;

(C) Each petition must include:

(i) proof that the person submitting the petition has a real property interest in groundwater located within the District's jurisdictional boundaries;

(ii) a written explanation of the proposed rule or rule modification's intended purpose;

(iii) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any; and

(iv) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(2) If a person is unable to comply with any procedures required under this rule, then the person must submit to the District, on the same day that the person submits a petition under this rule, a written explanation as to why compliance with the required procedure(s) is not possible and must submit a written request that the Board waive the specific procedure(s) at issue. Upon receipt of a written explanation and request as described herein, the Board may, at its sole discretion, waive any procedure set forth under this rule. A petition may be denied for failure to comply with the requirements under this rule.

(3) Notice of the Board's consideration of and action on a petition shall be included on a Board agenda with three (3) calendar days' notice compliant with the Texas Open Meetings Act.

(4) Any person desiring to testify on a petition during a hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, and the time period for oral presentations. In addition, the Presiding Officer may limit or exclude question and cumulative, irrelevant, or unduly repetitious presentations.

(5) Within 90 (ninety) calendar days after submission of a petition that complies with this rule, the Board shall consider the petition at a Board meeting and either:

- (A) grant the petition in part or in its entirety and initiate rulemaking proceedings on the subject matter identified in the granted petition in accordance with the rulemaking procedure set forth in these rules; or
 - (B) deny the petition in part or in its entirety and provide an explanation for denial in the minutes of the Board meeting or in a separate written statement to be kept in the District's records.
- (6) Nothing in this rule may be construed to create a private cause of action for a decision to accept or deny a petition filed under this rule.

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