

KINNEY COUNTY GROUNDWATER CONSERVATION DISTRICT

EXCERPT OF RULES

Proposed Amendments to Rules

(Set for Public Hearing on November 8, 2023)

(1) Amend Rule 7.01 F) to read as follows (HB 3059):

F) **Export Fees.** The District may impose an export Fee or surcharge in accordance with Section 36.122(e-2), Water Code. The export fee rate will be established by Board resolution, and the fee will be included in the District's fee schedule. Export fees will not be applied to:

- (1) the export of groundwater from the District for incidental use as defined in Chapter 2 of these Rules;
- (2) the export of groundwater for an agricultural operation that overlaps or is adjacent to the District boundary; or
- (3) the export of groundwater that occurs as a result of the distribution of water within a single aggregate system of a retail public utility that overlaps the District boundary. The District may establish a reasonable fee for the export of groundwater, using one of the following methods:

~~1) a fee negotiated between the District and the export permit holder; or~~

~~2) a fee rate not to exceed the equivalent of the district's tax rate per hundred dollars (\$100) of valuation for each thousand gallons of water transferred out of the district, or ten cents (\$0.10) per thousand gallons of groundwater if the district assesses a tax rate of \$0.10 per hundred dollars of valuation.~~

The District is prohibited from using revenues obtained from export fees to prohibit the transfer of groundwater outside the District, but may use export fees for paying expenses related to any enforcement provisions of Chapter 36, Water Code, or the Rules, or for any other lawful purpose of the District.

All export permits shall contain a condition that requires, as a condition to exporting water to a destination user, that the permit holder's contract with a destination user require the destination user to assume responsibility for payment to the District of all due and owing resource impact fees in the event (a) the permit holder refuses to pay all due and owing water fees, (b) the permit holder is unable, for financial reasons, to pay all due and owing resource impact fees, or (c) the permit holder files for protection under any chapter of the United States Bankruptcy Code.

(2) Amend Rule 3.07 Y) (c) to read as follows (HB 1971):

(e) The Board shall act on a permit or permit amendment application not later than the 60th day after the date the final hearing on the application is concluded. If the Board votes to issue the permit with conditions or denies the permit as an uncontested application, the applicant may contest the Board's action by submitting a formal contested case letter to the District office within ten (10) days after the Board's vote. The application shall go before the Board as a contested case at the next available Board hearing. If the Board refers a contested case to SOAH, then the Board's decision will be rendered no more than 180 days after the date that the District received the final Proposal for Decision from SOAH. The Board is considered to have adopted a final proposal for decision of the administrative law judge as a final order on the 181st day after the date the administrative law judge issued the final proposal for decision if the board has not issued a final decision by:

(1) adopting the findings of fact and conclusions of law as proposed by the administrative law judge; or

(2) issuing revised findings of fact and conclusions of law.

(3) Amend Rule 3.07 Z) to read as follows (HB 1971):

Z) Request for Rehearing or Findings and Conclusions. Requests for rehearing or for findings and conclusions shall be considered in the manner provided below.

1) **Time for Filing.** Not later than twenty (20) days after the date the Board issues its written order or resolution, an Applicant or a party to a contested case hearing may administratively appeal a decision of the Board on an application by requesting written findings and conclusions of the Board.

2) **Board Action.** 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 thirty-five (35) days after the date the Board received the request. The Applicant or a party to the contested case hearing may request a rehearing before the Board not later than twenty (20) days after the date the Board issues the findings and conclusions

3) Place of Filing; Required Information; Copies. A request for rehearing must be filed in the District office. On or before the date of filing of a motion for rehearing, the party filing the motion shall mail or deliver a copy of the motion to all parties with certification of service furnished to the District. The motion shall contain:

a) The name and representative capacity of the Person filing the motion

b) The style and official docket number assigned by the Hearing Examiner;

c) The date of the decision or order; and

a)d) The grounds for the motion, including a concise statement of each allegation of error. and must state the grounds for the request. The person requesting a rehearing must provide copies of the request to each of the other parties to the contested case and hearing.

~~3)4)~~ The motion for rehearing will be scheduled for consideration during a Board meeting. The Board must consolidate requests for rehearing filed by multiple parties to one contested case hearing, but only one rehearing may be held per application. 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 deems necessary. If the Board grants a motion for rehearing, District staff shall schedule the rehearing not later than the 45th day after the date the motion is granted. Thereafter, the Board shall render a decision or order. The Board shall make a final decision on the application not later than the 90th day after the date of the decision by the Board that was subject to the motion for rehearing. The failure of the Board to grant or deny a motion for rehearing before the 91st day after the date the motion is submitted constitutes a denial of the motion by operation of law.

~~4)5)~~ **If Rehearing Granted.** If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than forty-five (45) days after the date the request is granted. Any action by the Board on a request for rehearing shall be made at a Board meeting conducted in accordance with the Open Meetings Act.

(4) Amend Rule 12.06 to read as follows (HB 2443):

RULE 12.06 AMENDING OF RULES

A) The Board may, following notice and hearing, amend or repeal these Rules or adopt new Rules from time to time. A person with a real property interest in groundwater in the district may file a petition with the district to request the adoption of a rule.

B) Petitions must be submitted in writing to the district office and must comply with the following requirements:

1) each rule requested must be submitted by separate petition.

2) each petition must be signed, and state the name and address of each person signing the petition.

3) each petition must include:

(a) a brief description of the petitioner's real property interest in groundwater in the district;

(b) a brief explanation of the proposed rule;

(c) 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;

(d) an allegation of injury or inequity that could result from the failure to adopt the proposed rule; and

(e) signed by at least 50 persons at least 18 years of age with a real property interest in groundwater in the District.

C) The General Manager may reject any petition for failure to comply with the requirements of Subsection (b) of this section and shall provide notice to the petitioner of the reason for the rejection.

D) Within 90 days after submission of a petition that complies with this section, the Board shall either deny the petition, stating its reasons for denial in the minutes of the board meeting or in a letter providing a written explanation to the petitioner, or initiate rulemaking proceedings as provided by Section 36.101, Water Code.

NOTE: SB 1746 passed and added a permit exemption for wells used to supply water to a rig actively engaged in drilling a water well. KCGCD Rule 2.01 A references Section 36.117, Water Code, and therefore now includes the new exemption by reference to the statute.