

# **BS/EACD Enforcement Plan**

**(Adopted by the Board on 6-25-09, 08-12-21, 11-14-24)**

The purpose of this enforcement plan is to establish a structure with procedures and guidelines within which the District General Manager (GM) will make decisions relative to the initiation, pursuit, and resolution of enforcement efforts in response to violations of the Barton Springs - Edwards Aquifer Conservation District (District) Rules and Bylaws. The plan is not binding upon the District Board of Directors when acting as the final decision makers in contested cases. The Board of Directors is only bound by the limitations imposed by the District Rules and Bylaws; State statutes, specifically including Chapter 36 of the Texas Water Code; and the District's enabling legislation, Chapter 8802 Texas Special Districts Local Law Code.

## **1.0 Enforcement Policy**

This plan shall constitute the general policy and procedures of the District in all matters relating to compliance, enforcement, and litigation. This plan does not restrict the District from taking any other actions ordered by the Board of Directors, nor does this plan create any procedural rights for any person inside or outside the District's jurisdiction. It is the policy of the District to file suit to enforce its rules only as a last resort.

## **2.0 Rule References**

The Enforcement Plan conforms to the District Rules and Bylaws currently in effect. It will be modified, if and as necessary, to conform to future rules changes approved by the Board.

## **3.0 General Enforcement Procedures**

District enforcement efforts shall be conducted in accordance with the procedures described below. These procedures will be used during the period before litigation is initiated, unless there is a nearly certain and imminent danger to public health or the environment. **Figure 1** depicts the general enforcement procedures in a process flowchart form. **Figure 2** depicts the enforcement procedures for annual overpumpage in a process flowchart form. The enforcement protocol for violations of drought management rules and for violations of the over pumpage rules, which are consistent with these procedures, are elaborated in the Appendix A and B to this Plan.

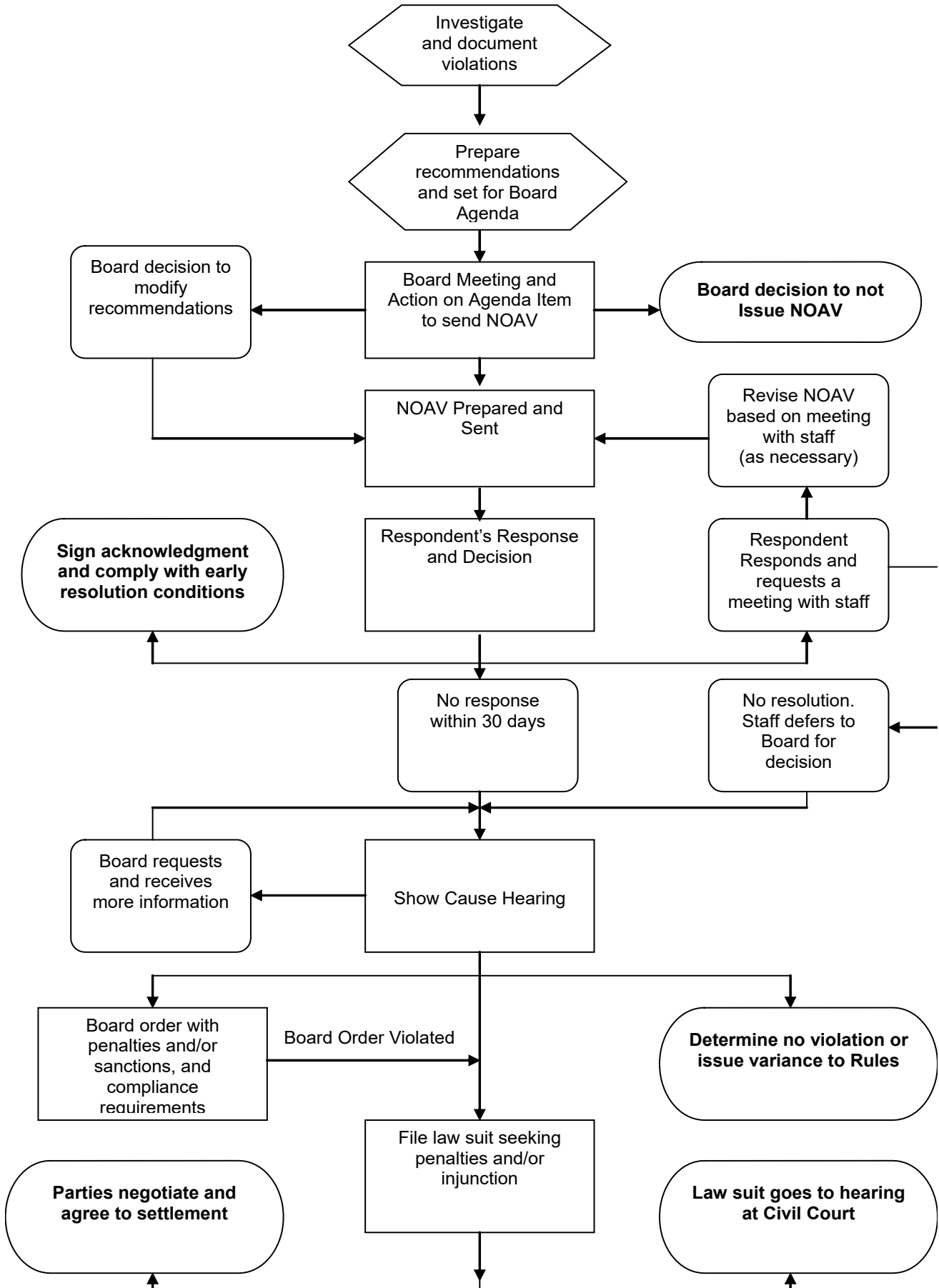
### **3.1 Complaint Received/Violation Discovered**

If a complaint is received or an alleged violation is reported, staff shall obtain sufficient preliminary information to determine if further investigation is necessary:

- Does the District have jurisdiction over the matter?
- Is there enough reliable information to proceed with an investigation?

Once this is determined, staff may proceed with an investigation. Investigations may also be initiated if staff discovers a violation that satisfies these criteria.

**Figure 1 - BS/EACD Enforcement Process**



### **3.1 Staff Pre-Enforcement Communication:**

If a complaint is received or an alleged violation is reported that is within the District's jurisdiction, staff shall contact the permittee or well owner via email, phone call or letter to collect more information about the incident or alleged violation and/or inform them via courtesy notice they could be facing a violation if the matter is not resolved promptly. Staff may proceed with an alert letter or pre-enforcement meetings.

### **3.2 Conduct of Investigation**

If staff determines there is sufficient reliable information, staff may determine to proceed with a full investigation in accordance with District Rule 3-8.3. The investigation shall provide a written report with all of the pertinent findings and information to include:

- Basic Information (i.e. Respondent/Permittees name, contact information, well location if applicable, etc.);
- Investigation Summary;
- Alleged Violations;
- Chronology of Pertinent Events; and
- Pertinent Documentation.

Upon completion of the investigation report, the GM shall determine if sufficient information exists to support Board discussion and possible action related to the issuance of a Notice of Alleged Violation (NOAV).

### **3.3 Board Action**

Should the GM make this determination, the matter will be set on the Board's regular meeting agenda for possible Board action. Staff shall prepare the appropriate materials to be provided with the backup for the next available board meeting to include the investigation report and staff's recommendations. Staff recommendations should include:

- recommended action (i.e. issuance of NOAV);
- indicated penalties for each alleged violation;
- possible enforcement mechanisms other than civil penalties and/or compliance requirements; and
- prospective early resolution conditions.

Penalties recommended by the staff shall be determined in accordance with Section 4 *Violations and Penalty Assessment Guidelines* and include a discussion of the factors used to determine what amount within the specified penalty range was chosen. Early resolution conditions shall be included to provide an option and an incentive for immediate resolution and compliance, before litigation. The GM will generally recommend a reduced penalty associated with an early resolution incentive based on penalty adjustments outlined in Section 4.3.

If the Board determines that the violations are not substantiated and that an NOAV should not be prepared and sent, the case will then either be investigated further or considered closed, at the

Board's direction. Otherwise, staff will prepare an NOAV incorporating the staff recommendations or modify the allegations and conditions in accordance with the instructions provided by the Board.

### **3.4 Notice of Alleged Violation and Notice of Violation**

#### **3.4.1 Notice of Alleged Violation – for General Violations, Drought Management Violations and Enforcement**

Staff will send an NOAV with the Board-approved allegations, penalties, and conditions and a 30-day response time. The NOAV shall also offer an early resolution incentive that shall include an acknowledgment of the violations to be signed by the Respondent, a reduced penalty amount, and a commitment to all necessary compliance requirements. The option for early resolution shall only be available if the acknowledgment is signed and the penalties are paid within the 30-day response time.

Upon receipt of the NOAV, the Respondent has the option to accept the conditions of the early resolution offer and resolve the case or to contact staff and arrange a meeting for the purpose of discussing the alleged violations. If a meeting is scheduled, staff may modify the original NOAV as necessary based on the discussions or may defer to a public hearing for a Board decision on the matter. If no response is received within the response time, the case will default to a public hearing for a Board decision on the matter. Pursuant to Rule 3-8.2, the public hearing (Show Cause Hearing) is a hearing where the Respondent will be cited to appear before the Board to show cause why an enforcement action should not be initiated.

#### **3.4.2 Notice of Violation – for Overpumpage Violations and Enforcement**

At the end of each fiscal year, the District will determine which permittees overpumped their annual authorized permitted volume. After the District reviews monthly production reports to determine when actual production volume exceeds annual authorized volume, the General Manager shall determine whether a Notice of Violation (NOV) is warranted based on the enforcement criteria outlined in Section 4.2 and the overpumpage enforcement calculation (Appendix A, Section 2.5) The NOV documents the permit violation for over pumping, the amount over pumped, and the amount of daily penalties that may be assessed for each day of over pumping as determined using the penalty methodology (Appendix A, Section 2.6).

### **3.5 Show Cause Hearing**

A Show Cause Hearing may be conducted 1) for all cases not resolved after the issuance of an NOAV, and 2) for all cases where no response to the NOAV was received before the expiration of the response timeframe. At the hearing, staff shall provide the investigation report, pertinent documentation, and testimony to the Board to substantiate the alleged violations. A Show Cause Hearing will follow the contested hearing rules, including notice requirements, under Bylaw 4-9. The Respondent will also have an opportunity to participate and present evidence to show cause to the Board why an enforcement action should not be initiated. The enforcement action(s) by the Board that may result from a show-cause hearing include both seeking of civil penalties to be assessed by a court and/or authorizing other enforcement mechanisms for permittees including written warnings, reprimands, suspension, or revocation of a permit.

If a Variance is sought by the Respondent, the Respondent must request the Variance in advance of hearing and also satisfy all of the specified criteria in accordance with Rule 3-1.25 or 3-7.9 to obtain a Variance.

On the basis of evidence presented at the hearing, the Board may: 1) dismiss the NOAV because it determines that no violations have occurred; 2) grant a Variance to the District rules; 3) issue an order that amends, revokes, suspends, or otherwise modifies the permit; or 4) file a lawsuit seeking civil penalties and injunction; or 5) request additional information and reconsider the additional information once received at a subsequent Show Cause Hearing at a later date.

### **3.6 Board Order/Civil Suit**

If the Board determines that an enforcement action should be initiated, a Board Order will be issued that outlines the findings and either initiates a lawsuit or specifies the appropriate penalties, compliance requirements, and/or enforcement mechanisms other than civil penalties resulting from the Show Cause Hearing. In the latter instance, if the Board Order is violated, the District will send a Notice of Intent to Sue to initiate legal proceedings against the Respondent in District Court. The lawsuit will generally seek civil penalties, court costs, attorney's fees, and/or injunctive relief. Once a lawsuit is initiated, the parties may at that point negotiate a settlement. If a settlement is not negotiated, the lawsuit will go forward in civil court.

### **4.0 Violations and Penalty Assessment Guidelines**

The District may pursue enforcement penalties in addition to other District compliance efforts and options. Pursuant to Section 3-8.9 of the District's Rules, the District may assess penalties for each act of violation and for each day of violation, and each day a violation continues may be considered a separate, specific violation. Multiple violations of District Rules may result in the assessment of multiple penalties. In determining the amount of a civil penalty to be assessed within the ranges presented, the District will consider the factors in Section 4.2. Pursuit of a penalty outside of the penalty matrix may be permitted only with the express approval of the Board when circumstances warrant a departure from these Guidelines. Penalties assessed under these Guidelines may be waived or reduced by the District Board, based on factors outlined in Section 4.2.

#### **4.1 Violations by Type and Penalty Ranges**

The violations and associated ranges of penalties in the subsections below, including the tiers of non-compliance with drought provisions shown in Appendix B for targeting enforcement activities.

**4.1.1 General Violations:** Violations of District Rules not covered by other penalty categories, including but not limited to the following specific Rules:

- § 3-1.1: failure to register wells;
- § 3-1.11.A.5,  
3-1.15,: failure to timely report or failure to report accurate pumpage reports and water-quality reports for non-exempt wells;
- § 3-1.11.A.6: failure to provide access to well site during normal business hours or emergencies, or the failure to cooperate fully in any reasonable inspection of the well site or in any well monitoring or sampling by the District;
- § 3-1.16(C): non-payment of fees following past due notice by District;
- § 3-5.1: failure to register abandoned, open or uncovered well; and
- § 3-6.7: failure to prepare, adopt or implement a user conservation plan.

**Penalty Range:** \$50-\$250 per violation per day

**4.1.2 Well Violations:** Violations of District Rules relating to the drilling and operation of wells, including but not limited to the following specific Rules:

**§§ 3-1.2,**

**3-1.4, 3-4.1:** constructing a well, drilling a well, modifying a well, completing a well, changing type of well use, performing dye tracing operations on a well, plugging a well, abandoning a well or altering well size without District authorization or advance notice;

**§ 3-1.3:** pumping from or operation of non-exempt wells without a permit;

**§ 3-2.1:** failure to employ water meter where required;

**§ 3-4.4:** failure to drill or complete a well in accordance with State well construction standards, District Rules, and/or District Well Construction Standards

**§ 3-4.5:** installation of pump and /or equipment on wells not registered with the District; and

**§ 3-5.3:** failure to plug or cap abandoned, open or uncovered wells in accordance with District Rules and Well Construction Standards; and

**§ 3-8.9** failure to pay water production fees.

**Penalty Range:** \$250-\$500 per violation per day

**4.1.3 Falsification/Tampering Violations:** Violations of District Rules relating to the falsification of information provided to the District regarding pumping from and monitoring of the groundwater, including but not limited to the following specific Rules:

**§ 3-1.11.A.7** falsifying information in application for well registration, permits, or well drilling or modification authorization;

**§ 3-2.4:** false reporting or logging of meter reading, intentionally tampering with or disabling a meter, or similar actions to avoid accurate reporting of groundwater use and pumpage; and,

**§ 3-2.5:** tampering with, altering, damaging, or removing a water meter seal or tag.

**Penalty Range:** \$500 – \$1,000 per violation per day

**4.1.4 Waste/Pollution Violations:** Violations of District Rules relating to the sealing of abandoned, open or uncovered wells, the wasteful use of groundwater, and the pollution of the groundwater, including but not limited to the following specific Rules:

**§ 3-3.1,**

**3-3.2, 3-3.5:** producing or using groundwater in such a manner or under such conditions as to constitute waste;

**§ 3-3.3:** causing or allowing the introduction of saline-water pollutants or other deleterious matter from another stratum, from the surface of the ground, or from the operation of a well;

**§ 3-3.4:** causing or allowing pollutants to enter the groundwater reservoir through recharge features, whether natural or manmade; and,

**§ 3-5:** failure to properly plug or cap an abandoned, open, or uncovered well allowing pollutants to enter the groundwater reservoir through an improperly sealed or capped well.

**Penalty Range:** \$500 - \$1,000 per violation per day

**4.1.5 Overpumpage Violations:**

Violations of District Rules relating to exceeding the annual production volume amounts, specific to Rule:

**§ 3-8.5, 3-8.8:** exceeds the volume amount authorized to be withdrawn in accordance with the Production Permit issued by the District based on permittee's meter readings.

Penalty Range: \$50 - \$1,000 per violation per day as provided in table below

**Table 1**

<b>TIER 1</b>		Daily Penalties for percent pumped in excess of permitted volume					
		<10%	≥10% and <25%	≥25% and <50%	≥50% and <100%	≥100% and <150%	≥150%
Annual Permitted Amount in million gallons per year (mgy)	< 4 mgy	\$50	\$55	\$60	\$65	\$70	\$80
	≥4 and <8 mgy	\$55	\$60	\$65	\$70	\$75	\$90
	≥8 and <12 mgy	\$60	\$65	\$70	\$75	\$80	\$100

<b>TIER 2</b>		Daily Penalties for percent pumped in excess of permitted volume				
		<10%	≥10% and <25%	≥25% and <50%	≥50% and <100%	≥100%
Annual Permitted Amount in million gallons per year (mgy)	≥12 and <25 mgy	\$100	\$125	\$150	\$195	\$260
	≥25 and <50 mgy	\$105	\$130	\$155	\$200	\$265
	≥50 and <100 mgy	\$110	\$135	\$160	\$205	\$270
	≥100 and <120 mgy	\$115	\$140	\$165	\$210	\$275

<b>TIER 3</b>		Daily Penalties for percent pumped in excess of permitted volume			
		<10%	≥10% and <25%	≥25% and <50%	≥50%
Annual Permitted Amount	≥120 and <240 mgy	\$200	\$400	\$600	\$900
	≥240 and <360 mgy	\$250	\$450	\$650	\$950
	≥360 mgy	\$300	\$500	\$700	\$1,000

**4.1.6 Drought Violations:** Penalties for the violations of District Rules **§§3-1.11, 3-1.15, 3-2.4, 3-3, and 3-8.9** will be assessed in accordance with the ranges specified in Sections 4.1.1, 4.1.3, and 4.1.4 during Alarm Stage Drought and at twice that amount during Critical Stage and Exceptional Stage Drought. Violations of District Rules relating to the implementation of user drought contingency measures and other drought related violations, including but not limited to the following specific rules shall be assessed penalties as follows:

**§3-7.5:** Failure to implement measures of the user drought contingency plan

**Penalty Range:** \$250 - \$500 per violation per day and at twice the amount during Critical Stage Drought

**§3-7.6, 3-7.7:** Failure to reduce pumpage during District declared drought in accordance with monthly pumpage limits of the UDCP

**Penalty Range:** Penalties for violations of 3-7.6 shall be determined on a monthly basis, with each day of the month constituting a new violation. Daily penalties shall be assessed according to the following penalty matrices:

<b>Daily Penalties During Alarm Stage Drought</b> Rule 3-7.6.B(1)			
<b>Permitted Pumpage</b>	<b>Overpumpage Level</b>		
	<b>Level A</b>	<b>Level B</b>	<b>Level C</b>
<b>Tier 1</b>	\$50-\$100	\$100-\$200	\$200-\$400
<b>Tier 2</b>	\$200-\$400	\$400-\$800	\$800-\$1,600
<b>Tier 3</b>	\$800-\$1,600	\$1,600-\$3,200	\$3,200-\$5,000

<b>Daily Penalties During Critical Stage and Exceptional Drought</b> Rule 3-7.6.B(2)			
<b>Permitted Pumpage</b>	<b>Overpumpage Levels</b>		
	<b>Level A</b>	<b>Level B</b>	<b>Level C</b>
<b>Tier 1</b>	\$100-\$200	\$200-\$400	\$400-\$800
<b>Tier 2</b>	\$400-\$800	\$800-\$1,600	\$1,600-\$3,200
<b>Tier 3</b>	\$1,600-\$3,200	\$3,200-\$6,400	\$6,400-\$10,000

**Where:**

<b>Permitted Pumpage (gallons/year)</b>	
Tier 1:	< 12,000,000
Tier 2:	≥ 12,000,000 and < 120,000,000
Tier 3:	≥ 120,000,000
<b>%Pumpage over Monthly Limits</b>	
Level A:	≥5% < 25% (Tiers 1 and 2), and ≥2.5% < 25% (Tier 3)
Level B:	≥ 25% and 100%
Level C:	≥ 100%

#### 4.2 Penalty Assessment and Enforcement Criteria

In determining the appropriate level of enforcement and whether a violation is warranted, the District will consider the factors below. Furthermore, in determining the amount of a civil penalty to be assessed within the ranges presented, the District will consider the following factors:



1. The severity, seriousness, or magnitude of the violation;
2. Whether the violation was willful, intentional, or could have been reasonably anticipated and avoided (i.e., culpability);
3. Whether the violator adequately responded and communicated with the District and acted in good faith to avoid or mitigate the violation, or to correct the violation after it became apparent and compensate those affected;
4. Whether the violation was during a District declared drought;
5. Whether similar violations have been committed in the past (i.e., compliance history);
6. Any other matter that justice may require.

The Board may also choose to assess enforcement mechanisms other than civil penalties including permit suspension or revocation, based on the consideration of these factors.

### 4.3 Penalty Adjustments

Penalties assessed may be waived or reduced by the District Board, following assessment of the following factors:

- Compliance History (maximum 30%)
  - No compliance issues (of a similar nature) or violations (NOAV/NOV) that occurred in the last 5 years (Reasonable compliance record) – reduce penalty by up to 10%
  - No compliance issues (of a similar nature) or violations (NOAV/NOV) that occurred in the last 6-10 years (Satisfactory compliance record) – reduce penalty by up to 20%
  - No compliance issues (of a similar nature) or violations (NOAV/NOV) that occurred in the last 11 or more years (Above-satisfactory compliance record) – reduce penalty by up to 30%
  -
- Culpability (maximum 30%)
  - If the permittee could not have reasonably anticipated or avoided the violation – reduce penalty by up to 30%
- Good Faith Effort to Comply (maximum 40%)
  - Corrective actions are completed immediately after receiving courtesy notices - reduce penalty by up to 40%
  - Corrective actions are completed immediately after pre-enforcement meeting and before an NOAV/NOV is issued – reduce penalty by up to 30%
  - Corrective actions are completed after issuance of the NOAV/NOV but before a Board Agreed Order is issued – reduce penalty by up to 10%

and/or

- Voluntary Resolution Conditions or Projects Approved by Board (reduce by up to 20-100%) including but not limited to:
  - Voluntary on-site compliance assessment or water audit;
  - Voluntary supplemental environmental projects;
  - Voluntary conservation projects; and/or
  - Any other resolution conditions related to the specific violation.

The penalty reduction will depend on the quality and extent of the conditions or project – reduce by 20% to 100%

Calculation – Multiply the original penalty amount by the total percentage of penalty adjustments.

Ex. Permittee 1 had an original penalty of \$ 5,000 but did not have any violations in the last 10 years (20%) and completed corrective actions as soon as receiving a courtesy notice (40%).  
 $\$5,000 \times 60\% = \$2000$

## **Appendix A**

### **Overpumpage of Annual Production Permit Production and Enforcement Process**

#### **1.0 Enforcement Strategy**

The District's approach to a permittee's annual production permit exceedance is described here and is consistent with District Rule 3-8.5 and 3-8.8. This procedure describes the appropriate implementation mechanisms, permittee notification efforts, and permittee performance monitoring and assessment requirements. The compliance and enforcement efforts specified below, elaborate on District Rule 3-8.5 and 3-8.8 with a focus on assessment of permittee performance on a monthly and annual basis which is used to identify the level of non-compliance.

#### **2.0 Implementation Mechanisms and Enforcement Procedures**

The protocols and procedures for notifications relating to permittee overpumpage are depicted in Figure 2. *Enforcement Procedures and Process for Annual Overpumpage Violations.*

##### **2.1 Meter Readings/Unusual High Monthly Production**

Meter readings shall be submitted monthly to the District and recorded by the Administration team into the pumpage database for review. Once reviewed, any unusual high monthly usage will prompt a courtesy email and a courtesy phone call from the staff.

##### **2.2 Alert Notice for 80% of Permit Usage**

- Once a permittee's allotted production permit meets or exceeds 80% of the allotted production amount staff shall send the permittee a written notice.
  - This notice will serve as notification to the Permittee that the Permittee has reached 80% of the annual production amount and that the user should be cautious of future pumping that may cause them to exceed their annual authorized production volume.
  - This letter will be the first step of documentation for potential enforcement actions.
  
- A notice does not have to be sent to a permittee if the permittee does not show a trend of potentially exceeding the total annual authorized production volume by the end of the fiscal year.

##### **2.3 Notice of Offence for 100% of Permit Usage /Notice of Offense**

- Notice of Offense letters will only be issued and provided to Permittees if the staff has documented that the permittee has exceeded annual authorized production volume before the end of the fiscal year.

- If the staff determines that a permittee has met or exceeded its total annual production amount prior the end of the fiscal year, the Administration team will notify the Regulatory Compliance team.
- The staff will then send a Notice of Offense letter via certified mail and email to the Permittee.
  - This notice will serve as notification to the permittee that they have met or exceeded their total annual production amount and that the excess production amounts may result in an assessment of overpumpage penalties.
  - This notice will also make it the responsibility of the permittee to correspond with staff to discuss reasons as to why over pumping is occurring and how to monitor the over pumping during remaining fiscal year.

#### 2.4 Determination of Overpumpage Violation by General Manager

- Once the fiscal year has ended, a determination of an occurrence of a violation will be made by the General Manager and will be based on an evaluation of the enforcement assessment criteria in Section 4.2 of this plan. In determining the appropriate level of enforcement and whether or not to issue a NOV, the General Manager will consider the criteria outlined in Section 2.5.

#### 2.5 Criteria for Determining a NOV and Enforcement

In determining an enforcement action, the General Manager will sum the total enforcement points and any permittee with an enforcement calculation total over 11 points will result in the General Manager issuing a NOV and pursuing enforcement. Additionally, the matter will be referred to the Board for action and assessment of penalties.

Enforcement Points	
10	<b>Magnitude of violation:</b> Permittee overpumpage greater than 15%
10	<b>Compliance history:</b> permittee had an overpumpage compliance issue or violation in previous 5 years (2 points for each violation in previous 5 years)
5	<b>Good faith effort:</b> Permittee did not correct and overpumped for more than 90 days and/or did not timely respond to District request
1	<b>Permittee Communication:</b> Permittee did not notify the District of an issue
1	<b>Drought:</b> overpumpage occurred during a District declared drought

#### 2.6 Penalty Methodology:

- Permittees that are issued an NOV will be assessed penalties based on permitted volume and percentage over pumped in accordance with Section 4.1.5. and the matter will be sent to the

Board for action on the penalty amount. These penalties will be assessed in addition to the excess base fee as described in the fee schedule. Permittees that are not issued an NOV will only be assessed excess base fee in accordance with the fee schedule.

- In determining penalty amounts, the District will review monthly production reports to determine when actual production volume exceeds authorized volume. After the District determines that a permittee's actual production for any month, except August, exceeds annual permitted volumes, each day of additional production after the month that permit volume is exceeded is considered overpumpage and a separate violation subject to the penalties in the table 1 and enforcement mechanisms available to the District.

For the month of August, if the permittee exceeds the authorized annual permitted amount to be withdrawn under the Production Permit, based on the August meter reading, the permittee's production for the month of August will be divided by the number of days in August to find a daily average equivalent production volume. The daily equivalent production volume will then be added incrementally to each day in August in order to determine which day in August that production exceeded the authorized permitted volume.

- Once a permittee is found to have exceeded the annual production amount, and be in violation, the permittee will issued an NOV and be notified by certified mail and email of the following:
  - The District has documented a permit violation for over pumping;
  - The amount over pumped; and
  - The amount of daily penalties that may be assessed for each day of over pumping as determined using the tables and methodology above.
- Should the GM issue an NOV, the matter will be set on the Board's regular meeting agenda for possible Board action. Staff shall prepare the appropriate materials to be provided with the backup for the board meeting to include the relevant information and GM's recommendations on any penalty adjustments and/or conditions.

Penalties recommended by the GM shall be determined in accordance with Section 4 *Violations and Penalty Assessment Guidelines*. The GM could recommend a reduced penalty associated based on penalty adjustments outlined in Section 4.3.

- The permittee shall then be sent a 30-day notice to pay the penalties. If the permittee is non-responsive or refuses to pay the GM shall exceed with a show cause hearing as outlined in Section 3.5.

## **2.7 Site Inspection**

If the permittee does not contact the District within the time specified in the District's written request, a site inspection may be required. A site inspection may be required depending on the amount of over pumpage or if the permittee requests a site inspection. Site Inspections are authorized by District personnel under rule 3-8.3.

**Example 1.** Permittee (A) has an Annual Production amount of 2,000,000 gallons per year. According to the monthly meter reading submitted on May 1<sup>st</sup>(for April Pumpage) the permittee exceeds its annual production amount during the month of April. From May 1<sup>st</sup> through August 31<sup>st</sup> there are a total of 123 days. By Sep 1<sup>st</sup> the permittee accumulated a total annual overpumpage amount of 1,093,000 gallons over its permitted amount of 2,000,000 gallons. The percentage of annual overpumpage exceedance is 54.65%. Permittee (A) would be assessed penalties in Tier 1, at a penalty rate of \$120/day. Penalty amount = \$14,760. Excess Base Fee = \$185.81.

**Example 2.** Permittee (F) has an Annual Production amount of 12,875,000 gallons per year. According to the monthly meter reading submitted on Aug 1<sup>st</sup> (for July pumpage) the permittee had accumulated 11,968,000 gallons produced through July 31<sup>st</sup>. According to the monthly meter reading submitted on Sep 1<sup>st</sup>, the permittee used 1,014,000 during the month of August, exceeding its annual production amount by 107,000 for a total annual pumpage of 12,982,000 gallons. In the month of August there are a total of 31 days.

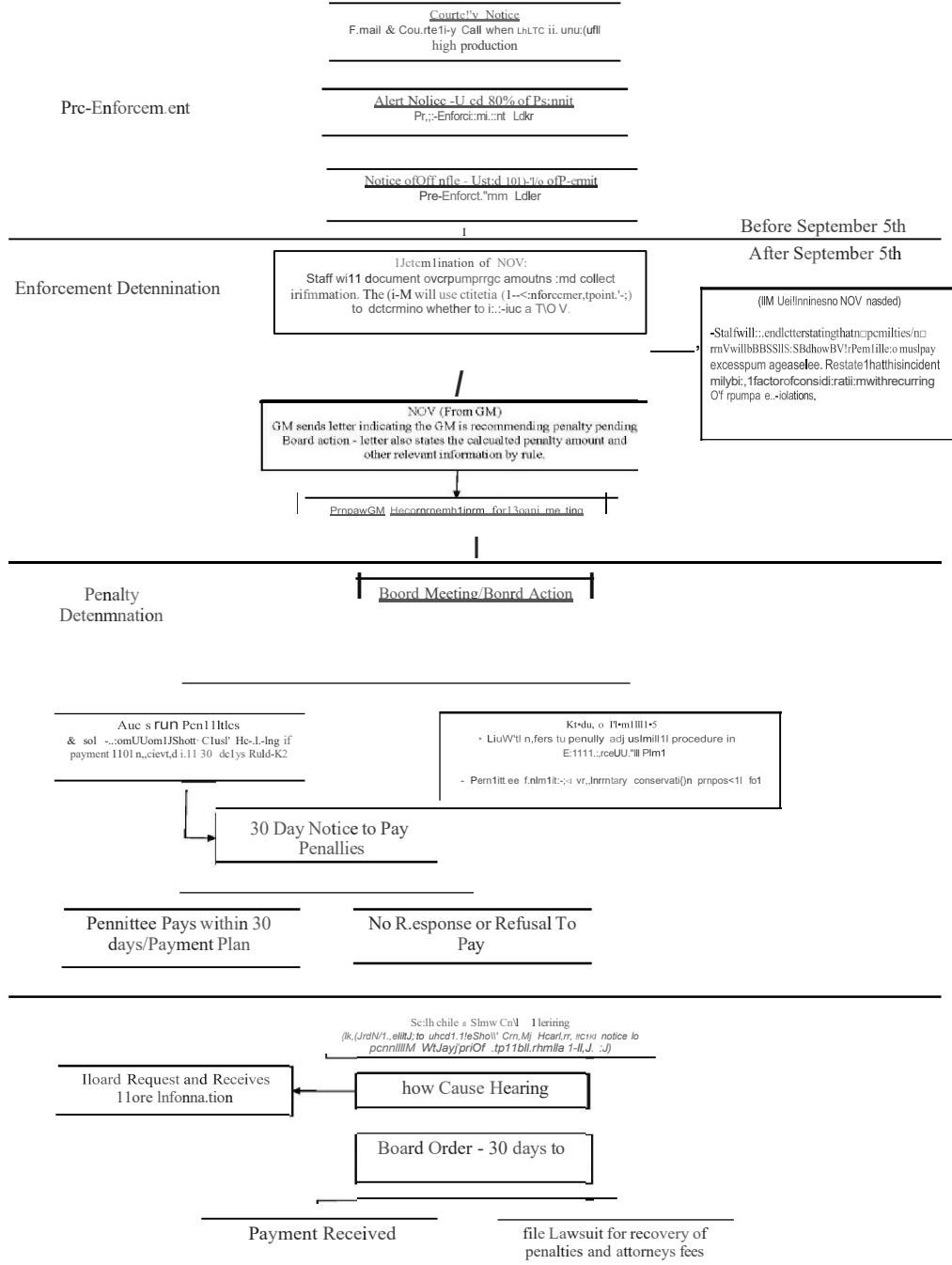
- 1,014,000 gallons produced in August ÷ 31days = 32,709 daily equivalent
  - The Aug 1<sup>st</sup> beginning production amount is 11,968,000 gals
  - Add the daily equivalent amount to each day of August production until the amount exceeds 12,875,000 gallons\*
- \*Internal staff calculator

The percentage of annual overpumpage exceedance is 0.83%. Permittee (F) would be assessed penalties in Tier 2, at a penalty rate of \$100/day. Penalty amount = \$300.00 Excess Base Fee = \$18.19

Example - Scenarios for Calculation of Overpumpage Penalties									
Permittee	Annual Permitted Volume	Overpumpage	Over %	Month Exceeded	Penalties begin on	Number Days in Penalty	Tier	Daily Penalty	Penalty Amount
A	2,000,000	1,093,000	54.65%	April	May 1	123	1	\$120.00	\$14,760.00
B	26,000,000	7,500,000	28.85%	January	Feb 1	212	2	\$155.00	\$32,860.00
C	180,000	95,710	53.17%	June	July 1	62	1	\$120.00	\$7,440.00
D	250,000,000	15,000,000	6.00%	July	Aug 1	31	3	\$250.00	\$7,750.00
E	100,000	59,700	59.70%	June	July 1	62	1	\$120.00	\$7,440.00
F	12,875,000	107,000	0.83%	August	*see calculation	3	2	\$100.00	\$300.00

Figure 2

### Enforcement Procedure & Process for Annual Over Pumpage Violations



## **Appendix B**

### **Drought Management and Enforcement Process**

#### **1.0 Drought Enforcement Strategy**

The District's approach to drought management described here flows from and is consistent with District Rules 3-7 and 3-8. It describes the appropriate implementation mechanisms, public awareness efforts, aquifer and drought monitoring, and permittee performance monitoring and assessment to be used during drought. Compliance and enforcement efforts specified below elaborate District Rule 3-8 and 3-7.10 and center on assessment of permittee performance on a monthly basis to identify the various levels of non-compliance with mandatory pumpage reductions. This monthly assessment will focus the District's early efforts on permittees with the more egregious levels of over-pumpage, on the basis of both the percentage of pumpage over their monthly pumpage limits and the volumes of their permitted pumpage.

#### **2.0 Implementation Mechanisms**

##### **2.1 Drought Declaration Notices**

The District will declare the commencement of drought by sending written notice to all District permittees when specified aquifer conditions are met in accordance with the approved District drought trigger methodology and after the Board has approved the declaration. The staff will assess the continuation and stage of drought continuously and notify all permittees when a more or less severe drought stage is declared and when the drought no longer exists.

##### **2.2 Public Awareness**

Once drought is officially declared by the District, the District may implement measures to provide public awareness including but not limited to:

- Web site updates on aquifer conditions and permittee pumpage performance
- Press releases and guest columns in the local newspapers
- Recurring articles and columns in District newsletter
- Drought and aquifer condition updates provided via e-newsletter to permittees
- Outreach and education by District Communications team.

##### **2.3 Monthly Compliance Evaluations**

Monthly evaluations of permittee performance and compliance with monthly drought limits will begin on the 5<sup>th</sup> of each month.

- Staff will notify permittees who have failed to report meter readings by the monthly reporting deadline that the District will obtain the meter readings at a fee per the Fee Schedule to the permittee. District staff will follow up with meter readings for all delinquent permittees to ensure necessary readings are available to assess drought compliance.
- Should a more or less severe drought stage be declared in the middle of a particular month, the District will evaluate and measure compliance with the less stringent drought stage



requirements for that month that the status change occurred. Compliance with the measures of the newly declared stage will be required in the following month.

- Staff will generate a list of non-compliant permittees based on permitted volume and percentage over-pumped. Non-compliance will be categorized in tiers in accordance with the following criteria:

<b>Permitted Pumpage (gallons/year)</b>	
Tier 1:	< 12,000,000
Tier 2:	≥ 12,000,000 and < 120,000,000
Tier 3:	≥ 120,000,000
<b>%Pumpage over Monthly Limits</b>	
Level A:	≥5% < 25% (Tiers 1 and 2), and ≥2.5% < 25% (Tier 3)
Level B:	≥ 25% and 100%
Level C:	≥ 100%

- Staff will send notices of overpumpage to all non-compliant permittees to notify them of their overpumpage and to inform them of their level of non-compliance. This notice will also include the amount of a drought management fee if a fee is assessed
- Staff will identify and red flag suspect permittee meter readings, on the basis of previous readings, and conduct follow-up meter reading verifications.
- Staff will monitor pumping trends of those permittees that repeatedly over-pump monthly limits while in Drought and take action based on Section 4.0 Drought Enforcement Procedures outlined below.
- Staff will evaluate compliance trends of all other permittees to identify efforts to comply or escalating overpumpage.
- Staff will report and update monthly, all non-performing permittees after the third consecutive enforceable month of District declared drought, by posting a list of those permittees not meeting their monthly pumpage limits on the District website and at the District office for public review.

#### **2.4 Drought Management Regulatory Fee for Non-compliance**

In accordance with District Rule 3-7.8, the District will impose a Drought Management Fee (DMF) to individual who exceed their monthly drought allocations (excluding all permittees under general permits) starting after one full month of District declared Alarm or Critical Stage Drought. The appropriate fees are determined based on the outside diameter of the production zone casing of the permitted well or an average of the casing size of all wells in an aggregate system. The fees are outlined in the Fee Schedule.

#### **2.5 Determination of Occurrence of Non-compliance**

Determinations of an occurrence of substantial non-compliance will be made based on 1) repeated events of non-compliance, 2) specific causes of overpumpage, and 3) the permittee's response to the reported overpumpage. In determining an occurrence, the District will take into

consideration the permittee's demonstrated efforts to achieve pumpage reductions and any documented trends in prior water use reductions.

### **3.0 Timelines and Phasing of Determinations**

**Initial Month of a Drought Stage:** No enforcement will be initiated for non-compliance in the initial month of Alarm Stage Drought if the timing of the declaration does not allow for a full month (after notice has been provided to the permittees) to begin assessing compliance with monthly limits. Overpumpage notices will be sent to all permittees who over-pumped their monthly pumpage limits to inform them of the on-going pumpage assessment being conducted by the District during drought and to notify them of the District's authority to enforce against non-compliance. For the initial month of Critical Stage Drought, the permittees will only be subject to the conditions of the Alarm Stage Drought until such time that a full month is available to assess compliance.

Enforcement efforts will begin after one-full month of District declared drought. All tiers will be eligible for monthly assessment of overpumpage violations of any level at this time. Enforcement efforts for Tiers 3, 2, and 1 permitted for over 2,000,000 gallons annually will be reserved for only those occurrences more recurrent in nature. It will take two monthly occurrences of noncompliance within a six-month period to trigger an enforcement action for these permittees. Enforcement efforts for Tier 1 permittees permitted for 2,000,000 gallons or less will generally be reserved only for non-compliance that warrants enforcement as determined by the Board.

### **4.0 Drought Enforcement Procedures**

Levels of non-compliance will be assessed with actions taken in accordance with the Districts Enforcement Plan and Procedures and the following enforcement protocol for those permittees with consistent or increasing levels of non-compliance\*.

**1<sup>st</sup> Occurrence:** For the initial occurrence of non-compliance, a meeting or teleconference will be arranged with the permittee representative and the District GM and staff to discuss the particular causes of the non-compliance. The discussion will focus on compliance with the measures of the UDCP and identifying causes of excessive water use/loss or other possible relevant causes for overpumpage. Specific commitments and timelines to achieve pumpage reductions will be requested and documented.

**2<sup>nd</sup> Occurrence:** For those permittees with a first occurrence of non-compliance and recurrent months of reported non-compliance, staff may refer the case to the Board with a recommendation to issue a NOAV. Further enforcement efforts will proceed in accordance with the District *Enforcement Procedures* and the *Penalty Assessment Guidelines*.

For those permittees with a first violation who continue to have recurrent months of reported non-compliance but with some improvement, a meeting will be arranged with the permittee representatives, GM and staff, and the appropriate District Director at the District office. Discussion will focus on the implementation of the documented measures, the success or failure of those specific measures, and the commitments to achieve pumpage reductions resulting from the first violation discussions. More detailed analysis of causes for continued non-compliance will be conducted to result in more specific and binding measures for committed pumpage reductions by the permittee.

### **3<sup>rd</sup> Occurrence:**

For permittees with a second occurrence who continue to have multiple months of reported non-compliance, the GM may refer the case to the Board with a recommendation to issue an NOAV. Further enforcement efforts will proceed in accordance with the District *Enforcement Procedures* and the *Penalty Assessment Guidelines*.

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\* If a permittee is non-responsive to any of the bulleted elements of these enforcement procedures, the GM may recommend to Board that either an NOAV be issued, a Show Cause Hearing be conducted, or an enforcement action be pursued on the violation immediately, whichever is more likely to elicit a constructive response.