

Rules and Regulations of West Central Texas Municipal Water District for Agricultural and Livestock Irrigation Permits

Board Approved 11/09/2016

Purpose / Overview

The purpose of these Rules and Regulations (“Rules”) is to provide guidance and establish procedures for the administration by the West Central Texas Municipal Water District (District) of minor diversions of water from Hubbard Creek Reservoir (HCR) limited to Agricultural Usage and Irrigation Usage only, as such uses are defined in these Rules; and, incident thereto, to prevent waste of HCR water, protect the quality of water in HCR, and promote sound water conservation practices.

Definitions

Note: Words used in these Regulations that are not defined in this Section shall have their ordinarily accepted meaning. For the purposes of these Rules, the following words and phrases are defined:

Acre-foot of water: A quantity of water equal to 325, 851 US gallons; that is, the quantity of water that will cover one acre of land one foot in depth.

Agricultural Usage: The use of non-potable water for watering of lands in excess of ½ acre in size for the purpose of:

- (A) cultivating the soil to produce crops for human food, animal feed, or planting seed or for the production of fibers;
- (B) the practice of floriculture, viticulture, silviculture, and horticulture, including the cultivation of plants in containers or nonsoil media, by a nursery grower;
- (C) raising, feeding, or keeping animals for breeding purposes or for the production of food or fiber, leather, pelts, or other tangible products having a commercial value;
- (D) raising or keeping equine animals;
- (E) wildlife management;
- (F) planting and maintaining cover crops or turfs, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in any governmental program or normal crop or livestock rotation procedure; or
- (G) aquaculture, as defined by Section 134.001, Texas Agriculture Code;

and used primarily for other than household, residential or other domestic purposes.

Applicant: A person, association of persons, business, or other entity who has submitted an application for an Irrigation Permit; and, incident thereto, has provided the District with all of the information required under these Rules.

Customer: A person, association of persons, business, or other entity to whom an Irrigation Permit is issued, or to whom a Permit was previously issued and is still in effect.

Domestic Usage: The usage of non-potable water from HCR for irrigation of lawns, orchards and gardens, and other similar, but primarily household and domestic, purposes not related to human consumption or for commercial purposes, on lots or tracts not greater than ½ acre in size and, generally, on what property where the permit holder resides. A WCTMWD Domestic Use Term Permit is available for these purposes.

Field Office Coordinator: Coordinator of Hubbard Creek Reservoir Lake Office.

Field Representative (Field Rep): A WCTMWD employee, staff member, or other authorized agent.

HCR Conservation Level: When the water surface elevation, and the resulting Shoreline, of HCR are at 1183 ft. above mean sea level (msl).

HCR Lake Office: District's HCR Field Office located on the northeast end of HCR on Water District Road 277 just southeast of the HCR dam. See address and phone in Contact Information hereafter.

Irrigation Permit (IP): A permit issued by the District allowing a Customer to pump water from HCR for Agricultural Usage, Irrigation Usage or Livestock Usage. An IP shall expire on December 31 of each year, subject to renewal at the District's discretion.

HCR Lakebed: All of the land lying below the waters of HCR when the water surface elevation of HCR is at 1183 ft. msl, all of which is owned by the District.

Irrigation Usage: The use of HCR water for Agricultural and Livestock purposes on lands in excess of ½ acre in size.

Irrigation Site (IP Site): The Waterfront Property (and any adjoining land of the Customer) described in a current, valid IP where the HCR Lakebed adjoins such Property. The IP Site will generally be the location of a Customer's pump, intake lines, surface lines, valves, electrical components, and other pumping equipment.

Livestock Usage: The usage of water in galvanized tanks, troughs or other containers for the watering of livestock and other domesticated animals (including, but not limited to, cows, horses, pigs, goats, etc.), exotic animals, and/or game animals.

Non-potable Water: Water that is not fit or suitable for human consumption.

Overage Amount: Water from HCR taken or used by a Customer in excess of the PAM (hereinafter defined) amount authorized by or in the Customer's IP.

Permitted Annual Maximum (PAM): A quantity equal to one (1) acre foot of water times the number of acres (or part thereof) described in a Customer's permit application and IP.

Pumping Equipment: Pumps, motors, intakes, valves, lines, support structures, connections, electrical components, and any other similar equipment used for withdrawal, transportation and delivery of water from HCR by a Customer.

Shoreline: The line along which the water surface elevation of HCR intersects the HCR Lakebed (or, at Conservation Level, adjoins Customer's Waterfront Property) at any given time; and which will move as the water surface elevation of HCR rises and falls.

TCEQ: Texas Commission on Environmental Quality, or its successor agency.

Water Conservation: Water conservation includes, but is not limited to, those practices, techniques and technologies that limit, restrict or reduce the withdrawal, consumption or use of water; reduce the loss or waste of water; improve efficiency in the use of water; or increase/enhance the recycling and reuse of water.

Watercraft: Any craft, vessel or boat used (or capable of being used) as a means of transportation on, over, through or under water, including vessels such as houseboats and other vessels not used primarily for transportation.

Waterfront Property: Property that adjoins the Shoreline of HCR when the water surface elevation of HCR is at 1,183 feet msl.

West Central Texas Municipal Water District (District): Owner of, and managing authority for, HCR.

Property Ownership and Access to HCR

An Applicant for an IP must own or lease the Waterfront Property at the location of the proposed IP Site; and, if requested, an Applicant shall provide District, at the time of permit application, satisfactory documentation establishing Applicant's ownership of, or leasehold interest in, the IP Site.

If the proposed Irrigation Site is not contiguous to the HCR Lakebed, then Applicant shall be responsible for obtaining an easement or other legal right of access to the HCR Lakebed; and, if requested, shall provide the District with a copy of each easement or other agreement providing Applicant access to the IP Site.

If irrigation will be carried out by Applicant's tenant, lessee, employee or agent, then the Application shall disclose the name of such person; and Applicant shall provide District with a written and signed authorization stating such and provide the name, address, and phone number

of such person and his/her relationship to the Applicant. A Customer shall be responsible for timely notifying the District of any change in the status of the Irrigation Site, such as a sale of the property; any change in the person(s) authorized or designated to carry out irrigation activities, etc.. An IP is personal to each Customer and may not be transferred or assigned by a Customer without the prior written consent of District.

IP Term, Water Quantity and Annual Fees for Agricultural Usage

An IP for Agricultural or Livestock Usage shall entitle a Customer to withdraw one (1) acre-foot of water (325,851 gallons) per year from HCR for each acre (or part of an acre) that comprises the Customer's Irrigation Site (Customer's PAM).

The District's annual fee or charge for an IP ("Annual Fee") shall be \$75 per acre times the number of acres (or part of an acre) covered by IP, plus a \$_____ annual administration fee ("Admin Fee"). Payment of the Annual Fee and Admin Fee is due at the time the IP is first issued, and prior to (or upon) each renewal of the IP.

All amounts due by a Customer under these Rules are payable at the District's office in the City of Abilene, Taylor County, Texas. If not made in advance, a payment is due within 20 days following the date of District's invoice to Customer for the same.

No refunds will be issued, or carryover credit given, if a Customer does not use all of Customer's PAM amount by the end of the term of Customer's IP.

An IP may be issued at any time during the year; however, every IP will terminate on (or as of) December 31 next following the commencement date of the IP. The full Annual Fee will be charged for an IP, regardless of when during the year it is issued. No fees or other charges will be prorated.

An IP is not transferable or assignable if property ownership, or leasehold changes occur, during the IP term. The District reserves the right not to issue an IP to the new landowner, lessee or tenant, should the former landowner, lessor or tenant be found in violation of any of these Rules and/or under any other conditions/requirements imposed by the Customer's IP, including any outstanding unpaid fees or charges.

Renewal/cancellation notices will be mailed by District to all existing Customers at least 30 days prior to December 31 of each year.

Water Usage

All HCR water under an IP shall be used solely for Agricultural, Livestock or Irrigation purposes, as defined herein. HCR water may not be delivered to, or used at, any location other than the permitted Irrigation Site. HCR water may not be resold by a Customer, or be diverted or

transported from the Irrigation Site, including while being transported to the Irrigation Site, whether by pipeline, truck or other means.

Only one person, either the Customer, Customer's lessee or tenant, or another person designated in writing by Customer, shall be authorized to take water from HCR under such Customer's IP.

Suspension of Pumping

The District will suspend pumping from HCR for all Customers if (and so long as) the water surface elevation of HCR is at or below 1165 msl. Any suspension will be communicated in writing to all Customers by the District, and also posted on the District's website, 30 days before the effective date of the suspension. No refunds shall be made, or credit given, in the event of any pumping suspension.

Overage and Penalty Fees

If District determines that a Customer has withdrawn or used more HCR water than is authorized under the Customer's IP, then Customer will be charged an overage fee of \$150 per each acre-foot (or portion thereof) withdrawn or used in excess of such Customer's PAM. The District shall invoice a Customer for the Customer's overage charge following expiration of the current term of Customer's IP; and payment is due within 30 days after receipt of District's invoice.

At its sole discretion, including (without limitation) if a Customer exceeds the Customer's PAM for two (2) consecutive years, or commits multiple violations of the Rules, the District may also remove a Customer's pump and/or intake line from HCR, at Customer's expense; and Customer may also be required to forfeit any further right to HCR water. Notification shall be provided to Customer of the District's intent to remove Customer's equipment, or to cancel Customer's IP, at least seven (7) calendar days prior to the date of removal or cancellation.

Pump, Intake Line, and Meter

The proposed location and design of an Applicant's or Customer's pumping facilities, including the pump, driver, power source, anchoring platform, pipeline and meter, which will be located on or at the Irrigation Site, must be submitted to the District and approved by District, in writing, prior to installation.

Pumps may be a vertical turbine type, submersible, positive displacement, or other type, and may be driven by an electric motor, engine, or other means, subject to District approval. If placed within or upon the waters of HCR, a pump shall be attached to a dock or floating platform which is adequately anchored to prevent movement caused by wave action.

Any power cables and discharge pipelines may extend no more than 100 feet from the HCR shoreline at elevation 1183 ft. msl; shall be equipped with adequate flotation devices, and shall be marked with reflectors or lights, or weighted to a minimum depth of 4 feet below the water surface, so as to pose no danger to watercraft operation at night. Electrical cables serving pumps

and related equipment shall terminate at an adequately sized disconnect, and shall be equipped with proper circuit breakers and grounding in accordance with the National Electric Code (NEC) to prevent electrocution in the event of damage to the motor or cable.

A new, properly designed and functioning water meter shall be provided by each Applicant/Customer of the size and type approved by the District. The Customer shall be responsible for repair, maintenance and replacement of Customer's meter and shall either recalibrate or replace the meter, at the District's request, if, when tested, the meter fails to accurately measure water passing through the meter within $\pm 5\%$. Whether for cause, or on an annual basis, District may inspect a Customer's meter for proper functioning, calibration, etc..

No water may be diverted from HCR using facilities that do not have a properly functioning water meter. The District shall have the right to suspend a Customer's IP until adequate metering is provided.

Pumps, motors, intake lines, surface lines, valves, electrical components, and other similar equipment shall be installed by Applicant/Customer, or by a qualified/experienced contractor engaged by an Applicant/Customer, and shall be of the size, type, and location approved in advance, in writing, by the District. All installation work shall be at Applicant's or Customer's sole risk and expense. A pump discharge shall not exceed four (4) inches in diameter, and a pump motor shall not exceed fifteen (15) HP, without prior written consent of the District.

An Applicant/Customer shall provide, at Applicant's/Customer's expense, a permanent and conspicuous sign or marker attached or adjacent to Customer's pump, near to the intake line entering the water, which sign or marker will include the Customer's IP number assigned by the District. Letters and numeric characters shall be a minimum of 4 inches in height. A Customer's sign or marker shall be legible from both the landside and the lakeside of the Irrigation Site, during both daylight and nighttime hours.

Removal

The District reserves the right, at its sole discretion, to further restrict placement of (or remove), at owner's expense, any irrigation pumps, lines, or other similar equipment, for any breach or default by Customer of these Rules or of the terms of Customer's IP; if Customer is observed to be excessively wasteful of HCR water; if Customer's IP expires for non-payment; or if any of Customer's equipment (i) creates a hazard to navigation or public safety, (ii) creates a nuisance, (iii) becomes defective; (iv) impairs the District's ability to operate and maintain HCR, (v) or interferes with or restricts access to adjacent/neighborhood properties or structures. Such removal will be done after notice to the Customer, but without liability to the Customer on the part of the District. Notification shall be provided of the District's intent to remove Customer's equipment at least seven (7) calendar days prior to the start of the removal process.

The preceding paragraph shall in no way release or discharge a Customer from liability for, or related to, the design, installation and operation of Customer's pumping system, or for compliance with these Rules, or of the terms and conditions (if any) imposed by Customer's IP.

Right of Entry

District employees and other authorized agents shall have the right to enter at all reasonable times any property, whether public or private, for the purpose of inspecting and investigating a Customer's Irrigation Site or pumping system. However, District employees and authorized agents shall not enter upon private property without (i) first notifying any owner, occupant or other person present at or on the property at the time of the proposed inspection and (ii) exhibiting proper credentials.

Nothing in this section shall preclude a law enforcement officer from entering a Customer's property, with or without notice, to investigate suspected criminal activity, or for any other reason allowed under applicable state or federal law.

A Customer's Irrigation Site, and the privileges granted herein, are subject to all applicable rules and regulations of the District, as they now exist or may be amended in the future. The District also retains and reserves the right to change or revise (increase) fees and charges for an IP, including application fee, Admin Fee, Annual Fee, and other fees or charges for issuance of new or renewal permits.

Voluntary Termination

If a Customer desires to terminate the Customer's IP, notice of such termination must be given to District in writing using a District IP Renewal/Cancellation Form, and be completed and delivered (in person or by mail) to the HCR Lake Office. Once the Form is received by the District, all pumping equipment must be disabled as of, and be removed by Customer within 30 days after, the effective date of cancellation stated in Customer's notice. No refund or proration of any fees or other charges paid by the Customer shall be made by District.

Changes or Modification of Terms

All rights, terms, conditions and privileges (including fees) provided herein are subject to change at any time by action of the District's Board of Directors. The District will notify each Customer of any such changes in writing. Absent emergency or extraordinary circumstances, such changes will be effective on the January 1 next following approval or adoption of the changes.

Water Conservation Plan

Each Customer shall either (i) develop its own Water Conservation Plan in accordance with Texas Administrative Code (Title 30, Chapter 288), or (ii) assure the District that its water use, and its pumping facilities and operation, remain in compliance with the District's current Water Conservation Plan. Should a Customer develop its own Water Conservation Plan, a copy of the Plan shall be provided to the District simultaneous with Customer's submittal thereof to the TCEQ.

Water Quality

It is understood by each Applicant and Customer that HCR water is sold “AS IS”; that all HCR water is not potable; that District does not represent HCR water to be suitable for any purpose; and that availability of HCR water is not guaranteed. Each Customer takes full responsibility for its withdrawal, transportation, application and use of HCR water in accordance with these Rules, Customer’s IP, and applicable law.

Notice of Violation

Whenever any violation of these Rules occurs, an employee or authorized agent of the District shall issue a Notice of Violation (NOV) describing the nature of the violation(s) and shall cause the NOV to be delivered in person to the Customer and, if applicable, the designated tenant, lessee, etc. irrigating under Customer’s IP (with a signature required for receipt), or by sending the NOV via certified mail to the last known address of the Customer (and, if applicable, Customer’s tenant, lessee, etc.), as reflected in the District’s records.

Opportunity to Correct Violations

Except when necessary to prevent personal injury or property damage, or for public safety, or to remove a navigation or environmental hazard, a Customer shall have 30 days from the date of the delivery of the NOV to cure the violation stated in the NOV and to bring the Customer into compliance with these Rules. A request for an extension of time to cure the violation shall be made in writing and shall explain in detail the reason for the additional time requested and what measures are being (or will be) taken to ensure that the health and safety of the public, and the quality of the waters of HCR, will not be compromised while the violation is being corrected. The District General Manager shall have the discretion to grant (or deny) a request for extension, which decision shall be made in writing.

Penalties

If a violation is not corrected within 30 days, and no extension of time to correct the same is granted, a fine of \$50 shall be assessed against the Customer by District. The fine shall double for each additional 30 days that the violation is not corrected, up to a cumulative total of \$350 (\$50-\$100-\$200). The Customer will be notified of each fine by certified mail; and payment will be due within 30 days after receipt of the notice.

Failure or refusal to comply with these Rules, after notice from the District, shall be sufficient grounds for the District to prohibit, to the extent permitted by applicable law, the Customer (and, if applicable, the person irrigating under Customer’s IP), the use and benefits of Hubbard Creek Reservoir that might otherwise be enjoyed.

The District reserves the right to require a Customer to remove Customer's (or Customer's tenant's, lessee's, etc.) pumping system, if the Customer (or Customer's tenant, lessee, etc.) is found to be in violation of these Rules. Violations of these Rules (in addition to those set forth elsewhere herein) shall include (but are not limited to): failure to obtain an IP for Customer's irrigation; or failure to meet or satisfy IP Application or other procedures or conditions within the required time; or failure to use HCR water for the purpose stated in Customer's permit.

In addition to a fine imposed by the District, a violation of these Rules is a misdemeanor under the Texas Penal Code and, if prosecuted by the District, conviction of a person in a court of competent jurisdiction may be punished by a fine of up to \$500.

Injunction

Nothing in these Rules shall prevent the District from seeking a temporary restraining order, mandatory injunction or any other relief or remedy, whether at law or in equity, at any time, against any person believed to have violated, or to be violating, these Rules.

Indemnification

Each Customer agrees to indemnify, hold harmless and, if requested, defend the District, its directors, officers, employees and agents, from and against any claim made, or suit filed, against any of the indemnified persons arising out of, or resulting from, the exercise by the Customer of any right or privilege granted to the Customer by or under these Rules, any violation of these Rules by the Customer, or the use by the Customer or any other person of water taken from HCR, whether by the Customer or by any other person (with or without the knowledge or consent of the Customer) using Customer's pumping system, including any loss, cost, damage or expense (including, without limitation, attorney's fees, court costs and other related expenses) in connection with any such claim or suit, whether in defense of such claim or suit, settlement or other resolution of such claim or suit, or otherwise; provided, that this indemnification shall not be required in connection with any personal injury or property damage resulting solely from the gross negligence or other intentional tort committed by the District director, officer, employee or agent seeking indemnification by the Customer.

Authority

These Rules have been adopted by District pursuant to District's enabling legislation, and as well as Chapters 49 and 51 of the Texas Water Code.

Water pumping and use authorized by an IP is diverted under the District's Water Rights Permit from the TCEQ and is subject to such conditions and restrictions as may be imposed therein or by TCEQ Rules and Regulations applicable thereto.

Contact Information

Hubbard Creek Reservoir Lake Office
4164 WDR #277
Breckenridge, TX 76424
Off: (254) 559-3677
Fax: (254) 559-7125

WCTMWD Abilene Office
410 Hickory
Abilene, TX 79601
Off: (325) 673-8254
Fax: (325) 673-8272

<http://www.wctmwd.org/>

These Rules were approved by the Board of Directors of the West Central Texas Municipal Water District on the _____ day of _____, 20____.

**WEST CENTRAL TEXAS
MUNICIPAL WATER DISTRICT**

Date: _____, 2016

**By: _____
CHRIS L. WINGERT, P.E.
General Manager**