

ORDER AMENDING ORDER ESTABLISHING WELL PUMPAGE FEES AND WATER IMPORTATION FEES FOR FISCAL YEAR ENDING DECEMBER 31, 2003 AND ADOPTING RULES AND REGULATIONS CONCERNING MEASURING WELL PUMPAGE AND WATER IMPORTATION AND COLLECTING FEES

THE STATE OF TEXAS §

COUNTY OF HARRIS §

NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY §

WHEREAS, the North Harris County Regional Water Authority (the "Authority") is a regional water authority created pursuant to H.B. 2965 of the 76th Legislature (1999) (the "Act"), as amended by H.B. 1110 and S.B. 1444 of the 77th Legislature (2001), and Article XVI, Section 59 of the Texas Constitution; and

WHEREAS, § 4.01(b)(1) of the Act states that the Authority may provide for the conservation, preservation, protection, recharge and prevention of waste of groundwater in a manner consistent with the purpose of Article XVI, Section 59 of the Texas Constitution; and

WHEREAS, § 4.01(b)(2) of the Act states that the Authority may, for the purposes of reducing groundwater withdrawals and subsidence, acquire or develop surface water or groundwater supplies from sources inside of or outside of the boundaries of the Authority and may conserve, store, transport, treat, purify, distribute, sell and deliver water to persons, corporations, municipal corporations, political subdivisions of the State and others inside of and outside of the boundaries of the Authority; and

WHEREAS, § 4.01(b)(4) of the Act states that the Authority may coordinate water services provided inside of, outside of, or into the Authority; and

WHEREAS, § 4.01(b)(5) of the Act states that the Authority may provide for the reduction of groundwater withdrawals by the development, implementation, or enforcement of a groundwater reduction plan as provided in subsection (e) of this section; and

WHEREAS, § 4.01(e) states that the Authority may develop, implement, participate in, and enforce a groundwater reduction plan and that a groundwater reduction plan developed, implemented, participated in, or enforced by the Authority shall be binding on persons, districts, entities, and wells within the Authority's boundaries; and

WHEREAS, § 4.01(d) of the Act states that the Authority shall exercise its rights, powers, privileges and authority in a manner that will promote regionalization of water treatment and distribution; and

WHEREAS, § 4.03(a) of the Act states that the Authority may establish fees, rates, and charges and classifications of fee and rate payers, as necessary to enable the Authority to fulfill the Authority's purpose and regulatory obligations under the Act; and

WHEREAS, § 4.03(b) of the Act states that the Authority may charge against the owner of a well located in the Authority's boundaries and within the Authority's jurisdiction a fee on the amount of water pumped from the well; and

WHEREAS, § 4.03(c) of the Act states that the fees the Board of Directors of the Authority (the "Board") establishes must be sufficient to (1) achieve water conservation, prevent waste of water, serve as a disincentive to pumping groundwater, and accomplish the purposes of the Act, including making available alternative water supplies; and (2) enable the Authority to meet operation and maintenance expenses and pay the principal of and interest on debt issued in connection with the exercise of the Authority's general powers and duties; and

WHEREAS, the Authority held a special hearing to discuss well pumpage fees and water importation fees, at which members of the public were invited to comment on said fees, on September 5, 2002, at 6:00 p.m., at the Ponderosa Volunteer Fire Department, 17061 Rolling Creek, Houston, Texas, and notice of such meeting was duly given, delivered, mailed and posted pursuant to the Open Meetings Act, Chapter 551, Texas Government Code and §49.063 of the Texas Water Code; and

WHEREAS, on September 5, 2002, the Board considered the comments submitted by the public concerning said fees and determined that the following fees are required and sufficient to (1) achieve water conservation, prevent waste of water, serve as a disincentive to pumping groundwater, and accomplish the purposes of the Act, including making available alternative water supplies; and (2) enable the Authority to meet operation and maintenance expenses and pay the principal of and interest on debt issued in connection with the exercise of the Authority's general powers and duties; and (3) to equitably distribute the cost of implementing said rules and regulations over all water users located within the boundaries of the Authority; and

WHEREAS, the Authority held its regular meeting on September 5, 2002, at 7:00 p.m., at the Ponderosa Volunteer Fire Department, 17061 Rolling Creek, Houston, Texas, and notice of such meeting was duly given, delivered, mailed and posted pursuant to the Open Meetings Act, Chapter 551, Texas Government Code and § 49.063 of the Texas Water Code; and

WHEREAS, at its regular meeting on September 5, 2002 the Board adopted and established water importation fees for the year 2003; and

WHEREAS, the Board has implemented the 2003 well pumpage fees and water importation fees set forth in Article III hereof; and

WHEREAS, on February 3, 2003, the Board amended the provisions of the regulations requiring all emergency interconnections to be metered;

NOW THEREFORE, IT IS ORDERED BY THE BOARD OF DIRECTORS OF NORTH HARRIS COUNTY REGIONAL WATER AUTHORITY THAT:

I.
FINDINGS

1.1 Findings. Each of the recitals stated in this Order is hereby adopted as a finding of the Board. All statutory requirements and conditions have been met for the establishment of a fee on water pumped from wells within the boundaries of the Authority and within the jurisdiction of the Authority and the establishment of a fee on water imported from outside the boundaries of the Authority in and for the use of consumers within the jurisdiction of the Authority.

II.
DEFINITIONS

2.1 Exempt Wells. The following wells within the boundaries of the Authority shall be referred to as "Exempt Wells" and shall not be subject to a well pumpage fee:

- (a) wells within the Authority that are owned by a municipality that does not provide service to customers within the boundaries of the Authority;
- (b) wells with a casing diameter of less than five inches (5") that serve a single-family dwelling;
- (c) wells regulated under Chapter 27, Water Code (injection wells);
- (d) wells used for irrigation of agricultural crops;
- (e) a single well and/or multiple wells that in the aggregate produce less than 5 million gallons annually; and
- (f) wells used solely for electric generation.

The Board shall by rule exempt from the well pumpage fee reflected in Article III hereof those classes of wells that are not subject to the groundwater reduction requirements imposed by the Harris-Galveston Coastal Subsidence District, except that if any of those classes of wells become subject at a future date to a groundwater reduction requirement imposed by the Harris-Galveston Coastal Subsidence District, the Authority may then after that date charge the pumpage fee to those affected classes of wells. The Board by rule may exempt any other classes of wells from the payment of pumpage fees.

2.2 Non-Exempt Well(s). All wells within the Authority other than Exempt Wells shall be subject to the following well pumpage fee. These wells are referred to as "Non-Exempt Wells."

2.3 Imported Water. The term "Imported Water" shall mean water, whether groundwater or surface water, that is produced outside of the boundaries of the Authority and transported into the boundaries of the Authority for subsequent distribution to an end user within the boundaries of the Authority.

2.4 Water Importation Site. The term "Water Importation Site" shall mean each connection, whether permanent or temporary, at which water originating from outside the boundaries of the Authority enters the boundaries of the Authority.

2.5 Water Service Provider. The term "Water Service Provider" shall mean any person or entity that supplies potable water, whether surface water or groundwater, to any end user of such water within the boundaries of the Authority.

2.6 Water Well Owner. The term "Water Well Owner" shall mean any person or entity owning a water well within the boundaries of the Authority and who is not exempt from the water well permitting requirements of the Harris-Galveston Coastal Subsidence District.

III.

WELL PUMPAGE FEE AND WATER IMPORTATION FEE

3.1 First Quarter Fee. Each Water Well Owner within the Authority shall pay a well pumpage fee and each Water Service Provider who receives Imported Water shall pay a water importation fee equal to \$0.25 (25 cents) for each 1000 gallons of water pumped from such well in January, February, and March, 2003. The fee is due by April 30, 2003.

3.2 Second Quarter Fee. Each Water Well Owner within the Authority shall pay a well pumpage fee and each Water Service Provider who receives Imported Water shall pay a water importation fee equal to \$0.25 (25 cents) for each 1000 gallons of water pumped from such well in April, May, and June, 2003. The fee is due by July 31, 2003.

3.3 Third Quarter Fee. Each Water Well Owner within the Authority shall pay a well pumpage fee and each Water Service Provider who receives Imported Water shall pay a water importation fee equal to \$0.25 (25 cents) for each 1000 gallons of water pumped from such well in July, August, and September, 2003. The fee is due by October 31, 2003.

3.4 Fourth Quarter Fee. Each Water Well Owner within the Authority shall pay a well pumpage fee and each Water Service Provider who receives Imported Water shall pay a water importation fee equal to \$0.25 (25 cents) for each 1000 gallons of water pumped from such well in October, November, and December, 2003. The fee is due by January 31, 2004.

IV.

MEASURING PUMPAGE AND WATER IMPORTATION

4.1 Meters. Each Non-Exempt Well and Water Importation Site shall be equipped with a meter which measures the amount of water pumped from each Non-Exempt Well or imported from outside the boundaries of the Authority, provided however, that any Water Importation Site which is solely for emergency use only and is not in use for more than fifty percent (50%) of the calendar days in any 365-day period, except with notice to and approval by the General Manager of the Authority, shall be exempt from the requirement to be equipped with a meter.

4.2 Self-Reporting. Each Water Well Owner and Water Service Provider shall be responsible for reading any meter and calculating the amount of Imported Water at the end of

each calendar quarter. Such measurement shall be reported to the Authority on the reporting form published by the Authority. The Water Well Owner or Water Service Provider shall deliver the reporting form to the Authority with the quarterly well pumpage fee or water importation fee payment on or before each respective due date.

4.3 Audits. The Authority shall have the right to audit the well pumpage or water importation measurements or calculations submitted by the Water Well Owner or Water Service Provider by reading the meter at the Non-Exempt Well or Water Importation Site and reviewing the records of the District to audit the calculation of Imported Water. Upon written request, a Water Well Owner or Water Service Provider shall provide to the Authority, without charge, a copy of any agreement related to a Water Importation Site or Imported Water and all data and reports used to calculate the amount of Imported Water. Any such audit shall be conducted in accordance with the audit procedures adopted and implemented by the Board.

4.4 Failure to Read Meter or Calculate Imported Water.

(a) In the event a Water Well Owner fails to read the meter which measures the amount of water pumped from its well or in the event a Water Service Provider fails to read the meter which measures the amount of Imported Water transported into the boundaries of the Authority, the Authority shall have the right to read the meter. If the Authority is required to read the meter, such Water Well Owner or Water Service Provider will be billed an inspection fee of \$50. The Water Well Owner's or Water Service Provider's quarterly pumpage fee will be based on the Authority's reading, regardless of when the Authority reads the meter.

(b) In the event a Water Well Owner or Water Service Provider fails to calculate Imported Water, or fails to provide an agreement relating to any Water Importation Site or Imported Water, or fails to provide information sufficient for the Authority to ascertain the amount of Imported Water used by the Water Well Owner or Water Service Provider, the Authority may impose a penalty of \$50 for any quarter in which Imported Water was imported but not reported, or incorrectly reported by more than 10%.

4.5 Right to Enter Land. The Authority and its representatives shall have the authority to enter upon the land of the Water Well Owner or Water Service Provider or any property where a meter is located at any reasonable time in order to audit the well pumpage or water importation measurements submitted by the Water Well Owner or Water Service Provider to the Authority or to measure the well pumpage or water importation, in the event the well owner or Water Service Provider has failed to do so. Unless the Authority has reason to believe that the Water Well Owner or Water Service Provider has not submitted correct pumpage or importation data, it will afford the Water Well Owner or Water Service Provider a minimum of one (1) business day's notice of its intent to enter upon the land of the Water Well Owner or Water Service Provider or any property where a meter is located to inspect the Non-Exempt Well or Water Importation Site and audit the measurement made by the Water Well Owner or Water Service Provider and will coordinate its visit to the Non-Exempt Well or Water Importation Site with the Water Well Owner or Water Service Provider. Authority employees or agents acting under this authority who enter property of a Water Well Owner or Water Service Provider or any

property where a meter is located shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection and shall notify any occupant or management of their presence and shall exhibit proper credentials.

4.6 Calibration of Meters. Each Water Well Owner shall be responsible for keeping the well meter on each Non-Exempt Well properly calibrated. Each Water Service Provider shall be responsible for keeping the meter for each Water Importation Site properly calibrated. If the Authority at any time believes that the meter is not accurate, it may notify the Water Well Owner or Water Service Provider and ask that such meter be recalibrated and the results reported to the Authority. If the Water Well Owner or Water Service Provider refuses to recalibrate the meter or elects to have the Authority do so, the Authority shall remove the meter for calibration and replace it with a temporary meter. The Authority shall pay for the cost of such calibration and temporary meter, unless the results show that the meter underread pumpage by more than 5%, in which case the Water Well Owner or Water Service Provider shall be responsible for the cost of the calibration and temporary meter. If the calibration shows that the meter underread pumpage by more than 5%, the Water Well Owner or Water Service Provider shall also be responsible for paying the Authority the well pumpage fee or water importation fee for gallons used since January 1, 2002 based on the recalibrated reading. Such payment shall be due within 30 days of the recalibration results.

4.7 Annual Groundwater Pumpage Reports. Prior to January 31st of each year, each Water Well Owner shall submit to the Authority a copy of the Annual Groundwater Pumpage Report filed by the Water Well Owner with the Harris-Galveston Coastal Subsidence District for the immediately preceding calendar year.

V. PAYMENT OF FEES

5.1 Payment of Fees. All fees payable to the Authority shall be paid in money which is legal tender in the United States of America. Payments will be accepted only by check or money order made payable to the "North Harris County Regional Water Authority" or by wire transfer. No cash will be accepted. All payments must be received in the office of the Authority by the respective due date.

5.2 Self-Remission of Quarterly Fees. Each Water Well Owner and Water Service Provider shall be responsible for remitting to the Authority the quarterly well pumpage or water importation fees outlined in Article III of this Order on or before the due dates indicated in such Article. The Authority shall deliver to each Water Well Owner and Water Service Provider a notice regarding this Order, along with a copy of the Order, but no other billing will occur. The well pumpage or water importation fees shall be calculated on the form published by the Authority and delivered to the address shown thereon. Wire instructions are available upon request.

VI. COLLECTION OF FEES

6.1 Late Fees. Payments of well pumpage fees and water importation fees received more than 10 days after each respective due date shall be subject to a late penalty of 5%. An

additional 5% penalty shall be imposed if the payment is received more than 30 days beyond the due dates reflected in Article III hereof. All delinquent amounts shall accrue interest at the rate of 1% per month.

6.2 Collection Costs. If the Authority is required to incur costs to collect a delinquent account, all such costs, including reasonable attorney's fees, court costs, and expenses, shall be paid by the delinquent Water Well Owner, and the Authority shall be entitled to collect such costs in any suit for collection of a delinquent account.

VII.

AUTHORITY RULES RELATING TO PUMPAGE AND IMPORTATION FEES

7.1 Self -Reporting Violations. Each Water Well Owner and Water Service Provider shall be responsible for reading the meter to measure the amount of water pumped from each Non-Exempt Well or the amount of Imported Water, or calculating the amount of Imported Water in the event no meter exists, from each Water Importation Site at the end of each calendar quarter and for accurately reporting such measurement to the Authority on the form published by the Authority on the due dates indicated in Article III of this Order. Failure to take such measurement or make such calculation or to accurately report the measurement to the Authority shall be a violation of the Authority's rules.

7.2 Failure to Cooperate. Each Water Well Owner and Water Service Provider is required to allow the Authority to inspect its Non-Exempt Well or Water Importation Site and records relating to the calculation of Imported Water pursuant to Article IV hereof. Failure of a Water Well Owner or Water Service Provider to allow access to a Non-Exempt Well or Water Importation Site or provide required agreements or records for inspection on a timely basis shall be a violation of the Authority's rules.

7.3 Calibration of Meters. Each Water Well Owner and Water Service Provider is responsible for keeping its well meter or water importation meter properly calibrated to insure accurate readings. It shall be a violation of the Authority's rules for any Water Well Owner or Water Service Provider who knows or should know that its meter is not working accurately to fail to promptly recalibrate such meter and to correct any reports previously made to the Authority of inaccurate data.

7.4 Self-Remission Violations. Each Water Well Owner and Water Service Provider shall be responsible for paying the Authority the appropriate well pumpage or water importation fees by the respective due date. Willful failure to make any such payment when due shall be a violation of the Authority's rules.

VIII.

CIVIL PENALTIES, INJUNCTION

8.1 Civil Penalty. A person who violates a rule of the Authority is subject to a civil penalty of not less than \$50 and not more than \$5,000 for each violation or each day of a continuing violation. The Board shall set the penalty based on the severity of the offense, whether such violation was knowing or reckless or inadvertent, the history of offenses by such person, and the damages sustained by the Authority. The Authority may bring an action to

recover the penalty in a district court in the county where the violation occurred. The penalty shall be paid to the Authority.

8.2 Injunction. The Authority may bring an action for injunctive relief in a district court in the county where a violation of an Authority rule or order occurs or is threatened to occur. The Authority may bring an action for a civil penalty and injunctive relief in the same proceeding.

IX.
EXEMPT WELL REBATES OR CREDITS

9.1 Rebates. If actual metered well pumpage for any single well and/or multiple wells that in the aggregate produce less than five (5) million gallons during the calendar year, then the well(s) is by definition an "exempt well" and shall not be subject to a well pumpage fee. If the Owner of such a well(s) paid pumpage fees to the Authority, the Water Well Owner shall be entitled to a full rebate of such pumpage fees for the calendar year. Unless requested in writing by the Water Well Owner to do otherwise, the Authority will issue a rebate check to the Water Well Owner for the full amount of pumpage fees paid for the year subsequent to receipt of verification of the annual well pumpage information from either the Water Well Owner or the Harris-Galveston Coastal Subsidence District.

9.2 Credits. In lieu of a rebate check, the Authority may issue the Water Well Owner, at its request, a credit voucher for the amount of the overpayment. The credit voucher may be applied against pumpage fees billed by the Authority in the subsequent calendar year up to the total credit amount of the voucher.

THIS ORDER shall be effective as of the day of its adoption.

Adopted this 3rd day of February, 2003.

NORTH HARRIS COUNTY REGIONAL WATER
AUTHORITY

/s/Lenox A. Sigler

By: _____
President, Board of Directors

ATTEST:

/s/Ron Graham

By: _____
Secretary, Board of Directors

(SEAL)