Chapter 8.Procedural Rules

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The purpose of these procedural rules is to promote groundwater conservation, provide for long-term availability of groundwater resources, reduce localized depletion of groundwater, prevent interference between wells, and prevent the degradation of groundwater.

8.1 Actions on Management Plan, District Rules, or Administrative Fee Schedule

(1) Once the District has developed a proposal involving its Management Plan, District Rules, or administrative fee schedule, the District will decide at which Board meeting the proposal will be considered for action. The Board meeting at which the matter is considered under this Rule shall be considered the public hearing on the proposal and fulfills the requirement, if any, for a public hearing.

(2) The General Manager must provide notice as required by the Open Meetings Act and as required by these rules or Chapter 36, Water Code, for public hearings.

8.2 Hearings on Rules Other Than Emergency Rules

(1) Once the District has developed a proposal involving its Rules, the District will schedule a public hearing on the proposal. The public hearing may be conducted during a regular or called meeting of the Board of Directors, and the Board may take action during the same meeting.

(2) In addition to the notice required by the Open Meetings Act, not later than 20 days before the date of the hearing, notice shall be:

a) posted in a place readily accessible to the public at the District office;

b) provided to the county clerk of Comal County for posting at the County Courthouse;

c) published in one or more newspapers of general circulation in Comal County; and

d) provided by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.2.F. Failure to provide individual notice does not invalidate an action taken by the District at the hearing.

(3) Notice of the hearing shall include:

a) The time, date, and location of the hearing.

b) A brief explanation of the subject of the hearing.

c) The agenda of the hearing.

d) If the hearing is for the purpose of considering amendments to the District rules, the location or Internet site where the proposed rules may be reviewed or copied and the deadline for submitting written comments.

(4) Copies of the proposal shall be available during normal business hours at the District Office or shall be posted on the District's Internet site.

(5) A person may submit to the District a written request for individual notice of a hearing. A request is effective for the remainder of the calendar year in which the request is received by the District and a new request must be filed each calendar year.

(6) Anyone interested in the proposal may submit written comments about the proposal to the District at least 5 days prior to the scheduled hearing at which the proposal will be considered by the Board.

(7) Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.

(8) The District shall make and keep in its files an audio recording of the hearing.

(9) The Board shall issue a written order or resolution reflecting its decision. The proposal that the Board has approved shall be an attachment to that written order or resolution.

(10) The effective date of the written order or resolution shall be the date on which the Board President signs the order or resolution or the date reflected in the order or resolution. The order or resolution shall include a statement that the proposal becomes effective and final on that date. Any appeal authorized by law shall run from the date on which all administrative appeals to the district are final.

8.3 Hearings on Desired Future Condition(s)

(1) At least 10 calendar days before a public hearing or a Board meeting required for the adoption of the Desired Future Condition(s) under Section 36.108(d-2) or (d-4) of the Texas Water Code, the District shall post notice that includes the following:

a) the proposed Desired Future Condition and a list of any other agenda items;
b) the date, time, and location of the meeting or hearing;

c) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;

d) the name of the other groundwater districts in the Groundwater Management Area; and

e) information on how the public may submit comments.

(2) Notice required under this rule shall be posted and published in the same manner as that for rulemaking hearings in Rule 8.2.

8.4 Adoption of Emergency Rules

(1) The District may adopt an emergency rule without following the notice and hearing provisions of Rule 8.2, if the Board:

a) Finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on less than 20 days' notice; and

b) Prepares a written statement of the reasons for its finding.

(2) An emergency rule must be adopted at a meeting of the Board subject to the requirements of the Open Meetings Act.

(3) An emergency rule shall be effective for 90 days. If notice of a hearing to amend the rules is given before the emergency rule expires the emergency rule is effective for an additional 90 days.

8.5 Hearings on Enforcement Actions

(1) If the District receives a timely filed written request for hearing from a Respondent who has received a notice of violation from the District, the District shall decide at which Board meeting the enforcement action will be considered. The Board meeting at which the enforcement action is considered under this Rule shall be considered the public hearing on the matter and fulfills the requirement, if any, for a public hearing.

(2) Notice required by the Open Meetings Law shall be provided for the meeting.

(3) Notice of the hearing on the enforcement action shall be mailed to the Respondent by certified mail, return receipt requested, at least ten days prior to the scheduled hearing date.

(4) Anyone attending the meeting on the enforcement action may make oral comments at the time designated for comments.

(5) The Board, at its sole discretion, may administer an oath to the staff, the Respondent, and anyone who makes oral comments on the enforcement action.

(6) The Board, at its sole discretion, may appoint a Hearings Officer or committee of the Board to conduct the hearing on the enforcement action (Hearing Body). Any hearing conducted by a Hearing Body, shall be conducted in the same manner as provided in this Rule 8.5. At the close of the hearing, the Presiding Officer shall make a written recommendation to the Board. The recommendation shall become part of the record. The Board is not required to approve the recommendation of the Hearing Body.

(7) The Board shall issue a written order or resolution reflecting its decision.

(8) The effective date of the written order shall be the date on which the President of the District signs the order or resolution. The order or resolution shall include a statement that the order or resolution becomes effective and final on that date. Any appeal authorized by Texas Water Code Chapter 36, Subchapter H shall run from the effective date, because it is the date on which all administrative appeals to the district are final.

8.6 Contested Case Hearing Procedures

(1) If the District receives a timely filed request for a contested case hearing, the application shall be set for an evidentiary hearing.

(2) Notice required by the Open Meetings Act shall be provided for the hearing if conducted by a quorum of the Board.

(3) The evidentiary hearing must be conducted by:

a) A quorum of the Board or an individual to whom the Board has delegated in writing the responsibility to preside as a hearings examiner over the hearing or matters related to the hearing. The Board President or the hearings examiner shall serve as the presiding officer at the hearing. If the hearing is conducted by a quorum of the Board and the President is not present, the Directors conducting the hearing may select a Director to serve as the presiding officer.

b) Upon request of the applicant or of the protestant, the Board may delegate to the State Office of Administrative Hearings (SOAH) the authority to conduct hearings designated by the Board.

i. If the Board refers a contested case hearing to SOAH, then the applicable rules of practice and procedure of SOAH (1 Tex. Admin. Code Ch. 155) govern any contested case hearing of the District, as supplemented by these rules and Chapter 36, Water Code.

ii. If the Board refers a contested case hearing to SOAH, the administrative law judge who conducts the contested case hearing shall serve as the hearing examiner and consider applicable District rules and policies in conducting the hearing. However, the District may not supervise the administrative law judge.

iii. If the Board refers a contested case hearing to SOAH, the District maynot attempt to influence the findings of facts or the administrative law judge's application of the law in a contested case hearing except by proper evidence and legal argument.

iv. If requested by the applicant or other party to a contested case, the District shall contract with the State Office of Administrative Hearings to conduct the hearing. The party must file such a request not later than the fourteenth (14) day before the date the evidentiary hearing is scheduled to begin. The Board order granting the contested case hearing may designate a location for the hearing inside the boundaries of the District or in Travis County at a location designated by SOAH. The party requesting the hearing before the SOAH shall pay all costs associated with the contract for the hearing and shall, five business days before the hearing begins, deposit with the District an amount sufficient to pay the contract amount. At the conclusion of the hearing, the District shall refund any excess money to the paying party.

(4) The presiding officer has the following authority and obligations:

a) May convene the hearing at the time and place specified in the notice;

b) May set any necessary additional hearing dates;

c) May designate the parties regarding a contested application;

d) May establish the order for presentation of evidence;

e) May administer oaths to all persons presenting testimony;

f) May examine persons presenting testimony;

g) May ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;

h) Shall admit relevant evidence and may exclude evidence that is irrelevant, immaterial, or unduly repetitious;

i) May prescribe reasonable time limits for testimony and the presentation of

evidence;

j) May allow testimony to be submitted in writing and may require that written testimony be sworn to. On the motion of a party to the hearing, the presiding officer may exclude written testimony if the person who submits the testimony is not available for cross-examination by phone, a deposition before the hearing, or other reasonable means.

k) May refer parties to an alternative dispute resolution (ADR) procedure on any matter at issue in the hearing, apportion costs for ADR, and appoint an impartial third party as provided by Section 2009.053 of the Government Code to facilitate that procedure; and

l) May continue a hearing from time to time and from place to place without providing notice. If the continuance is not announced on the record at the hearing, the presiding officer shall provide notice of the continued hearing by regular mail to the parties.

(5) The presiding officer shall prepare and keep a record of each hearing in the form of an audio or video recording or a court reporter transcription. On the request of a party to the contested case hearing, the hearing shall be transcribed by a court reporter. The costs of such court reporter may be assessed against the party requesting it or among the parties to the hearing. The presiding officer may exclude a party from further participation in the hearing for failure to pay in a timelymanner costs assessed against that party under this Rule 8.6.E.

(6) If the Board has appointed a hearings examiner to be the presiding officer at the hearing, the hearings examiner shall submit a report to the Board not later than the 30th day after the date the hearing is concluded. A copy shall be provided to the applicant and each party to the hearing. The applicant and other parties to the hearing may submit to the Board written exceptions to the report within 10 days of issuance of the report. The report shall include:

a) A summary of the subject matter of the hearing;

b) A summary of the evidence received; and

c) The hearing examiner's recommendations for Board action on the subject matter of the hearing.

(7) The Board shall issue a written order or resolution reflecting its decision, which shall be made at the hearing or at a meeting subject to the requirements of the Open Meetings Act. A copy of the permit shall be an attachment to that written order or resolution. The Board's decision shall be made within 60 days after the final hearing on the application is concluded.

(8) Request for rehearing or findings and conclusions shall be considered as follows:

a) Not later than the 20th day after the date of the Board's decision, an applicant or a party to a contested hearing may administratively appeal a decision of the Board on an application by requesting written findings and conclusions or a rehearing before the Board.

b) 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 the 35th day after the date the Board receives the request. The applicant or a party to the contested case hearing may request a rehearing before the Board not later than the 20th day after the date the Board issues the findings and conclusions.

c) A request for rehearing must be filed in the District office and must state the grounds for the request. The person requesting a rehearing must provide copies of the request to all parties to the hearing.

d) If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the 45th day after the date the request is granted. Any action by the Board on a request for rehearing shall be made at a Board meeting subject to the Open Meetings Act.

e) The failure of the Board to grant or deny a request for rehearing before the 91st day after the date the request is submitted is a denial of the request.

(9) A decision by the Board on an application is final if:

a) A request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or

b) A request for rehearing is filed on time, on the date:
i. the Board denies the request for rehearing; or
ii. the Board renders a written decision after rehearing.

(10) An applicant or a party to a contested hearing may file a suit against the District under Texas Water Code § 36.251 to appeal a decision on an application not later than the 60th day after the date on which the decision becomes final. A timelyfiled request for rehearing is a prerequisite to any such suit.

8.7 Petition to Change District Rules

(1) A person with a real property interest in groundwater may petition the District where the property that gives rise to the real property interest is located to adopt a rule or modify a rule adopted under this chapter.

(2) Petitions must be submitted in writing to the District office and must comply with the following requirements:

(a) each rule requested must be submitted by separate petition;

(b) each petition must be signed and state the name and address of each person signing the petition;

(c) each petition must include:

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

(ii) a brief explanation of the proposed rule;

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

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

(1) The General Manager may reject any petition for failure to comply with the requirements of Subsection (2) of this section and shall provide notice to the petitioner of the reason for the rejection.

(2) Not later than the 90th day after the date the District receives the petition, the District shall:

(a) deny the petition and provide an explanation for the denial; or
(b) engage in rulemaking consistent with the granted petition.

(3) Nothing in this section may be construed to create a private cause of action for a decision to accept or deny a petition filed under this section.

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