

CHAPTER 8 – HEARINGS

SECTION 8.1 – DISTRICT HEARINGS

RULE 8.1.1 – TYPES OF HEARINGS

- a) **Permit Hearings** – Where mandated by rule, the District will hold hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after notice and an opportunity for an adjudicative hearing. The subject matter of these hearings will include operating permits, existing and historic use permits, transport permits, test well permits, permit renewals or amendments, and permit revocations or suspensions.
- b) **Rulemaking Hearings** – The District will hold hearings involving rulemaking matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describe the procedure or practice requirements of the District. The subject matter of these hearings will include consideration of amendments to the District's Management Plan and the District's Rules and Regulations.
- c) **Other Matters** – A public hearing may be held on any matter within the jurisdiction of the Board if the Board determines a hearing to be in the public interest, or necessary to effectively carry out the duties and responsibilities of the District, including, but not limited to a hearing on a Critical Groundwater Depletion Area (CGDA).

SECTION 8.2 – PERMIT HEARINGS

RULE 8.2.1 – APPLICATION PROCESSING

- a) **Acting on a Completed Application** – The District shall promptly consider and act on each administratively complete application for a permit. An administratively complete application requires information set forth in accordance with Sections 36.113, 35.1131, Texas Water Code and the District's Rules and the permit application. If within, sixty (60) days after the date an administratively complete application is submitted, the application has not been acted on or set for a hearing on a specific date, the applicant may petition the District court of the county where the land is located for a writ of mandamus of compel the District to act on the application or set a date for a hearing on the application, as appropriate.
- b) **Fees** – The District may assess fees to permit applicants for administrative acts of the District relating to a permit application. Fees set by the District may not unreasonably exceed the cost to the District of performing the administrative function for which the fee is charged.
- c) **Incomplete Applications** – An application will expire if the information requested in the application is not provided to the District within ninety (90) calendar days of the District informing the applicant that the application is incomplete.

RULE 8.2.2 – NOTICE

- a) **Notice of Permit Hearing** – If the General Manager or Board schedules a hearing on an application for a permit or permit amendment, the General Manager or Board shall give notice of the hearing as provided by this section. The notice must include the following: the name of the applicant; the address or approximate location of the well or proposed well; a brief explanation of the proposed permit or permit amendment, including any requested amount of groundwater, the purpose of the proposed use, and any change in use; the time, date and location of the hearing; and, any other information the General Manager or Board considers relevant and appropriate.
- b) **Timing of Notice** – Not later than the tenth day before the date of a hearing, the General Manager or Board shall: post notice in a place readily accessible to the public at the District office; provide notice to the County Clerk's office of each county in the District and/or post notice on the District's website; and, provide notice to the following: (i) the applicant at the time the application is submitted; (ii) by regular mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.2.2c; and, (iii) by regular mail to any other person entitled to receive notice under the Rules of the District.
- c) **Parties Eligible to Receive Notice** – For all Class C permit applications, the District shall make a reasonable effort to notify landowners that are within one half mile of the proposed well location that a permit hearing is scheduled. In the case that there are multiple landowners for a single property, the District will prioritize contacting the largest stakeholder of the property or the stakeholder that lives locally. For Class B permit applications, the District shall make a reasonable effort to notify potentially affected landowners that a Board of Directors meeting is scheduled where the permit application will be considered. For Class A permit applications, the General Manager shall make a reasonable effort to notify potentially affected landowners prior to making a decision on the permit application.
- d) **Request for Notice** – A person may request notice from the District of a hearing on a permit or a permit amendment application. The request must be in writing and is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a hearing in a later year, a person must

submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.

- e) **Failure to Provide Notice** – Failure to provide notice to those who requested it under Rule 8.2.2.d does not invalidate an action taken by the District at the hearing.

RULE 8.2.3 – SCHEDULING

- a) **Hearing Date** – For applications requiring a hearing, the initial hearing shall be held within thirty-five (35) days after the setting date, and the District shall act on the application within sixty (60) days after the date the final hearing on the application is concluded.
- b) **Time and Place** – Hearings may be scheduled during the District’s regular business hours, Monday through Friday of each week, except District holidays. All permit hearings will be held at the District Office. However, the Board may from time to time change or schedule additional dates, times, and places for permit hearings by resolution adopted at a regular Board meeting. The General Manager is instructed by the Board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings.
- c) **Multiple Applications** – The General Manager may schedule as many applications at one hearing as the General Manager deems appropriate.

RULE 8.2.4 – PROCEDURES

- a) **Designation of a Presiding Officer** – A hearing must be conducted by a quorum of the Board or by an individual to whom the Board has delegated in writing the responsibility to preside as a Hearing Examiner over the hearings or matters related to the hearing, or the State Office of Administrative Hearings under Section 36.416. The Board President or the Hearing Examiner shall serve as the presiding officer at the hearing unless another Director has been designated.
- b) **Responsibilities of the Presiding Officer** – The presiding officer may: (i) convene the hearing at the time and place specified in the notice; (ii) set any necessary additional hearing dates; (iii) designate the parties regarding a contested application; (iv) establish the order for the presentation of evidence; (v) administer oaths to all persons presenting testimony; (vi) examine persons presenting testimony; (vii) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party; (viii) prescribe reasonable time limits for testimony and the presentation of evidence; (ix) exercise the procedural rules adopted herein; and (x) determine how to apportion among the parties the costs related to: (A) a contract for the services of a presiding officer; and (B) the preparation of the official hearing record.
- c) **Hearing Registration** – The District may require each person who participates in a hearing to submit a hearing registration form stating the following: (i) the person’s name; (ii) the person’s address; and, (iii) whom the person represents, if the person is not there in the person’s individual capacity. The District may allow any person registered to speak, including the General Manager or a District employee, to provide comments at a hearing on an uncontested application, consistent with these Rules.
- d) **Written Testimony and Evidence** – The presiding officer may allow testimony to be submitted in writing and may require that written testimony be sworn to. The presiding officer shall admit evidence that is relevant to an issue at the hearing and may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Submittal of written testimony and evidence should follow the procedures as described in Rule 8.2.10.
- e) **Recording the Hearing** – 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 a contested hearing, the presiding officer shall have the hearing transcribed. The presiding officer may assess any transcription costs against the party that requested the transcription or among the parties to the hearing. The presiding officer may exclude a party from further participation in a hearing for failure to pay in a timely manner costs assessed against that party under this subsection. The presiding officer may not exclude a party from further participation in a hearing as provided by this subsection if the parties have agreed that the costs assessed against that party will be paid by another party. If a hearing is uncontested, the presiding officer may substitute minutes or its report as designated in Rule 8.2.11a below, as a method of recording the hearing.
- f) **Continuance** – The presiding officer may continue a hearing from time to time and from place to place without providing notice. If the presiding officer continues a hearing without announcing at the hearing the time, date, and location of the continued hearing, the presiding officer must provide notice of the continued hearing by regular mail to the parties.
- g) **Consolidated Hearing on Applications** – The District shall process applications from a single applicant under consolidated notice and hearing procedures on written request by the applicant if the District requires a separate permit or permit amendment application for the following: (i) drilling, equipping, operating, or

completing a well or substantially altering the size of a well or well pump under Section 36.113, Texas Water Code; (ii) the spacing of water wells or the production of groundwater under Section 36.116, Texas Water Code; or (iii) transferring groundwater out of the District under Section 36.122, Texas Water Code. The District is not required to use consolidated notice and hearing procedures to process separate permit or permit amendment applications from a single applicant if the Board cannot adequately evaluate one application until it has acted on another application.

- h) **Hearings Conducted by State Office of Administrative Hearings** – If the District contracts with the State Office of Administrative Hearings to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D and F, Chapter 2001, Government Code.
- i) **Alternative Dispute Resolution** – The District may use alternative dispute resolution procedures in the manner provided for governmental bodies under Chapter 2009, Government Code. The District may authorize the presiding officer, at the presiding officer’s discretion, to issue an order at any time before the Board takes final actions on a permit application that: (i) refers parties of a contested hearing to an alternative dispute resolution procedure on any matter at issue in the hearing; (ii) determines how the costs of the procedure shall be apportioned among the parties; and, (iii) appoints an impartial third party as provided by Section 2009.053, Government Code, to facilitate that procedure.

RULE 8.2.5 – INFORMAL HEARINGS

- a) **Informal Hearings** – Permit hearings may be conducted informally when, in the judgment of the Board or Hearing Examiner, the conduct of a proceeding under informal procedures will save time or cost to the parties, lead to a negotiated or agreed settlement of facts or issues in controversy, and not prejudice the rights of any party.
- b) **Agreement of Parties** – If, during an informal proceeding, all parties reach a negotiated or agreed settlement that, in the judgment of the Board or Hearing Examiner, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the Board or Hearing Examiner will summarize the evidence and make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.

RULE 8.2.6 – CONTESTED CASES

- a) **Written Notice of Intent** – Any person who intends to contest a permit application must provide written notice of that intent to the District prior to the day of the hearing. If the Board of Directors intends to contest a permit application, the Board of Directors must provide the applicant written notice of that intent prior to the day of the hearing. If no notice of intent to contest is received prior to the day of the hearing, the General Manager as instructed by the Board of Directors, may cancel the hearing and the Board will consider the permit at the next regular Board meeting as an uncontested permit application. The Board may then issue a written order to grant the application; grant the application with special conditions; or deny the application.
- b) **Preliminary Hearing** – The Board shall schedule a preliminary hearing to hear a request for a contested case hearing filed in accordance with Rule 8.2.6.a herein. The preliminary hearing may be conducted by: (i) a quorum of the board; (ii) an individual to whom the Board has delegated in writing the responsibility to preside as a hearing examiner over the hearing or matters related to the hearing; or (iii) the State Office of Administration Hearings under Section 36.416.
- c) **Standing** – Following a preliminary hearing, the Board shall determine whether any person requesting the contested case hearing has standing to make that request and whether a justiciable issue related to the application has been raised. The Board shall limit party status on a contested case hearing to persons who have personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District’s regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public. If the Board determines that no person who requested a contested case hearing had standing or that no justiciable issues were raised, the Board may take any action authorized under Subsection (a).
- d) **Demand for Contested Case Hearing** – An applicant may, not later than the 20th day after the date the Board issues an order granting the application, demand a contested case hearing if the order: (i) includes special conditions that were not part of the application as finally submitted; or (ii) grants a maximum amount of groundwater production that is less than the amount requested in the application.
- e) **Uncontested Case** – Any case not declared a contested case under this provision is an uncontested case and the Board or Hearing Examiner will summarize the evidence, make findings of fact and conclusions of law, and make appropriate recommendations to the Board.
- f) **Hearings Under the State Office of Administrative Hearings (SOAH)**
 - i. If, the District contracts with SOAH to conduct a hearing, the hearing shall be conducted as provided by Subchapters C, D, and F, Chapter 2001, Government Code. The District may adopt rules for a

hearing conducted under this section that are consistent with the procedural rules of the State Office of Administrative Hearings.

- ii. If requested by the applicant or other party to a contested case, the District shall contract with SOAH to conduct the hearing. The applicant or other party must request the hearing before SOAH not later than the 14th day before the date the evidentiary hearing is scheduled to begin. The hearing must be held in Travis County or at the District office or regular meeting location of the Board, unless the Board provide for hearings to be held at a different location. The District shall choose the location.
- iii. The party requesting the hearing before SOAH shall pay all costs associated with the contract for the hearing and shall deposit with the district an amount sufficient to pay the contract amount before the hearing begins. At the conclusion of the hearing, the District shall refund any excess money to the paying party. All other costs may be assessed as authorized by this chapter or District Rules.
- iv. An administrative law judge who conducts a contested case hearing shall consider applicable District Rules or policies in conducting the hearing, but the District deciding the case may not supervise the administrative law judge.
- v. The District shall provide the administrative law judge with a written statement of applicable rules or policies.
- vi. The District may not attempt to influence the finding of facts or the administrative law judge's application of the law in a contested case except by proper evidence and legal argument.
- vii. In a proceeding for a permit application or amendment in which the District has contracted with SOAH for a contested case hearing, the Board has the authority to make a final decision on consideration of a proposal for decision issued by an administrative law judge consistent with Section 2001.058, Government Code.
- viii. The Board may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the board determines: (A) that the administrative law judge did not properly apply or interpret applicable law, District Rules, written policies under Section 36.416(e), Texas Water Code, or proper administrative decisions; (B) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or, (C) that a technical error in a finding of fact should be changed.

RULE 8.2.7 – PRE-HEARING CONFERENCE

- a) **Pre-hearing Conference** – A pre-hearing conference may be held to consider any matter that may expedite the contested case hearing or otherwise facilitate the hearing process. Matters that may be considered at a pre-hearing conference include, but are not limited to, the following: (i) the designation of the parties; (ii) the formulation and simplification of issues; (iii) the necessity or desirability of amending applications or other pleadings; (iv) the possibility of making admissions or stipulations; (v) the scheduling of discovery; (vi) the identification of and specification of the number of witnesses; (vii) the filing and exchange of prepared testimony and exhibits; and, (viii) the procedure at the hearing. A pre-hearing conference may be held at a date, time, and place stated in a separate notice, and may be continued from time to time and place to place, at the discretion of the Board or Hearing Examiner.

RULE 8.2.8 – DESIGNATED PARTIES

- a) **Designation of Parties** – Parties to a hearing will be designated on the first day of hearing or at such other time as the Board or Hearing Examiner determines. The presiding officer shall determine a party's right to participate in a hearing before a referral of the case to the State Office of Administrative Hearings, if applicable. The Board of Directors and any person specifically named in a matter are automatically designated parties. Persons other than the automatic parties must, in order to be admitted as a party, appear at the proceeding in person or by representative and seek to be designated. The Board or Hearing Examiner may limit participation in a hearing on a contested application to persons who have a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority and affected by a permit or permit amendment application, not including persons who have an interest common to members of the public. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Board or Hearing Examiner, there exists good cause and the hearing will not be unreasonably delayed.
- b) **Rights of Designated Parties** – Subject to the direction and orders of the Board or Hearing Examiner, parties have the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all documents filed in the proceeding, receive copies of all notices issued by the District concerning the proceeding, and otherwise fully participate in the proceeding.
- c) **Persons Not Designated Parties** – At the discretion of the Board or Hearing Examiner, persons not designated as parties to a proceeding may submit comments or statements, orally or in writing. Comments or

statements submitted by non-parties may be included in the record, but may not be considered by the Board or Hearing Examiner as evidence.

- d) **Furnishing Copies of the Pleadings** – After parties have been designated, a copy of every pleading, request, motion, or reply filed in the proceeding must be provided by the author to every other party or party's representative. A certification of this fact must accompany the original instrument when filed with the District. Failure to provide copies may be grounds for withholding consideration of the pleading or the matters set forth therein.
- e) **Interpreters for Deaf Parties and Witnesses** – If a party or subpoenaed witness in a contested case is deaf, the District must provide an interpreter whose qualifications are approved by the State Commission for the Deaf and Hearing Impaired to interpret the proceedings for that person. "Deaf person" means a person who has a hearing impairment, whether or not the person also has a speech impairment that inhibits the person's comprehension of the proceedings or communication with others.
- f) **Agreements in Writing** – No agreement between parties or their representatives affecting any pending matter will be considered by the Board or Hearing Examiner unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered as in the record.

RULE 8.2.9 – DISCOVERY

- a) **Governance** – Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Board or Hearing Examiner. Unless specifically modified by these Rules or by order of the Board or Hearing Examiner, discovery will be governed by, and subject to the limitations set forth in, the Texas Rules of Civil Procedure. In addition to the forms of discovery authorized under the Texas Rules of Civil Procedure, the parties may exchange informal requests for information, either by agreement or by order of the Board or Hearing Examiner.
- b) **Discovery Sanctions** – If the Board or Hearing Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Board or Hearing Examiner may: (i) suspend processing of the application for a permit if the applicant is the offending party; (ii) disallow any further discovery of any kind or a particular kind by the offending party; (iii) rule that particular facts be regarded as established against the offending party for the purposes of the proceeding, in accordance with the claim of the party obtaining the discovery ruling; (iv) limit the offending party's participation in the proceeding; (v) disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and, (vi) recommend to the Board that the hearing be dismissed with or without prejudice.

RULE 8.2.10 – TESTIMONY AND EVIDENCE

- a) **Decision on Application** – When deciding whether or not to issue a permit and in setting the terms of the permit, the Board must consider whether the application conforms to the requirements prescribed by Chapter 36 of the Texas Water Code, as amended, and the District Rules. Before granting or denying an operating permit, the District shall also consider whether: i) the proposed use of water unreasonably affects existing groundwater and surface water resources, existing permit holders, and/or existing exempt wells; ii) the proposed use and/or the historic use of water is dedicated to any beneficial use; iii) the proposed use and/or historic use of water is consistent with the District's certified management plan; iv) the applicant has agreed to avoid waste and achieve water conservation; and, v) the applicant has agreed that reasonable diligence will be used to protect groundwater quality and that the applicant will follow well plugging guidelines at the time of well closure. Also, if an application for a permit or an amendment to a permit under Section 36.113 of the Texas Water Code, as amended, proposes the transfer of groundwater outside of the District's boundaries, the District may also consider the provisions in Section 3.4 of these Rules in determining whether to grant or deny the permit or permit amendment.
- b) **Subpoenas** – The Board or Hearing Examiner may issue subpoenas to compel the testimony of any person that is necessary, helpful, or appropriate to the hearing and for the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.
- c) **Swearing Witnesses** – The Board or Hearing Examiner will administer the oath in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth.
- d) **Written Testimony** – When a proceeding will be expedited and the interest of the parties will not be prejudiced substantially, testimony may be received in written form. The written testimony of a witness, either in narrative or question and answer form, may be admitted into evidence upon the witness being sworn and identifying the testimony as a true and accurate record of what the testimony would be if given orally. The witness will be subject to clarifying questions and to cross-examination, and the prepared testimony will be subject to objection. 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.

- e) **Supplement to Testimony** – Provided that the Board has not acted on the application, the presiding officer may allow a person who testifies at the hearing to supplement the testimony given at the hearing by filing additional written materials with the presiding officer not later than the tenth day after the date of the hearing. A person who files additional written material with the presiding officer under this subsection must also provide the material, not later than the tenth day after the date of the hearing, to any person who provided comments on an uncontested application or any party to a contested hearing. A person who receives additional written material under this subsection may file a response to the material with the presiding officer not later than the tenth day after the date the material was received.
- f) **Admissibility of Evidence** – Except as modified by these Rules, the Texas Rules of Civil Evidence govern the admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of Civil Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. In addition, evidence may be stipulated by agreement of all parties.
- g) **Requirements for Exhibits** – Exhibits of a documentary character must be sized to not unduly encumber the files and records of the District. All exhibits must be numbered and, except for maps and drawings, may not exceed 8-1/2 by 11 inches in size.
- h) **Introduction of Copies of Exhibits** – Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Board or Hearing Examiner and to each of the parties, unless the Board or Hearing Examiner rules otherwise.
- i) **Excluding Exhibits** – In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit will be included in the record for the purpose of preserving the objection to excluding the exhibit.
- j) **Abstracts of Documents** – When documents are numerous, the Board or Hearing Examiner may receive in evidence only those that are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties have the right to examine the documents from which the abstracts are made.
- k) **Documents in District Files** – Extrinsic evidence of authenticity is not required as a condition precedent to admissibility of documents maintained in the files and records of the District.
- l) **Official Notice** – The Board or Hearing Examiner may take official notice of all facts judicially cognizable. In addition, official notice may be taken of generally recognized facts within the area of the District's specialized knowledge.
- m) **Oral Arguments** – At the discretion of the Board or Hearing Examiner, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Board or Hearing Examiner may require or accept written briefs in lieu of, or in addition to, oral arguments. When the matter is presented to the Board for final decision, further oral arguments may be heard by the Board.
- n) **Ex Parte Communications** – The Board and the Hearing Examiner, if appointed, may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or representative, except with notice and opportunity for all parties to participate. This provision does not prevent communications with staff not directly involved in the hearing to utilize the special skills and knowledge of the agency in evaluating the evidence.

RULE 8.2.11 – CONCLUSION OF THE HEARING

- a) **Proposal for Decision** – For a contested case, the presiding officer shall submit a proposal for decision to the Board not later than the thirtieth (30th) calendar day after the date the evidentiary hearing is concluded. The proposal for decision must include a summary of the subject matter of the hearing, a summary of the evidence or public comments received; and, the presiding officer's recommendations for Board action on the subject matter of the hearing. The presiding officer or General Manager shall provide a copy of the proposal for decision to the applicant and to each person who provided comments and each designated party. A party who receives a copy of the report as distributed by the presiding officer or General Manager may submit to the Board written exceptions to the proposal for decision. If the hearing was conducted by a quorum of the Board and if the presiding officer prepared a record of the hearing from an audio or video recording or from a court reporter transcription, then the presiding officer shall determine whether to prepare and submit a report to the Board under this section.
- b) **Board Action** – The Board shall consider the proposal for decision at a final hearing. Additional evidence may not be presented during a final hearing. The parties may present oral argument at a final hearing to summarize the evidence, present legal argument, or argue an exception to the proposal for decision. A final hearing may be continued as provided by Rule 8.2.4 .The Board shall act on a permit or permit amendment application not later than the sixtieth (60th) calendar day after the date the final hearing on the application is concluded. In deciding whether or not to issue an operating permit, existing and historic use permit and/or

transport permit, and in setting the terms of the permit, the Board will consider whether the application is consistent with the goals, regulations and laws as presented in Chapter 36 of the Texas Water Code, the District Act, the District's Rules and Certified Management Plan. The Board will not consider an application that is not accompanied with the appropriate prescribed fee.

- c) **Requests for Rehearing and/or Finding and Conclusions** – An applicant in a contested or uncontested hearing or a party to a contested hearing may administratively appeal a decision of the Board on a permit or permit amendment application by requesting written findings and conclusions not later than the twentieth (20th) calendar day after the date of the Board's decision. On receipt of a timely written request, the Board shall make written findings and conclusions regarding a decision of the Board on a permit or permit amendment application. The Board shall provide certified copies of the findings and conclusions to the person who requested them, and to each person who provided comments and each designated party, not later than the thirty-fifth (35th) calendar day after the date the Board receives the request. A party to a contested hearing may request a rehearing not later than the twentieth (20th) calendar day after the date the Board issues the findings and conclusions. A request for rehearing must be filed in the District office and must state the grounds for the request. If the original hearing was a contested hearing, the party requesting a rehearing must provide copies of the request to all parties to the hearing. If the Board grants a request for rehearing, the Board shall schedule the rehearing not later than the forty-fifth (45th) calendar day after the date the request is granted. The failure of the Board to grant or deny a request for rehearing before the ninety-first (91st) calendar day after the date the request is submitted is a denial of the request.
- d) **Decision** – A decision by the Board on a permit or permit amendment application is final: (i) if a request for rehearing is not filed before the specified expiration time; or (ii) if a request for rehearing is filed on time, on the date and: (A) the Board denies the request for rehearing; or, (B) the Board renders a written decision after rehearing. An applicant or a party to a contested hearing may file a suit against the District under Section 36.251 of the Texas Water Code to appeal a decision on a permit or permit amendment application not later than the sixtieth (60th) calendar day after the date on which the decision becomes final. An applicant or a party to a contested hearing may not file suit against the District under Section 36.251 if a request for rehearing was not filed on time.

SECTION 8.3 – RULEMAKING HEARINGS

RULE 8.3.1 – GENERAL PROCEDURES

- a) **Amending District Rules and Management Plan** – The Board may, following notice and hearing, amend these Rules or adopt new Rules from time to time.

RULE 8.3.2 – NOTICE

- a) **Notice of Rulemaking Hearing** – If the General Manager or Board schedules a rulemaking hearing, the General Manager or Board shall give notice of the hearing as provided by this section. The notice must include the following: (i) the time, date, and location of the rulemaking hearing; (ii) a brief explanation of the subject of the rulemaking hearing; and, (iii) a location or internet site at which a copy of the proposed rules may be reviewed or copied.
- b) **Timing of Notice** – Not later than the twentieth (20th) calendar day before the date of a rulemaking hearing, the General Manager or Board shall: (i) post notice in a place readily accessible to the public at the District office; (ii) provide notice to the County Clerk of each county in the District; (iii) publish notice in one or more newspapers of general circulation in the county or counties in which the District is located; (iv) provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.3.2c; and, (v) make available a copy of all proposed rules at a place accessible to the public during normal business hours and, if the District has a website, post an electronic copy on a generally accessible internet site.
- c) **Request for Notice** – A person may submit to the District a written request for notice of a rulemaking hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that notice was provided by the District.
- d) **Failure to Provide Notice** – Failure to provide notice under Rule 8.3.2c does not invalidate an action taken by the District at a rulemaking hearing.

RULE 8.3.3 – PROCEDURES

- a) **Authority of the Presiding Officer** – The presiding officer will conduct the rulemaking hearing in the manner the

presiding officer determines most appropriate to obtain all relevant information pertaining to the subject of the hearing as conveniently, inexpensively, and expeditiously as possible. The presiding officer may follow guidelines of "Robert's Rules of Order," 10th Edition, General Henry M. Robert, 2000 Revised Edition, or as amended.

- b) **Hearing Registration** – The District may require each person who participates in a rulemaking hearing to submit a hearing registration form stating the following: the person's name; the person's address; and whom the person represents, if the person is not at the hearing in the person's individual capacity.
- c) **Recording the Hearing** – The presiding officer shall prepare and keep a record of each rulemaking hearing in the form of an audio or video recording or a court reporter transcription.
- d) **Informal Procedures** – The District may use an informal conference or consultation to obtain the opinions and advice of interested persons about contemplated rules and may appoint advisory committees of experts, interested parties, or public representatives to advise the District about contemplated rules.

RULE 8.3.4 – EMERGENCY RULES

- a) **Imminent Peril** – A Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board: (i) finds that a substantial likelihood of imminent peril to the public health, safety, or welfare, or requirement of state or federal law, requires adoption of a rule on less than twenty (20) calendar days notice; and, (ii) prepares a written statement of the reasons for its finding.
- b) **Time in Effect** – A rule adopted under this section may not be effective for longer than ninety (90) calendar days unless notice of a hearing on the final rules is given not later than the ninetieth (90th) calendar day after the date the rule is adopted, in which case the rule is effective for an additional ninety (90) calendar days.
- c) **Adoption of the Rule** – A rule adopted under this section must be adopted at a meeting held as provided by Chapter 551, Government Code.

RULE 8.3.5 – TESTIMONY AND EVIDENCE

- a) **Submission of Documents** – Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the subject of the hearing. Unless the presiding officer grants additional time, all such documents must be submitted no later than the time of the hearing, as stated in the notice of hearing given in accordance with Rule 8.3.2b.
- b) **Oral Presentations** – Any person desiring to testify on the subject of the hearing must so indicate on the registration form provided at the hearing. The presiding officer establishes the order of testimony and may limit the number of times a person may speak, the time period for oral presentations, and the time period for raising questions. In addition, the presiding officer may limit or exclude cumulative, irrelevant, or unduly repetitious presentations.

RULE 8.3.6 – CONCLUSION OF THE HEARING

- a) **Closing the Record** – At the conclusion of the testimony, and after the receipt of all documents, the presiding officer may either close the record, or keep it open for a specified period to allow the submission of additional information or written comments. If the presiding officer is a Hearing Examiner, the Hearing Examiner must, after the record is closed, prepare a report to the Board. The report must include a summary of the subject of the hearing and the public comments received, together with the Hearing Examiner's recommendations for action. Upon completion and issuance of the Hearing Examiner's report, a copy must be submitted to the Board. Any interested person who so requests in writing will be notified when the report is complete, and furnished a copy of the report.
- b) **Exceptions to the Report** – Any interested person may make exceptions to the final report submitted to the Board and the Board may reopen the record if necessary.
- c) **Decision** – After the record is closed and the matter is submitted to the Board, the Board may then take the matter under advisement, continue it from day to day, reopen or rest the matter, refuse the action sought or grant the same in whole or part, or take any other appropriate action. The Board action takes effect at the conclusion of the meeting and is not affected by a motion for rehearing.
- d) **Request for Re-hearing** – Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within twenty (20) calendar days of the Board's decision. Such a rehearing request must be filed at the District Office in writing and must state clear and concise grounds for the request. Such a rehearing request is mandatory with respect to any decision or action of the Board before any appeal may be brought. The Board's decision is final if no request for rehearing is made within the specified time, or upon the Board's denial of the request for rehearing, or upon rendering a decision after rehearing. If the rehearing request is granted by the board, the date of the rehearing will be within forty-five (45) calendar days thereafter, unless otherwise agreed to by the parties to the proceeding. The failure of the Board to grant or

deny the request for rehearing within ninety (90) days of submission will be deemed to be a denial of the request.

SECTION 8.4 – CRITICAL GROUNDWATER DEPLETION AREA HEARINGS

RULE 8.4.1 – NOTICE

- a) **Conduct of Hearing** – All hearings regarding Critical Groundwater Depletion Areas (CGCA) must abide by the requirements of the Open Meetings Act.
- b) **Affected Parties** – A copy of the notice must be provided to each landowner, well owner, well operator and known groundwater right holder in the proposed CGDA, or notice of hearing must be published at least once in a newspaper of general circulation in the District. The notice must describe the proposed management area in such a way that each landowner, well owner, well operator and known groundwater right holder in the proposed management area can recognize their inclusion.
- c) **Request for Notice** – A person may submit to the District a written request for notice of a CGDA hearing. A request is effective for the remainder of the calendar year in which the request is received by the District. To receive notice of a rulemaking hearing in a later year, a person must submit a new request. An affidavit of an officer or employee of the District establishing attempted service by first class mail, facsimile, or e-mail to the person in accordance with the information provided by the person is proof that the notice was provided by the District.