

## **Rule 8 Procedural Rules**

### ***Rule 8.1 Hearings on Management Plan, Budget and Rules Other Than Emergency Rules***

**8.1.A.** Once the District has developed a proposal involving its management plan, budget, or Rules, other than emergency rules, the District will decide at which Board meeting the proposal will be considered for action. The Board meeting at which the proposal is considered under this Rule shall be considered the public hearing on the proposal and fulfills the requirement, if any, for a public hearing. All proposed changes to District Rules must comply with District Rule 1.4.

**8.1.B.** Notice required by the Open Meetings Act shall be provided for the hearing.

**8.1.C.** In addition to the notice required by the Open Meetings Act, not later than the 20<sup>th</sup> day before the date of the hearing, notice shall be provided as follows:

- (1) Post notice in a place readily accessible to the public at the District office;
- (2) Provide notice to the county clerk of Kendall County;
- (3) Publish notice in one or more newspapers of general circulation in the county or counties in which the District is located; and
- (4) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.1.F. Failure to provide notice under this Rule 8.1.C(4) does not invalidate an action taken by the District at a rulemaking hearing.

**8.1.D.** Notice of the hearing on the proposal required by Rule 8.1.C shall include:

- (1) A brief explanation of the subject of the rulemaking hearing, including a statement that the District's Board of Directors will consider changes to the District's Rules, Management Plan, or budget, at the Board meeting, which will serve as the public hearing on the matter.
- (2) The time, date, and location of the hearing.
- (3) The agenda of the hearing.
- (4) A statement that the proposal is available to be reviewed or copied at the District Office prior to the hearing.
- (5) A statement that the District will accept written comments and give the deadline for submitting written comments.
- (6) A statement that oral public comment will be taken at the hearing.

**8.1.E.** Copies of the proposal shall be available at the District Office during normal business hours at least 20 days prior to the hearing.

**8.1.F.** 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.

- 8.1.G.** 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.
- 8.1.H.** Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.
- 8.1.I.** The District shall make and keep in its files an audio recording of the hearing.
- 8.1.J.** 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.
- 8.1.K.** The effective date of the written order or resolution 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 proposed Rules become 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.
- 8.1.L.** If in the course of the deliberation during the meeting, the Board decides it wants to substantially change the proposal, the Board shall “continue” or postpone the matter until a future Board meeting. Prior to consideration of the substantially changed proposal, the District shall provide notice and opportunity for comment and hold a hearing on the substantially changed proposal under this Rule. It is solely within the discretion of the Board what constitutes a substantial change to a proposal under this Rule.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended December 10, 2012, by Board Order 2012-008, effective December 12, 2012.*

## **Rule 8.2      Adoption of Emergency Rules**

- 8.2.A.** The District may adopt an emergency rule without following the notice and hearing provisions of Rule 8.1, if the Board complies with this Rule 8.2.A. Such emergency rule shall be consistent with District Rule 1.4,
- (1) 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
  - (2) Prepares a written statement of the reasons for its finding under Rule 8.2.A(1).

- 8.2.B.** An emergency rule under this Rule 8.2 must be adopted at a meeting of the Board subject to the requirements of the Open Meetings Act. Notice required by the Open Meetings Act shall be provided.
- 8.2.C.** Except as provided by Rule 8.2.D., a rule adopted under this Rule may not be effective for longer than 90 days.
- 8.2.D.** If notice of a hearing under Rule 8.1 is given before the emergency rule expires under Rule 8.2.C., the emergency rule is effective for an additional 90 days.

*Adopted September 12, 2005 by Board Order 2005-007; effective September 14, 2005.  
Amended December 10, 2012, by Board Order 2012-008, effective December 12, 2012.*

**Rule 8.3      *Actions on Drilling and Operating Permits***

- 8.3.A.** Within 60 days after the date it is deemed administratively complete by the District, an application under this Rule 8.3 shall be acted on by the District's General Manager or set on a specific date for action at a meeting of the District Board.
- 8.3.B.** An application for a drilling permit for a new exempt well under Rule 3.2 may be approved by the District's General Manager without further Board action. Denial of a drilling permit for a new exempt well shall be referred to the Board for action under Rule 8.4. An application for a drilling permit for a new non-exempt well shall be referred to the Board for action with the associated application for an operating permit.
- 8.3.C.** An application for an operating permit for either an existing or new well, which requests production of less than the instantaneous rate of 5 gallons per minute and less than a total annual production of 1 acre-foot, may be approved by the District's General Manager without further Board action. Upon denial of such an application, or upon request of the applicant, the application shall be referred to the Board for action under Rule 8.4. All other applications for an operating permit for an existing or new well under Rules 3.1.B and 3.3, or an amendment to an operating permit, shall be referred to the Board for action under Rule 8.4.
- 8.3.D.** An application for renewal or minor amendment of an operating permit under Rules 3.4.E or 3.4.F may be approved by the District's General Manager without further Board action. Denial of an operating permit renewal or minor amendment shall be referred to the Board for action under Rule 8.4.
- 8.3.E.** An application for a major amendment of an operating permit under Rule 3.4.F shall be referred to the Board for action under Rule 8.4.

- 8.3.F.** If an involuntary amendment or revocation is the result of an enforcement action under District Rule 7 and the respondent permit holder requests a hearing, it shall be referred to the Board for action under District Rule 8.7.
- 8.3.G.** The District may initiate a permit amendment(s) to Permits with reference to the drilling, equipping, completion, alteration, or operation of, or production of groundwater from, wells or pumps that may be necessary to prevent waste and achieve water conservation, minimize as far as practicable the drawdown of the water table or the reduction of artesian pressure, including but not limited to enforce the adopted desired future conditions of the aquifer(s), lessen interference between wells, or control and prevent subsidence. District-initiated permit amendments are subject to notice and hearing under Rule 14. If the District initiates an amendment to an operating permit, the permit as it existed before the permit amendment process shall remain in effect until the conclusion of the permit amendment or renewal process, as applicable. If an involuntary amendment or revocation is not the result of an enforcement action under District Rule 7 and the permit holder requests a hearing, it shall be referred to the Board for action under District Rule 8.4.

*Adopted September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029; effective August 23, 2007. Amended May 20, 2008 by Board Order 2008-007; effective May 23, 2008. Amended December 10, 2012, by Board Order 2012-008, effective December 12, 2012. Amended February 13, 2017 by Board Order 2012-008; effective February 13, 2017. Amended March 20, 2024, by Board Order 2024-001; effective March 20, 2024.*

**Rule 8.4      *Permit Actions by the Board***

- 8.4.A.** In this Rule, “Applications” means applications referred to the Board for action under the requirements of Rule 8.3 and establishes that prior to the Board decision under Rule 8.4.H, the Application is considered uncontested, whether or not there is opposition to the Application and whether or not a request for contested case hearing has been prematurely submitted. Rule 8.4.I establishes when an Application becomes contested.
- 8.4.B.** Within 60 days of the date on which the District determines that an Application is administratively complete, it shall be set on the agenda as an uncontested matter for Board action at a Board meeting. This setting serves to fulfill the requirement of Texas Water Code 36.114(e). Such setting shall be no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by Rule 8.4.E.

- 8.4.C.** An Application that is referred to the Board shall be considered by the Board within 95 days of the date on which the Application was determined to be administratively complete.
- 8.4.D.** Notice required by the Open Meetings Act shall be provided for the meeting and shall include the name of the applicant, the address or approximate location of the well, the amount of water production requested, and the purpose or use of the requested water.
- 8.4.E.** Notice of the Board meeting at which the Application will be considered shall be mailed to the applicant at least seven days prior to the scheduled meeting date. Such notice may be waived by the applicant.
- 8.4.F.** Anyone interested in the Application may attend the meeting and make oral comments at the time designated for comments.
- 8.4.G.** The Board, at its sole discretion, may administer an oath to the staff, the applicant, and anyone who makes oral comments on the Application.
- 8.4.H.** The Board shall issue a written order or resolution reflecting its decision. If the Board approves the Application, the permit shall be an attachment to that written order or resolution. The Board's decision shall be made within 60 days after the Board meeting at which the Application was considered.
- 8.4.I.** A request for contested case hearing, which will be conducted under Rule 8.5, shall be in writing and must be received by the District by the District by 5:00 p.m. the day before the permit hearing. If a contested case hearing requester intends to request that the hearing be sent to the State Office of Administrative Hearings, as authorized by Texas Water Code 36.416(b) and District Rule 8.6, that request must be included in the request for contested case hearing or it is waived. The following individuals may submit a contested case hearing request and may be named parties at the preliminary hearing:
- (1) The applicant; or
  - (2) A person who (a) has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest that is within the District's regulatory authority, that is not merely an interest common to members of the public; and (b) is affected by the Board's action on the Application.
- 8.4.J.** If the District receives a written contested case hearing request during the period required under District Rule 8.4.I, the District shall schedule a preliminary hearing no later than the next regularly scheduled Board

meeting that would allow sufficient time for the notice required by this Rule 8.5, but in no event longer than 35 days after the date of the request. Notice of the preliminary hearing shall be provided as required under District Rules 8.5.B, C, D, E and F.

- (1) The preliminary hearing may be conducted by:
  - (a) a quorum of the board;
  - (b) 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
  - (c) the State Office of Administrative Hearings under Section 36.416.
  
- (2) At the preliminary hearing, any matter which may expedite the hearing or otherwise facilitate the hearing process may be considered, including:
  - (a) whether a valid contested case hearing request has been submitted and if so, the designation of parties. If the District's decision on an operating permit application is opposed by one or more individuals requesting a contested case hearing, the General Manager is automatically a party.
  - (b) the contested case hearing fee deposit amount required to be paid by each designated party under Rule 4.2. If a request under District Rule 8.6 has been made to send the contested case hearing to the State Office of Administrative Hearings, the amount of the contested case hearing fee deposit under Texas Water Code section 36.416(c) and District Rule 4.2.B.
  - (c) if a request under District Rule 8.6 has been made to send the contested case hearing to the State Office of Administrative Hearings, the location of the hearing either in Travis County, Texas, or as described in Texas Water Code section 36.403(c).
  - (d) formulation and simplification of issues.
  - (e) the hearing schedule, including any necessary discovery.
  
- (3) The District's decisions made in the preliminary hearing will be in the form of a written order. If the District determines that there will be a contested case hearing, the written order shall also specify, if

applicable, a ten (10) day deadline to submit to the District the required contested case hearing fee deposits under Texas Water Code section 36.416(c) and District Rules 4.2.A and B. The 10-day deadline shall run from the date of the written order under this Rule 8.4.J(2).

**8.4.K.** The effective date of the Board's written order or resolution reflecting its decision on the application under Rule 8.4.H shall be 10 days after the date on which the President of the District signs the order or resolution, if no contested case hearing request is submitted under Rule 8.4.I. is received by the District. The order or resolution shall include a statement that the order or resolution and its attachment become effective and final within 10 days of 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, unless there is a contested case hearing request.

**8.4.L. Effective Date**

(1) The effective date of the Board's written order or resolution reflecting its decision on the Application under Rule 8.4.H shall be the date on which the Board signs a written order or resolution under 8.4.J(2) denying the Contested Case Hearing Request under the following circumstances. If there is:

- (a) a timely filed contested case hearing request,
- (b) a preliminary hearing is held under Rule 8.4.J, and
- (c) the Board determines that there will be no contested case hearing.

(2) 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

**8.4.M.** If the contested case hearing fee deposit described in 8.4.J (1)(b) is not submitted to the District by the deadline prescribed in the Board order under Rule 8.4.J(2), the contested case hearing request is considered withdrawn. Under these circumstances, the Board's written order or resolution reflecting its decision on the Application under Rule 8.4.H shall become effective. 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.



**8.4.N.** 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. 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 (8.4.O.).

**8.4.O.** The Board may take action on any uncontested application at a properly noticed public meeting held at any time after the public hearing at which the application is scheduled to be heard. The Board may issue a written order to:

- (1) grant the application;
- (2) grant the application with special conditions; or
- (3) deny the application.

**8.4.P.** 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:

- (1) includes special conditions that were not part of the application as finally submitted; or
- (2) grants a maximum amount of groundwater production that is less than the amount requested in the application.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended December 10, 2012, by Board Order 2012-008, effective December 12, 2012. Amended February 13, 2017 by Board Order 2012-008; effective February 13, 2017.*

### **Rule 8.5      *Permit Actions Requiring a Contested Case Hearing***

**8.5.A.** Rule 8.5 applies only to Applications for which the District has received a timely filed request for a contested case hearing under Rule 8.4.I. Additional requirements for a SOAH contested case hearing are in District Rule 8.6.

**8.5.B.** If the District receives a timely filed request for a contested case hearing under Rule 8.4.I., the Application shall be set for the initial hearing no later than the next regularly scheduled Board meeting that would allow sufficient time for the notice required by this Rule 8.5. Setting of a prehearing conference under Rule 8.4.J. shall be considered the setting of the initial hearing.

**8.5.C.** Notice required by the Open Meetings Act shall be provided for the preliminary hearing and any other settings of a contested case hearing, if conducted by a quorum of the Board.

**8.5.D.** In addition to the notice required by the Open Meetings Act, not later than the 10<sup>th</sup> day before the date of the preliminary hearing, notice shall be provided as follows:

- (1) Post notice in a place readily accessible to the public at the District office;
- (2) Provide notice to the county clerk of Kendall County;
- (3) Mail notice to the applicant by regular mail;
- (4) Mail notice to the individual requesting a contested case hearing by regular mail; and
- (5) Provide notice by mail, facsimile, or electronic mail to any person who has requested notice under Rule 8.5.F. Failure to provide notice under this Rule 8.5.D(5) does not invalidate an action taken by the District at the preliminary hearing or any other settings of a contested case hearing.

**8.5.E.** Notice of the hearing on the Application shall include the following:

- (1) The name of the applicant;
- (2) The address or approximate location of the well or proposed well;
- (3) A brief explanation of the proposed permit, permit amendment, or permit renewal, including any requested amount of groundwater, the purpose of the proposed use, and any change in use;
- (4) The time, date and location of the preliminary hearing; and
- (5) Any other information the District considers relevant and appropriate.

**8.5.F.** A person may submit to the District a written request for notice of a hearing on a permit or permit amendment. 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 hearing in a later year, a person must submit a new request.

**8.5.G.** The hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a hearings examiner to preside at and conduct the hearing on the application. Additionally, a hearing may be held by SOAH under District Rule 8.6. The appointment of a hearings examiner shall be made in writing. If the hearing is conducted by a quorum of the Board, the President shall preside. If the President is not present, the Board shall select one of the Directors who are present to preside.

**8.5.H.** The presiding officer has the following authority and obligations:

- (1) May convene the hearing at the time and place specified in the notice;
- (2) May set any necessary additional hearing dates;
- (3) May designate the parties regarding a contested application;
- (4) May establish the order for presentation of evidence;
- (5) May administer oaths to all persons presenting testimony;
- (6) May examine persons presenting testimony;
- (7) May ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party;
- (8) Shall admit relevant evidence and may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
- (9) May prescribe reasonable time limits for testimony and the presentation of evidence.
- (10) 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.
- (11) 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

- (12) May continue a hearing from time to time and from place to place without providing notice under Rule 8.5.D. and E. 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. In any event, if the hearing is being conducted by a quorum of the Board, Open Meetings notice under Rule 8.5.C. shall be provided. A continuance may not exceed the time limit for the issuance of a final decision under 8.6.F.
- (13) exercise the procedural rules adopted herein; and
- (14) 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.

**8.5.I** 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 and payment of an appropriate deposit, as set by the presiding officer, 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 timely manner costs assessed against that party under this Rule 8.5.I.

**8.5.J.** If the Board has appointed a hearings examiner to be the presiding officer at the hearing, the hearings examiner shall submit a proposal for decision to the Board not later than the 30<sup>th</sup> day after the date the evidentiary 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 proposal for decision. The proposal for decision shall include:

- (1) A summary of the subject matter of the hearing;
- (2) A summary of the evidence received; and
- (3) The hearing examiner's recommendations for Board action on the subject matter of the hearing.

**8.5.K.** The Board shall consider the hearings examiner's 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 Section 36.409. 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.

**8.5.K.i.** If the hearing was conducted by a quorum of the Board and if the presiding officer prepared a record of the hearing as provided by Section 36.408(a), the presiding officer shall determine whether to prepare and submit a proposal for decision [~~report~~] to the Board under this section.

**8.5.L.** Request for rehearing or findings of fact and conclusions of law shall be considered as follows:

- (1) An applicant in a contested or uncontested hearing on an application or a party to a contested hearing may administratively appeal a decision of the board on a permit or permit amendment application by making a request in writing to the board. A party seeking to appeal a decision by the board must request written findings of fact and conclusions of law not later than the 20th day after the date of the board's decision unless the board issued findings of fact and conclusions of law as part of the final decision.
- (2) On receipt of a timely written request as stated in (1) above, the Board shall make written findings of fact and conclusions of law regarding a decision of the Board on an Application. The board shall provide certified copies of the findings of fact and conclusions of law 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 of fact and conclusions of law.
- (3) A request for rehearing must be filed in the District office and must state the grounds for the request. The party requesting a rehearing must provide copies of the request to all parties to the hearing.

- (4) 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.
- (5) 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.
- (6) The board shall consolidate requests for rehearing filed by multiple parties to the contested case hearing, but only one rehearing may be considered per matter.

**8.5.M.** A decision by the Board on an Application is final if:

- (1) A request for rehearing is not filed on time, on the expiration of the period for filing a request for rehearing; or
- (2) A request for rehearing is filed on time, on the date:
  - (a) the Board denies the request for rehearing; or
  - (b) the Board renders a written decision after rehearing.

**8.5.N.** An applicant or a party to a contested hearing may file a suit against the District under Texas Water Code Section 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 timely filed request for rehearing is a prerequisite to any such suit. Only the District, the applicant, and the parties to a contested case hearing may participate in an appeal of a decision on the application that was the subject of that contested case hearing. An appeal of a decision on a permit application must include the applicant as a necessary party.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Amended September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended December 10, 2012, by Board Order 2012-008, effective December 12, 2012. Amended February 13, 2017 by Board Order 2012-008; effective February 13, 2017. Amended October 10, 2023 by Board Order 2023-010; effective Amended October 10, 2023.*

## **Rule 8.6      Contested Case Hearing Referred to SOAH**

**8.6.A.** If the Board determines that a contested case hearing will be held, a request by the applicant or other party was timely filed under District Rule 8.4.I, and the contested case hearing deposit fee was timely received by the District

under District Rule 8.4.K, the District shall contract with the State Office of Administrative Hearings to conduct the hearing.

- 8.6.B.** The contested case hearing shall be conducted in Travis County or at the District Office or regular meeting location of the Board unless the Board provides for hearings to be held at a different location.
- 8.6.C.** 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. This contested case hearing deposit fee shall be received by the District within 10 days of issuance of the order or resolution under District Rule 8.4.J(2). At the conclusion of the contested case hearing, the District shall refund any excess money to the paying party. All other costs may be assessed as authorized by Texas Water Code Chapter 36 or District Rules.
- 8.6.D.** The hearing shall be conducted as provided in District Rule 8.5, to the extent District Rule 8.5 does not conflict with subchapters C, D, and F of the Texas Government Code, Chapter 2011 and the procedural rules of the State Office of Administrative Hearings.
- 8.6.E.** The District order or resolution under District Rule 8.4.J(2) shall control on the issues addressed in that order.
- 8.6.F.** (1) The District Board has the authority to make a final decision on consideration of a proposal for decision issued by a SOAH Administrative Law Judge consistent with Texas Government Code 2001.058.  
  
(2) A 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 provided under Section 36.416(e), or prior 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.
- (3) A final decision issued by the board under this section must be in writing and must either adopt the proposed findings of fact and

conclusions of law as proposed by the administrative law judge or include revised findings of fact and conclusions of law consistent with (2) above.

- (4) Notwithstanding any other law, a board shall issue a final decision under this section not later than the 180th day after the date of receipt of the final proposal for decision from the State Office of Administrative Hearings. The deadline may be extended if all parties agree to the extension.
- (5) Notwithstanding any other law, if a motion for rehearing is filed and granted by a board under Rule 8.5.L, the board shall make a final decision on the application not later than the 90th day after the date of the decision by the board that was subject to the motion for rehearing.
- (6) A board is considered to have adopted a final proposal for decision of the administrative law judge as a final order on the 181st day after the date the administrative law judge issued the final proposal for decision if the board has not issued a final decision by:
  - (a) adopting the findings of fact and conclusions of law as proposed by the administrative law judge; or
  - (b) issuing revised findings of fact and conclusions of law as provided by (2) above.
- (7) A proposal for decision adopted under (6) above is final, immediately appealable, and not subject to a request for rehearing.

**8.6.G.** 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.

**8.6.H.** The District shall provide the administrative law judge with a written statement of applicable rules or policies.

**8.6.I.** 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.

*Adopted December 10, 2012 by Board Order 2012-008; effective December 12, 2012. Amended February 13, 2017 by Board Order 2012-008; effective February 13, 2017. Amended October 10, 2023 by Board Order 2023-010; effective Amended October 10, 2023.*



**Rule 8.7     *Hearings on Enforcement Actions***

- 8.7.A.** 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.
- 8.7.B.** Notice required by the Open Meetings Act shall be provided for the meeting.
- 8.7.C.** Notice of the enforcement hearing shall be mailed to the respondent by certified mail, return receipt requested, at least ten days prior to the scheduled hearing date.
- 8.7.D.** Anyone attending the meeting on the enforcement action may make oral comments at the time designated for comments.
- 8.7.E.** 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.
- 8.7.F.** The hearing shall be conducted by a quorum of the Board, or the Board, at its sole discretion, may appoint a hearings examiner to preside at and conduct the enforcement hearing. Appointment of a hearings examiner shall be made in writing. If the hearing is conducted by a quorum of the Board, the President shall preside. If the President is not present, the Board shall select one of the Directors who are present to preside. If the matter is referred to a hearings examiner, upon completion of the hearing the hearings examiner shall submit a written recommendation to the Board of Directors.
- 8.7.G.** At the close of the enforcement hearing, the Board of Directors shall make a decision on the issues before it. If that matter was referred for hearing, the Board of Directors is not required to approve the written recommendation submitted by the hearings examiner.
- 8.7.H.** The Board of Directors shall issue a written order or resolution reflecting its decision.
- 8.7.I.** 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.

*Adopted May 17, 2005 by Board Order; effective May 17, 2005. Renumbered September 12, 2005 by Board Order 2005-007; effective September 14, 2005. Amended August 20, 2007 by Board Order 2007-029 effective August 23, 2007. Amended December 10, 2012, by Board Order 2012-008, effective December 12, 2012.*

## **Rule 8.8      Procedures for Joint Planning**

### **8.8.A. Notice and Public Hearing on Proposed Relevant DFCs**

- (1) When the GMA-9 joint planning committee mails a copy of the proposed desired future conditions proposed under Texas Water Code 36.108(d), a 90-day comment period begins.
- (2) During the public comment period, the District shall post notice and hold a public hearing on any proposed DFCs relevant to the District.
- (3) During the public comment period, the District shall make available in the District Office a copy of the proposed DFC and any supporting materials, such as the documentation of factors considered under Texas Water Code 36.108(d) and groundwater availability model run results.
- (4) At least 10 days before a hearing on the proposed desired future conditions proposed by the GMA-9 Joint Planning Committee under Texas Water Code 36.108(d), the District must post notice of public hearing on the proposed DFC that includes the following:
  - (a) the proposed desired future conditions and a list of any other agenda items;
  - (b) the date, time, and location of the public hearing;
  - (c) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted;
  - (d) the names of the other districts in GMA-9; and
  - (e) information on how the public may submit comments

- (5) The notice must be:
  - (a) posted in a place readily accessible to the public at the District Office;
  - (b) provided to the county clerk of each county in the District;
  - (c) published in one or more newspapers of general circulation in the counties in which the District is located; and
  - (d) provided by mail, facsimile, or electronic mail to any person who has requested notice under District Rule 8.1.F.
- (6) At least 10 days before a hearing on the proposed desired future conditions proposed by the GMA-9 joint planning committee, the District shall make available a copy of the proposed desired future conditions at a place accessible to the public during normal business hours and on the District website.
- (7) 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.
- (8) Anyone interested in the proposal may attend the hearing and make oral comments at the time designated for comments.
- (9) The District shall make and keep in its files an audio recording of the hearing.
- (10) 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.
- (11) After the public hearing, the District shall compile for consideration at the next GMA-9 joint planning meeting a summary of relevant comments received, any suggested revisions to the proposed desired future conditions, and the basis for the revisions; and any supporting materials, including new or revised groundwater availability model run results. This information compiled and submitted to the district representatives must be made available on a generally accessible Internet website maintained on behalf of the management area for not less than 30 days.

- (12) The District shall submit the DFC hearing summary report to GMA9 no later than the end of the 90-day public comment period.

#### **8.8.B. District Adoption of the DFCs**

- (1) As soon as possible after the District receives the DFC resolution and explanatory report, the District shall adopt the DFCs in the resolution and report that apply to the District.
- (2) The notice and hearing provisions of District Rule 8.8.A(2) - (9) apply to the District's adoption of the DFCs.
- (3) An appeal of District-adopted desired future conditions shall follow §§36.1083 and 36.10835, Water Code.

*Adopted December 10, 2012 by Board Order 2012-008; effective December 12, 2012. Amended February 13, 2017 by Board Order 2012-008; effective February 13, 2017. Amended October 10, 2023 by Board Order 2023-010; effective Amended October 10, 2023.*

#### **8.9. 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.

- (3) 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.
- (4) 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.
- (5) 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.

*Amended October 10, 2023 by Board Order 2023-010; effective Amended October 10, 2023.*