

**LIPAN-KICKAPOO
WATER CONSERVATION DISTRICT**

**MANUAL
OF
HEARINGS PROCEDURES**

Adopted August 4, 2004

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DEFINITIONS

- (a) LKWCD means the Lipan-Kickapoo Water Conservation District.
- (b) TWC means the Texas Water Code, as amended.

SECTION 1. PUBLIC COMPLAINTS AND INFORMAL HEARINGS

RULE 1.1 - PUBLIC COMPLAINT PROCEDURES.

Members of the public having complaints regarding the District's policies, procedures, or operations may present their complaints or concerns to the Board pursuant to the procedures set forth in this manual. The Board intends that, whenever feasible, complaints shall be resolved at the lowest possible administrative level.

- (a) **LEVEL ONE: Initial Complaint.**
 - (1) An individual who has a complaint or concern shall request a conference with the general manager within fifteen (15) days of the event or action that is the subject of the complaint. The general manager shall hold a conference with the individual within seven (7) days of the request. Following the conference, the general manager shall have seven (7) days within which to respond.
 - (2) Prior to or at the time of the conference, the complainant shall submit a signed written complaint that includes his or her signed statement of the complaint, any evidence in its support, and the resolution sought.
- (b) **LEVEL TWO: Informal Hearing with the Board.**
 - (1) If the outcome of the conference with the general manager is not to the complainant's satisfaction or the time for a response has expired, the complainant may submit to the general manager a request to place the matter on the agenda of a future Board meeting. The request shall be in writing and must be filed within seven (7) days of the response or, if no response is received, within seven (7) days of the response deadline. The general manager shall inform the complainant of the date, time, and place of the meeting.
 - (2) The Presiding Officer shall establish a reasonable time limit for complaint presentations. The District may make an audiotape record of the Level Two proceeding before the Board. The Board shall hear the complaint and shall then make and communicate its decision orally at the informal hearing or proceeding and formally in writing within 30 days following the informal hearing or proceeding.
- (c) **LEVEL THREE: Appeals Procedure.**
 - (1) Any decision of the Board on a matter from an informal hearing may be appealed by requesting a rehearing before the Board within fifteen (15) days of the announcement by the Board of its decision or action.
 - (a) Such a rehearing request must be filed at the District office in writing and must state clear and concise grounds for the request.
 - (b) 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 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 90 calendar days of submission will be deemed to be a denial of the request. Rehearings shall be conducted in accordance with the procedures for contested hearings, Rules 2.5 herein.
 - (2) Any person whose application is denied, whose contest is overruled, or who is not granted the relief desired, may appeal the decision of the Board to District Court. In the event the complainant desires to appeal the decision of the Board to District Court, a notice of appeal must be filed with the District within 60 days of the Board's entry of its final order.

RULE 1.2 - CLOSED MEETING. If a complaint involves concerns or charges regarding an employee, it shall be heard by the Board in a closed meeting unless the employee to whom the complaint pertains requests that it be heard in public.

SECTION 2. HEARINGS

RULE 2.1 - TYPES OF HEARINGS.

The District conducts two general types of hearings: adjudicative and rule making.

- (a) **Adjudicative.** Adjudicative hearings are conducted in accordance with the Lipan-Kickapoo Water Conservation District Manual of Hearing Procedures.
 - (1) Permit hearings: Applications, Amendments and Revocations, Exceptions to Spacing Rules. Permit hearings involve permit matters, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing; and
 - (2) Other matters. A public hearing may be held on any matter within the jurisdiction of the duties and responsibilities of the Board if the Board deems a hearing to be in the public interest or necessary to effectively carry out the duties and responsibilities of the District. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearings Examiner.
- (b) **Rule Making.** Rule making hearings involve matters of general applicability that implement, interpret, or prescribe the law or District policy. Rule making hearings are conducted in accordance with §36.101, Texas Water Code.

RULE 2.2 - GENERAL PROVISIONS.

- (a) **Computing Time.** If the day on which compliance is due under the terms and provisions of these Hearing Procedures is a Saturday, Sunday, or legal holiday, then compliance will be due the next day that is not a Saturday, Sunday, or legal holiday.
- (b) **Notice and Scheduling of Hearings.** The General Manager is responsible for giving notice of all hearings and public meetings of the District in the following manner:
 - (1) Notice will be given to each person who requests copies of hearing notices pursuant to the procedures set forth in subsection (3), and any other person the General Manager or Board of Directors deems appropriate. The date of delivery or mailing of notice may not be less than ten (10) calendar days before the date set for the hearing.
 - (2) A copy of the notice must be posted at the District's office and the county courthouse of each county within the District in the place where notices are usually posted. The date of posting shall not be less than 10 business days before the date of the hearing.
 - (3) Any person having an interest in the subject matter of a hearing(s) may receive written notice of such hearing(s) by submitting a request in writing. The request must identify with as much specificity as possible the hearing(s) for which written notice is requested. The request remains valid for a period of one year from the date of the request, after which time a new request must be submitted. Failure to provide written notice under this section does not invalidate any action taken by the Board.
 - (4) After giving proper notice, hearings may be held in conjunction with any Regular or Special called meeting of the Board or hearings may be scheduled at other times as deemed appropriate by the Board. All hearings will be held at the District office unless the Board determines that another location would be more appropriate for a specific hearing.
- (a) **Conduct of Hearings.**
 - (1) Hearings will be conducted in such a manner as the Board deems most suitable to the particular case. It is the purpose of the Board to obtain all the relevant information and testimony pertaining to the issue before it as conveniently, inexpensively and expeditiously as possible without prejudicing the rights of either applicants or contestants.
 - (2) All hearings will be conducted in conformance with the Lipan-Kickapoo Water Conservation District Manual of Hearings Procedures, the Texas Rules of Civil Procedure and the Texas Rules of Evidence. Where there is a conflict between the District's Manual of Hearings Procedures and the Texas Rules of Civil Procedure and the Texas Rules of Evidence, the procedures set forth in the District's Manual of Hearings Procedures will prevail.

RULE 2.3 - GENERAL RULES OF PROCEDURE FOR ADJUDICATIVE HEARINGS.

- (a) **Presiding Officer.** In hearings before the Board, the President of the Board or a Board member selected by the President of the Board shall be the presiding officer. In hearings referred to a Hearings Examiner, the Hearings Examiner shall be the presiding officer. The Hearings Examiner may be any person selected by the board for that purpose.

- (b) **Authority of Presiding Officer.** The presiding officer may conduct the hearing or other proceeding in the manner the presiding officer deems most appropriate for that particular proceeding. The presiding officer has the authority to:
- (1) set hearing dates;
 - (2) convene the hearing at the time and place specified in the notice for public hearing;
 - (3) establish the jurisdiction of the District concerning the subject matter under consideration;
 - (4) rule on motions and on the admissibility of evidence and amendments to pleadings;
 - (5) designate and align parties and establish the order for presentation of evidence;
 - (6) administer oaths to all persons presenting testimony;
 - (7) examine witnesses;
 - (8) issue subpoenas authorized by the Board when required to compel the attendance of witnesses or the production of papers and documents;
 - (9) compel discovery under these Rules;
 - (10) ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
 - (11) conduct public hearings in an orderly manner, in accordance with these Rules;
 - (12) recess any hearing from time to time and place to place;
 - (13) reopen the record of a hearing for additional evidence, when necessary to make the record more complete; and
 - (14) exercise any other appropriate powers necessary or convenient, to effectively carry out the responsibilities of presiding officer.
- (c) **Hearing Registration Forms.** Each individual attending a hearing or other proceeding of the District must submit a form providing the following information: name; address; whether the person plans to testify; and any other information relevant to the hearing or other proceeding.
- (d) **Appearance; Representative Capacity.** Any interested person may appear in person or may be represented by counsel, engineer, or other representative provided the representative is fully authorized to speak and act for the principal. Such person or representative may present evidence, exhibits, or testimony, or make an oral presentation in accordance with the procedures applicable to the particular proceeding. A duly authorized officer or agent of a public or private corporation, political subdivision, governmental agency, municipality, association, firm, or other entity may appear for the entity. A fiduciary may appear for a ward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.
- (e) **Alignment of Parties; Number of Representatives Heard.** Participants in a proceeding may be aligned according to the nature of the proceeding and their relationship to it. The presiding officer may require the participants of an aligned class to select one or more persons to represent them in the proceeding, or on any particular matter or ruling, and may limit the number of representatives heard, but must allow a least one representative of an aligned class to be heard in the proceeding, or on any particular matter or ruling.
- (f) **Appearance by Applicant or Movant.** The applicant, movant or party requesting the hearing or other proceeding or a representative should be present at the hearing or other proceeding. Failure to appear may be grounds for withholding consideration of a matter and dismissal without prejudice, or may require the rescheduling or continuance of the hearing or other proceeding, if the presiding officer deems it necessary in order to fully develop the record.
- (g) **Subpoenas.**
- (1) Requests for issuance of subpoenas or commissions in a contested case shall be in writing and directed to the Board.
 - (2) A party requesting the issuance of a subpoena shall file an original and one copy of the request with the General Manager, who shall arrange for the request to be presented to the Board at a regular or special meeting of the Board, in compliance with the Open Meetings Act and other applicable laws. If good cause is shown for the issuance of a subpoena, the Board may issue the subpoena.
- (h) **Reporting.** Hearings and other proceedings may be recorded on audio cassette tape or, at the discretion of the presiding officer, may be recorded by a certified shorthand reporter. The District does not prepare transcriptions of hearings or other proceedings recorded on audio cassette tape on District equipment for the public, but will arrange for a party in interest to have access to the recording. Subject to availability of space, any party in interest may, at its own expense, arrange for a reporter to transcribe or record the hearing. The cost of reporting or transcribing a permit hearing may be assessed in accordance with District Rules. If a proceeding, other than a permit hearing, is recorded by a reporter and a copy of the transcript of testimony is ordered by any person, the testimony will be transcribed and the original transcript filed with the

papers of the proceeding at the expense of the person requesting the transcript of testimony. Copies of the transcript of testimony of any hearing, or other proceeding thus reported, may be purchased from the reporter.

- (i) **Continuance.** The presiding officer may continue hearings or other proceedings from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice. If a hearing or other proceeding is continued and a time and place (other than the District office) for the hearing or other proceeding to reconvene are not publicly announced at the hearing or other proceeding by the presiding officer before it is recessed, a notice of any further setting of the hearing or other proceeding must be delivered, at a reasonable time, to all parties, persons who have requested notice of the hearing pursuant to Rule 2.2, and any other person the presiding officer deems appropriate, but it is not necessary to post at the county courthouses or publish a newspaper notice of the new setting.
- (j) **Admissibility.** Evidence will be admitted if it is of that quality upon which reasonable persons are accustomed to rely in the conduct of serious affairs. It is intended that needful and proper evidence shall be conveniently, inexpensively, and speedily produced while preserving the substantial rights of the parties to the proceedings.
- (k) **Stipulation.** Evidence may be stipulated by agreement of all parties at interest.
- (l) **Affidavit.** Whenever the making of an affidavit by a party to a hearing or other proceeding is necessary, it may be made by the party or the party's representative or counsel. This rule does not dispense with the necessity of an affidavit being made by a party when expressly required by statute.
- (m) **Testimony Shall Be Pertinent.** The testimony shall be confined to the subject matter contained in the application or contest. In the event that any party at a hearing or other proceeding shall pursue a line of testimony or interrogation of a witness that is clearly irrelevant, incompetent or immaterial, the person conducting the hearing or other proceeding may forthwith terminate such line of interrogation.
- (n) **Limiting Length of Testimony.** The right is reserved to the Board in any hearing or proceeding to limit the length of testimony of the witnesses appearing before it.
- (o) **Broadening the Issues.** No person will be allowed to appear in any hearing or other proceeding that in the opinion of the Presiding Officer is for the sole purpose of unduly broadening the issues to be considered in the hearing or other proceeding.
- (p) **Conduct and Decorum.** Every person, party, representative, witness, and other participant in a hearing or proceeding must conform to ethical standards of conduct and must exhibit courtesy and respect for all other participants. No person may engage in any activity during a hearing or proceeding that interferes with the orderly conduct of District business. If in the judgment of the Presiding Officer, a person is acting in violation of this provision, the Presiding Officer will first warn the person to refrain from engaging in such conduct. Upon further violation by the same person, the Presiding Officer may exclude that person from the hearing or proceeding for such time and under such conditions as the Presiding Officer deems necessary.

RULE 2.4 - INFORMAL HEARINGS.

- (a) **Proper Notice.** Upon proper notice, hearings may be conducted informally during Board meetings when, in the judgment of the Presiding Officer, 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 which, in the judgment of the Presiding Officer, settles the facts or issues in controversy, the proceeding will be considered an uncontested case and the Presiding Officer will summarize the evidence, make findings of fact and conclusions of law based on the existing record and any other evidence submitted by the parties at the hearing.
- (c) **Decision to Proceed as Contested Case.** If the parties do not reach a negotiated or agreed settlement of the facts and issues in controversy or if any party contests a staff recommendation, and the Presiding Officer determines these issues will require extensive discovery proceedings, the Presiding Officer will declare the case to be contested and will be turned over for a formal contested case hearing.

RULE 2.5 - RULES GOVERNING CONTESTED HEARINGS.

- (a) **Notice of Intent to Contest.** In the event anyone should desire to contest or oppose any pending matter before the Board, a written notice of contest or opposition shall be filed at least **ten (10) calendar days** before the hearing date. If the contestant will be represented during the hearing, the identity of the person or organization must be included in the written notice. If no notice of intent to contest is received within ten (10) calendar days prior to a hearing, the general manager, as instructed by the Board of Directors, will cancel the hearing and the Board will consider the matter at the next regular Board meeting.
- (b) **Contest Requirements.** Contests shall be submitted in writing with a duplicate copy to the opposite parties and shall comply in substance with the following requirements:
- (1) Each contest shall show the name and address of the contestant and show that contestant has read either the application or a notice relative thereto published by the Board.
 - (2) There shall be an allegation of injury to contestant which will result from the proposed action or matter to be considered by the Board.
 - (3) If the contest is based upon claim of interference with some present right of contestant, it shall include a statement of the basis of contestant's claim of right.
 - (4) Contestant should call attention to any amendment of the application or adjustment which, if made, would result in withdrawal of the contest.
- (c) **Contested Applications or Proceedings Defined.** An application, appeal, motion, or proceeding pending before the Board is considered contested when either contestants or interveners, or both, files the notice of contest as above set out and appears at the hearing held on the application, motion or proceeding and present testimony or evidence in support of their contentions, or present a question or questions of law with regard to the application, motion or proceedings. Where neither contestants nor interveners so appear and offer testimony or evidence in support of their contentions, or raise a question of law with reference to any pending application, motion or proceeding, the same shall be considered as non-contested.
- (d) **Filing of Documents; Time Limit.** In the event of a contested hearing, each party shall furnish other parties to the proceeding with a copy of all motions, amendments or briefs filed by such party with the Board. Applications, motions, exceptions, communications, requests, briefs or other papers and documents required to be filed under these rules or by law must be received in hand at the District's office within five (5) days prior to the hearing unless another time period is set by the presiding officer for filing. Mailing within the time period is insufficient if the submissions are not actually received by the District within the time limit.
- (e) **Prehearing Conference.** A prehearing conference may be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process.
- (1) Matters Considered. Matters which may be considered at a prehearing conference include, but are not limited to:
 - (a) the designation of parties;
 - (b) the formulation and simplification of issues;
 - (c) the necessity or desirability of amending applications or other pleadings
 - (d) the possibility of making admissions or stipulations;
 - (e) the scheduling of discovery;
 - (f) the identification of and specification of the number of witnesses;
 - (g) the filing and exchange of prepared testimony and exhibits; and
 - (h) the procedure at the hearing.
 - (2) Notice. A prehearing conference may be held at a date, time, and place stated in a separate notice given in accordance with Rule 2.3 herein, or at the date, time, and place for hearing stated in the notice of public hearing, and may be continued from time to time and place to place, at the discretion of the Presiding Officer or Hearing Examiner.
 - (3) Conference Action. Action taken at a prehearing conference may be reduced to writing and made a part of the record or may be stated on the record at the close of the conference.
- (f) **Assessing Reporting and Transcription Costs.** Upon the timely request of any party, or at the discretion of the Presiding Officer, the Presiding Officer may assess reporting and transcription costs to one or more of the parties. The Presiding Officer must consider the following factors in assessing reporting and transcription costs:
- (1) The party who requested the transcript;
 - (2) The financial ability of the party to pay the costs;
 - (3) The extent to which the party participated in the hearing;

- (4) The relative benefits to the various parties of having a transcript;
- (5) The budgetary constraints of a governmental entity participating in the proceeding;
- (6) Any other factor that is relevant to a just and reasonable assessment of costs.

In any proceeding where the assessment of reporting or transcription costs is an issue, the Presiding Officer must provide the parties an opportunity to present evidence and argument on the issue. A recommendation regarding the assessment of costs must be included in the Presiding Officer's report to the Board.

- (g) **Designation of Parties.** Parties to a hearing will be designated on the first day of hearing or at such other time as the Presiding Officer determines. 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. After parties are designated, no other person may be admitted as a party unless, in the judgment of the Presiding Officer, there exists good cause and the hearing will not be unreasonably delayed.
- (h) **Rights of Designated Parties.** Subject to the direction and orders of the Presiding Officer, 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.
- (i) **Persons Not Designated Parties.** At the discretion of the Presiding Officer, 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 Presiding Officer as evidence.
- (j) **Furnishing Copies of Pleadings.** After parties have been designated, the author must provide a copy of every pleading, request, motion, or reply filed in the proceeding to every other party or the 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.
- (k) **Agreements to Be in Writing.** No agreement between parties or their representatives affecting any pending matter will be considered by the Presiding Officer unless it is in writing, signed, and filed as part of the record, or unless it is announced at the hearing and entered into the record.
- (l) **Discovery.** Discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Presiding Officer. Except as specifically modified by these Hearing Procedures or by order of the Presiding Officer, 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 Presiding Officer.
- (m) **Discovery Sanctions.** If the Presiding Officer finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Presiding Officer may:
 - (1) Suspend processing of the application for a permit if the Applicant is the offending party;
 - (2) Disallow any further discovery of any kind or a particular kind by the offending party;
 - (3) 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;
 - (4) Limit the offending party's participation in the proceeding;
 - (5) Disallow the offending party's presentation of evidence on issues that were the subject of the discovery request; and
 - (6) Recommend to the Board that the hearing be dismissed with or without prejudice.
- (n) **Ex Parte Communications.** The Presiding Officer may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on 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.
- (o) **Compelling Testimony; Swearing Witnesses and Subpoena Power.** The Presiding Officer may compel the testimony of any person that is necessary, helpful, or appropriate to the hearing. The Presiding Officer 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. The Presiding Officer may issue subpoenas to compel the testimony of any person and the production of books, papers, documents, or tangible things, in the manner provided in the Texas Rules of Civil Procedure.
- (p) **Evidence.** Except as modified by these Hearing Procedures, the Texas Rules of Evidence govern the

admissibility and introduction of evidence; however, evidence not admissible under the Texas Rules of 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.

- (q) **Written Testimony.** When a proceeding will be expedited and the interest of the parties will not be substantially prejudiced, 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.
- (r) **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.
- (s) **Abstracts of Documents.** When documents are numerous, the Presiding Officer 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.
- (t) **Introduction and Copies of Exhibits.** Each exhibit offered must be tendered for identification and placed in the record. Copies must be furnished to the Presiding Officer and to each of the parties, unless the Presiding Officer rules otherwise.
- (u) **Excluding Exhibits.** In the event an exhibit has been identified, objected to, and excluded, the offering party may withdraw it. 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.
- (v) **Official Notice.** The Presiding Officer 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.
- (w) **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.
- (x) **Oral Argument.** At the discretion of the Presiding Officer, oral arguments may be heard at the conclusion of the presentation of evidence. Reasonable time limits may be prescribed. The Presiding Officer 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, the Board may hear further oral arguments.

RULE 2.6 - CONCLUSION OF THE HEARING; REPORT.

- (a) **Closing the Record; Final Report.** At the conclusion of the presentation of evidence and any oral argument, the Presiding Officer may either close the record or keep it open and allow the submission of additional evidence, exhibits, briefs, or proposed findings and conclusions from one or more of the parties. No additional evidence, exhibits, briefs, or proposed findings and conclusions may be filed unless permitted or requested by the Presiding Officer. After the record is closed, the Presiding Officer will prepare a report to the Board. The report must include a summary of the evidence, together with the Presiding Officer's findings and conclusions and recommendations for action. Upon completion and issuance of the Presiding Officer's report, a copy must be submitted to the Board and delivered to each party to the proceeding. In a contested case, delivery to the parties must be by certified mail.
- (b) **Exceptions to the Presiding Officer's Report; Reopening the Record Prior to Board Action.** Any party in a contested case may file written exceptions to the Presiding Officer's report, and any party in an uncontested case may request an opportunity to make an oral presentation of exceptions to the Board. Upon review of the report and exceptions, the Presiding Officer may reopen the record for the purpose of developing additional evidence, or may deny the exceptions and submit the report and exceptions to the Board. The Board may, at any time and in any case, remand the matter to the Presiding Officer for further proceedings.

RULE 2.7- REHEARING.

- (a) Any person whose application is denied, whose contest is overruled, or who is not granted the relief desired, may file with the Board a motion for rehearing within **fifteen (15) days** from the announcement by the Board of its decision or action. The Board shall act thereon within a reasonable time. If such a motion for rehearing is filed and is overruled, the order of the Board shall be final on the date the motion is overruled.
- (b) The Board may, in a proper case, find that an emergency exists and that substantial injustice will result from delay. In that event, and upon recitation of such finding, the order of the Board will become final on the date of the announcement of the order by the Board, and no motion for rehearing will be considered thereon.
- (c) If an application or contest is denied by the Board, and if the applicant or contestant shall not have had and shall not have been afforded an opportunity for a hearing before the Board, as elsewhere provided by these rules, the applicant or contestant shall be entitled to a hearing before the Board. A written request to the Board for such a hearing, stating such facts, must be filed with the Board within the above fifteen (15) day period. If such motion is in order and is duly filed, the Board shall give notice to the applicant and all proper and necessary parties of the time and place of such hearing, and shall proceed to conduct such a hearing.

RULE 2.8 - CHANGED CONDITIONS.

The decision of the Board on any matter contained herein may be reconsidered by it of its own motion or upon motion showing changed conditions, or upon the discovery of new and different conditions or facts after the hearing or decision of such matter. If the Board should decide to reconsider a matter after having announced a ruling or decision, or after having finally granted or denied an application, it shall give notice to persons who were proper parties to the original action and such persons shall be entitled to a hearing thereon if they file a request therefor within fifteen (15) days from the date of the mailing of such notice.

SECTION 3. FINAL ORDERS OF THE BOARD

RULE 3.1 - FINAL ORDERS OF THE BOARD.

The orders of the Board in any non-contested application or proceeding shall become the final order of the Board on the day it is entered by the Board. All orders of the Board in contested applications, appeals or other proceedings shall contain a statement that the same was contested. In such event the order will become final after fifteen (15) days from the entry thereof and be binding on the parties thereto unless a Motion for Rehearing is filed under Rule 1.1or 2.7 hereof.

SECTION 4. RULE- MAKING PROCEDURES

RULE 4.1- APPLICABILITY.

This section applies to rule making by the District but does not apply to internal personnel rules or practices, bylaws, statements regarding internal management or organization, or other statements not of general applicability.

RULE 4.2 - PUBLIC HEARINGS ON PROPOSED RULES.

- (a) **General Procedures:** The Board shall hold at least one public hearing on proposed rules prior to adoption of the proposed rules as final rules.
 - (1) The Board may direct any person to serve as the presiding office and to conduct the public hearings on the proposed rules;
 - (2) Public hearings will be conducted in the manner the Board deems most suitable to conveniently, inexpensively, and expeditiously provide a reasonable opportunity for interested persons to submit relevant data, views, or arguments, in writing or orally, on proposed rules;
- (b) **Submission of Documents:** Any interested person may submit written statements, protests or comments, briefs, affidavits, exhibits, technical reports, or other documents relating to the proposed rules. Such documents must be submitted no later than the time of the hearing or the deadline for written comments to be received by the District, whichever is later, as stated in the notice of hearing; provided however, the presiding officer may grant additional time for the submission of documents.

- (c) **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.
- (d) **Conclusion of the Hearing; Closing the Record; Presiding Officer's Report:** 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 to allow the submission of additional information. 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 completed, and furnished a copy of the report.

RULE 4.3 - NOTICE OF PUBLIC HEARINGS ON PROPOSED RULES.

- (a) The Board will set a time and place for any public hearing on proposed rules of the District.
- (b) The General Manager shall give prior notice of the public hearing at least ten (10) days before the public hearing by posting the notice in the location where notices of the District's Board meetings are posted and by publishing the notice in one or more newspapers of general circulation within the District, unless the Board determines an emergency to public health or safety exists. Notice for a hearing on proposed rules of the District for emergency situations shall be given at least five (5) days prior to the public hearing.
- (c) The notice shall advise the public of the following:
 - (1) the proposed agenda;
 - (2) the date, place, and time the public hearing is to be convened;
 - (3) the date and time by which written comments must be filed with the District;
 - (4) the place at which written comments must be filed with the District; and
 - (5) that proposed rules shall be available for use and inspection at the District Office, and any other location for ease of public access as may be deemed necessary by the District.

RULE 4.4 - ADOPTION OF RULES.

- (a) The Board may adopt proposed rules as final rules at any time after the completion of the public hearing(s) and after the close of the written comment period.
- (b) The Board will compile its rules and make them available for public use and inspection at the District's principal office.

APPENDIX A

FORMS

PUBLIC COMPLAINTS
EXHIBIT A

NOTICE OF COMPLAINT

This form must be filled out completely by a member of the public filing a complaint with the General Manager or designee, in accordance with the policy established by the Board or any exceptions outlined therein.

- 1. Name _____
- 2. Address _____
- 3. Home telephone _____

4. If you will be represented in pursuing your complaint, please identify the person or organization representing you.

Name _____

____Address _____

____Telephone number _____

5. Please state the date of the event or series of events causing your complaint.

6. Please state your complaint, including the individual harm alleged.

7. Please state specific facts that support your complaint (*list in detail*).

8. Please state the remedy you seek for this complaint.

Signature of Complainant

Date Submitted

PUBLIC COMPLAINTS
EXHIBIT B

GENERAL MANAGER'S REPORT OF LEVEL ONE CONFERENCE

1. Complainant's name _____
2. Address _____
3. Date and time of conference _____
4. The facts as presented by the complainant are as follows: _____

5. In my opinion, the allegations made in the original complaint *(are)* *(are not)* adequately supported by the facts submitted. Explanation _____

6. In my opinion, the remedy sought by the complainant *(is)* *(is not)* justified by the facts submitted. Explanation _____

7. The decisions made or recommendations agreed upon as a result of the conference are as follows:

Signature of General Manager

Date

Before submitting a copy of this report to the Board of Directors, attach a copy of the original complaint and a copy of the written response that was given to the complainant.

Received by:

Board Secretary

Date

PUBLIC COMPLAINTS
EXHIBIT C

NOTICE OF APPEAL TO THE BOARD AT LEVEL TWO

This form must be filled out completely by a member of the public appealing a Level One decision to the Board, in accordance with the policy established by the Board or any exceptions outlined therein.

1. Name _____
2. Address _____
3. Home telephone _____
4. Date and time of Level One conference _____
5. If you will be represented in pursuing your complaint, please identify the person or organization representing you.

Name _____

Address _____

Telephone number _____
6. Attach a copy of your original Level One complaint.
7. Attach a copy of the Level One decision.

Signature of Complainant

Date Submitted

EXHIBIT D

REQUEST FOR REHEARING TO THE BOARD AT LEVEL THREE

This form must be filled out completely by a member of the public requesting a rehearing of a Level Two decision of the Board, in accordance with the policy established by the Board or any exceptions outlined therein.

1. Name _____
2. Address _____
3. Home telephone _____
4. Date and time of Level One conference _____
5. Date and time of Level Two Informal Hearing _____
6. If you will be represented in pursuing your complaint, please identify the person or organization representing you.

Name _____

Address _____

Telephone number _____

7. Attach a copy of your original Level One complaint.
8. Attach a copy of the Level One decision and Level Two Board decision.

Signature of Complainant

Date Submitted

EXHIBIT E

NOTICE OF APPEAL TO DISTRICT COURT AT LEVEL THREE

This form must be filled out completely by a member of the public appealing a Level Three decision to the Board, in accordance with the policy established by the Board or any exceptions outlined therein.

- 1. Name _____
- 2. Address _____
- 3. Home telephone _____
- 4. Date and time of Level One conference _____
- 5. Date and time of Level Two Informal Hearing _____
- 6. Date and time of Level Three Informal Hearing _____

7. If you will be represented in pursuing your complaint, please identify the person or organization representing you.

Name _____

Address _____

Telephone number _____

- 8. Attach a copy of your original Level One complaint.
- 9. Attach a copy of the Level One decision, the Level Two decision, and the Level Three decision.

Signature of Complainant

Date Submitted

HEARINGS
EXHIBIT F

CONTESTED HEARING

This form must be filled out completely by a member of the public and filed with the General Manager or designee at least 10 days prior to a contested hearing, in accordance with the policy established by the Board or any exceptions outlined therein.

1. Name _____

2. Address _____

3. Home telephone _____

4. If you will be represented during the hearing, please identify the person or organization representing you.

Name _____

Address _____

____ Telephone number _____

5. Please state the date of the event or series of events resulting in this hearing.

6. Please state your position, including the individual harm alleged.

7. Please state specific facts that support your position (*list in detail*).

8. Please state the remedy you seek from this hearing.

Signature of Complainant

Date Submitted

Received by:

General Manager or designee

Date