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# NECHES AND TRINITY VALLEYS GROUNDWATER CONSERVATION DISTRICT

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## *Rules for Hearings*



Amended August 19, 2015

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## **Neches and Trinity Valleys Groundwater Conservation District**

### **RULES FOR HEARINGS**

The Neches and Trinity Valleys Groundwater Conservation District (the “District”), pursuant to the authority granted to it by Texas Water Code Chapter 36 and by Texas Special Local Law Code Chapter 8863 (the “District Act”) adopts these rules to govern the hearings and procedures before the District. All rules or parts of rules otherwise in conflict with these rules are repealed. These rules are adopted for the purpose of simplifying procedure, avoiding delays, saving expenses, facilitating the administration of the laws relating to groundwater, and the rules of the District and to protect property rights. Under no circumstances are these rules to be construed as limitation or restriction on exercising any discretion where such exist nor shall they in any event be construed to deprive the Board of Directors of the District of an exercise of power, duty, and jurisdiction conferred by law nor to limit or restrict the amount and character of data or information which may be required by the Board for the proper administration of the law.

The rules are adopted to achieve the goals of the District Act and the District Management Plan. The District has also adopted rules governing the acts and affairs of the District (the “District Rules”) and these Rules for Hearing are adopted in order to set forth the procedures for hearings. The District Rules are incorporated by reference into these Rules for Hearing.

**RULE 1. TYPES OF HEARINGS:** The District conducts two general types of hearings: hearings involving permit matters, in which the rights, duties, or privileges of a party are determined after an opportunity for an adjudicative hearing, and rulemaking hearings involving matters of general applicability that implement, interpret, or prescribe the law or District policy, or that describes the procedure or practice requirements of the District. Any matter designated for hearing before the Board may be referred by the Board for hearing before a Hearing Examiner. The person presiding at the hearing may be referred to below as the “Presiding Office.” For a hearing before the Board, the president, vice-president, or other person presiding at the meeting will be the Presiding Offices.

#### **1.1 Permit Hearings:**

**1.1.1 Permit Applications, Amendments and Revocations:** The District will hold hearings on water well drilling permits, operating permits, permit renewals or amendments and permit revocations or suspensions. Hearings involving permit matters may be scheduled before a Hearing Examiner.

**1.1.2 Hearings on Motions for Rehearing:** Motions for Rehearing will be heard by the Board pursuant to Rule 8.2.

1.2 **Rule-making Hearings:**

1.2.1.1 **District Rules:** At its discretion, the Board may hold a hearing to consider adoption of a new or amended District Rules. The Board shall follow the the procedures set out in Texas Water Code Section 36.101 in all matters relating to rules.

**RULE 2. NOTICE AND SCHEDULING OF HEARINGS:** The Board or General Manager, as instructed by the Board, is responsible for giving notice of all hearings in accordance with the procedures set out in Texas Water Code Section 36.101.

2.1.1 Notice will be given to each person who requests copies of hearing notices pursuant to the procedures set forth in subsection 2.2, and any other person the Board of Directors deem 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.

2.1.2 A copy of the notice will be posted at the county courthouse in which the well is or will be located and in the place where notices are usually posted. The date of posting may not be less than ten (10) calendar days before the date of the hearing.

2.1.3 In addition to the notices required above, when a hearing involves an operating permit matter, notice of the date, time, and location of the hearing will be given to the applicant at least ten (10) calendar days before the day of the hearing.

2.2 Any person having an interest in the subject matter of a hearing or hearings may receive written notice of such hearing or hearings by submitting a request, in writing addressed to the District. The request will identify with as much specificity as possible the hearing or hearings of 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.

- 2.3 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 motion at a regular Board meeting. The General Manager may be instructed by the Board to schedule hearings involving permit matters at such dates, times, and places set forth above for permit hearings. Other hearings will be scheduled at the dates, times and locations set at a regular Board meeting.

### **RULE 3. GENERAL PROCEDURES:**

- 3.1 **Authority of Presiding Officer:** The Presiding Officer may conduct the hearing or other proceeding in the manner the Presiding Officer deems most appropriate for the particular proceeding. The Presiding Officer has the authority to:
- a. set hearing dates, other than the initial hearing date for permit matters set in accordance with Rule 2.3;
  - b. convene the hearing at the time and place specified in the notice for public hearing;
  - c. establish the jurisdiction of the District concerning the subject matter under consideration;
  - d. rule on motions and on the admissibility of evidence and amendments to pleadings;
  - e. designate and align parties and establish the order for presentation of evidence;
  - f. administer oaths to all persons presenting testimony;
  - g. examine witnesses;
  - h. issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents;
  - i. require the taking of depositions and compel other forms of discovery under these rules;
  - j. ensure that information and testimony are introduced as conveniently and expeditiously as possible, without prejudicing the rights of any party to the proceeding;
  - k. conduct public hearings in an orderly manner in accordance with these rules;
  - l. recess any hearing from time to time and place to place;
  - m. reopen the record of a hearing for additional evidence when necessary to make the record more complete; and
  - n. exercise any other appropriate powers necessary or convenient to effectively carry out the responsibilities of Presiding Officer.

- 3.2 **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. Any partner may appear on behalf of the partnership. 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 forward, trust, or estate. A person appearing in a representative capacity may be required to prove proper authority.
- 3.3. **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 so 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.
- 3.4 **Reporting:** Hearings and other proceedings will be recorded on audio cassette tape or, at the discretion of the Presiding Officer, may be recorded by a certified shorthand reporter. The District will not prepare transcripts of hearings or other proceedings recorded on audio cassette tape on District equipment for the public, but the District will arrange access to the recording. Subject to availability of space, any party may, at their own expense, arrange for a reporter to report the hearing or other proceeding or for recording of the hearing or other proceeding. The cost of reporting or transcribing a permit hearing may be assessed in accordance with Rule 5.2. 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.
- 3.5 **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 will 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.

- 3.6 **Filing of Documents Time Limit:** 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 Office within the time limit, if any, set by these Rules or 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.
- 3.7 **Computing line:** In computing any period of time specified by these Rules, by a Presiding Officer, by Board orders, or by law, the day of the act, event, or default after which the designated period of time begins to run is not included, but the last day of the period computed is included, unless the last day is a Saturday, Sunday or legal holiday as determined by the Board, in which case the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday.
- 3.8 **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.
- 3.9 **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.
- 3.10 **Conduct and Decorum:** Every person, party, representative, witness, and other participant in a 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 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 proceeding for such time and under such conditions as the Presiding Officer deems necessary.

**RULE 4. ALTERNATIVE PERMIT HEARINGS PROCEDURES:**

- 4.1 **Informal Hearings:** Permit hearings may be conducted informally 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.
- 4.2 **Agreement of Parties:** If, during an informal proceeding, all parties reach a negotiated or agreed settlement and it is either reduced to writing or stated into the record, which settles the facts or issues in controversy, the proceeding will be considered an uncontested case and an order will be issued accordingly.
- 4.3 **Decision to Proceed as Uncontested or Contested Case:** If the parties do not reach a negotiated or agreed settlement of the issues in controversy or if any party contests a staff recommendation, the Presiding Officer will declare the case to be contested and convene a prehearing conference as set forth in Rule 5.1. The Presiding Officer may also recommend issuance of a temporary permit for a period not to exceed four months, with any special provisions deemed necessarily, for the purpose of completing the contested case process.

**RULE 5. CONTESTED PERMIT HEARINGS PROCEDURES:**

- 5.1 **Prehearing Conference:** A prehearing conference may be held to consider any matter which may expedite the hearing or otherwise facilitate the hearing process.

- 5.2 **Assessing Reporting and Transcription Costs:** Upon the timely request of any party, or at the discretion of the Hearing Examiner, the Hearing Examiner may assess reporting and transcription costs to one or more of the parties. The Hearing Examiner must consider the following factors in assessing reporting and transcription costs:
- a. the party who requested the transcript;
  - b. the financial ability of the party to pay the costs;
  - c. the extent to which the party participated in the hearing;
  - d. the relative benefits to the various parties of having a transcript;
  - e. the budgetary constraints of a governmental entity participating in the proceeding;
  - f. 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, a recommendation regarding the assessment of costs must be included in the Hearing Examiner's report to the Board.
- 5.3 **Rights of Designated Parties:** Subject to the direction and orders of the 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.
- 5.4 **Persons Not Designated Parties:** At the discretion of the 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 Hearing Examiner as evidence.
- 5.5 **Furnishing Copies of 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 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.
- 5.6 **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. A “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.

- 5.7 **Discovery:** For good cause shown, discovery will be conducted upon such terms and conditions, and at such times and places, as directed by the Hearing Examiner. Unless specifically modified by these rules or by order of the 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 Hearing Examiner. If the Hearing Examiner finds a party is abusing the discovery process in seeking, responding to, or resisting discovery, the Hearing Examiner may take such action as may be appropriate including recommending to the Board that the hearings are dismissed with or without prejudice.
- 5.8 **Ex Parte Communications:** The Hearing Examiner 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 who is not directly involved in the hearing to utilize the special skills and knowledge of the District in evaluating the evidence.
- 5.9 **Evidence:** The Hearing Examiner is the sole judge of the relevance and materiality of the 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.
- 5.10 **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 objections.

## **RULE 6 CONCLUSION OF THE HEARING; REPORT:**

- 6.1 **Closing the Record; Final Report:** At the conclusion of the presentation of evidence and any oral argument, the Hearing Examiner 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 Hearing Examiner. After the record is closed, the Hearing Examiner will prepare a report to the Board. The report must include a summary of the evidence, together with the Hearing Examiner's findings and conclusions and recommendations for action. Upon completion and issuance of the Hearing Examiner'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.
- 6.2 **Exceptions to the Hearing Examiner's Report; Reopening the Record:** Prior to Board action any party in a contested case may file written exceptions to the Hearing Examiner'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 Hearing Examiner 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 Hearing Examiner for further proceedings.
- 6.3 **Time for Board Action on Certain Permit Matters:** In the case of hearings involving new permit applications, original applications for existing wells, or applications for permit renewals or amendments, the Hearing Examiner's report should be submitted, and the Board should act, within 60 calendar days after the close of the hearing record.

## **RULE 7 FINAL DECISION; APPEAL:**

- 7.1 **Board Action:** 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 time order or

other written decision is signed and is not affected by a motion for rehearing.

- 7.2 **Requests for Rehearing:** Any decision of the Board on a matter may be appealed by requesting a rehearing before the Board within 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 a 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 60 calendar days of submission will be deemed to be a denial of the request.

End of Rules

Adopted: August 19, 2015