

RULE NO. 24
WATER SERVICE CHARGE RULES

24-1.00 Preamble.

These rules are enacted pursuant to N.M. Stat. Ann. 1978 §§ 73-18-6 through 17-18-8.1 (1995 Supp.) and govern the Middle Rio Grande Conservancy District's ("District") procedures in imposing the Water Service Charge on all owners of irrigable property within the District's boundaries.

24-2.00 Definitions.

- A. Equalization Hearings: Hearings held by the District's Board of Directors to afford all owners of property within the District's boundaries the opportunity to show why their property should be reclassified and charged according to the reclassification.
- B. Irrigable Land: Land that is capable of being irrigated from the District's Water Delivery System.
- C. Nonirrigable Land: Land that is not capable of being irrigated from the District's Water Delivery System.
- D. Water Delivery System: The system by which water may be physically provided to the District's constituents including, but not limited to, ditches, laterals, flumes, wells, watercourses, levees, dikes, dams, reservoirs, syphons and any other works and improvements deemed necessary by the District's Board of Directors for the physical delivery of water within the District's boundaries.
- E. Water Service Charge: A per-acre annual charge levied against all Irrigable Lands as they appear in the District's records, or lands that are made irrigable pursuant to a Water-Use Contract with the District. The Water Service Charge is separate and distinct from the ad valorem assessment levied by the District but collected by the relevant county. The Water Service Charge is levied by the District and payable directly to the District.
- F. Water Service Charge Protest: A written protest by a property owner who requests that his property be reclassified and that he be charged according to his property's reclassification.
- G. Water-Use Contract: A written contract between the District and a property owner that authorizes use of the Water Delivery System.

24-3.00 Classification of property.

All real property within District boundaries shall be classified as either "Irrigable" or "Nonirrigable" for the purposes N.M. Stat. Ann. 1978 § 73-18-6 through 17-18-9.1 (1995 Supp.).

24-4.00 Application of the Water Service Charge.

- A. To ensure that the Water Service Charge is applied fairly and equitably to property owned within the District's boundaries, the District's Board of Directors shall:
 - (1) provide written notice of the Water Service Charge to all individuals who own
 - (a) Irrigable Land as it appears on the records of the District, or
 - (b) land that is entitled to receive water pursuant to a Water-Use Contract with the District;
 - (2) provide any owner with the opportunity to protest the classification of his property as set forth in Section IV of these rules; and
 - (3) if there is a protest, after opportunity for a hearing, determine whether land is irrigable and collect the Water Service Charge for each acre determined to be Irrigable Land by the Board of Directors.
- B. Each acre made irrigable pursuant to a Water-Use Contract entered into after July 1, 1995, becomes Irrigable Land placed on the records of the District and shall be subject to the Water Service Charge and any other reasonable administrative fee the Board of Directors deems necessary.
- C. Persons wishing to enter into a Water-Use Contract with the District after July 1, 1995, must do so not later than the last day in February of the year in which the property owner is entitled to receive water pursuant to the contract.

24-5.00 Water Service Charge Protests, presumptions, and procedure.

- A. Presumption of irrigability. Pursuant to N.M. Stat. Ann. 1978 §§ 73-18-6 through 73-18-8.1 (1995 Supp.), all lands recorded as irrigable in the District's records are presumed to be capable of being irrigated by the District's Water Delivery System. Irrigable Land may be reclassified as nonirrigable if:
 - (1) the property owner ("Protestant") submits a Water Service Charge Protest ("Protest") in which he declares and offers proof that his property, or a portion thereof, is nonirrigable, and
 - (2) the District's Board of Directors determines that the property is nonirrigable after it conducts an Equalization Hearing.
- B. Protest procedure.
 - (1) The Protest shall be made on a form prescribed by the District, signed by the owner or his agent and postmarked or delivered to the District not later than the last day of May of the year to which it applies. The Protestant shall provide proof that the property is not irrigable including, but not limited to:
 - (a) a current photo, a land plat map, proof that the property has not been awarded any greenbelt exemptions by the relevant county;
 - (b) proof of physical or structural conditions that render the property not capable of irrigation; and
 - (c) a signed written statement that the property is not currently being irrigated and will not be irrigated after reclassification.
 - (2) If applicable, a Protestant may also claim that he is not subject to the Water Service Charge by providing proof that:
 - (a) he is not the owner of the property subject to the charge;
 - (b) the land is not classified as Irrigable Land on the records of the District and that he has not entered into a Water-Use Contract with the District; or
 - (c) state law precludes the subject property from receiving irrigation water.

- (3) Field checks. District staff shall review each Protest and may conduct a field inspection to investigate the claims made by the Protestant. Upon review of the Protest and after completing a field check, staff shall submit its written recommendation concerning the status of the property's irrigability to the Board of Directors.
 - (a) In making determinations of irrigability of land, staff may consider, but is not limited to considering, the following:
 - (i) whether the land is presently being irrigated;
 - (ii) the property owner's ability to access irrigation water from the District's Water Delivery System; and
 - (iii) whether the land has been granted a greenbelt exemption from the relevant county.
 - (b) In making determinations of nonirrigability of land, District staff may consider, but is not limited to considering, the following:
 - (i) forest wetland edges along the Rio Grande River course, periodically flooded, most commonly referred to by the District as "Bosque" land;
 - (ii) land that has too much salt accumulation and/or scrub grass, and is unsuitable for cultivation, most commonly referred to by the District as "Vega" land;
 - (iii) land that has a high water table, most commonly referred to by the District as "Water-logged" land;
 - (iv) land that has no practical access to irrigation water; or
 - (v) land that contains buildings or other structures.
- (4) Notice of hearing. The Protestant shall receive written notice of staff's recommendation which will include notice of the Board of Directors' Equalization Hearing in which the Protestant will be permitted to present evidence of his land's nonirrigable status.
- (5) Quarter-acre allowance. To promote administrative ease during the Equalization Hearing, the Board of Directors, in its discretion and absent proof to the contrary, may presume a total nonirrigable allowance of .25 acre that reflects the acreage rendered nonirrigable because of buildings and outbuildings on an owner's property
- (6) Board of Directors' final determination. If the Board of Directors finds that the Protestant's land, or any portion thereof, is nonirrigable, it will make the appropriate entries on the District's records. The Protestant will receive a copy of the board of director's determination by registered mail. Once land has been reclassified by the District, the owner need not protest in subsequent years if the nonirrigable status of the property has not changed.
- (7) Appeal procedure. Any owner of real property aggrieved by the decision of the Board of Directors sitting as a board of equalization may appeal to the district court of the second judicial district in the manner prescribed by N.M. Stat. Ann. 1978 § 73-18-8(D) (Orig. Pamph.).

24-6.00 Other changes in irrigability status.

- A. Any person who effectuates irrigation on land classified as nonirrigable shall notify the District in writing of the change in the status of the land no later than the last day of May in the applicable year so that the land may be reclassified as Irrigable Land.

- B. As the Water Service Charge will be imposed on all Irrigable Land, the property owner shall be responsible for communicating to the District any changes in ownership of the property or any subdivision thereof.
- C. The District's Board of Directors may, at anytime, independently reclassify property. All owners of reclassified property shall be given notice of such reclassification.

24-7.00 Late charges, liens, enforcement.

- A. Any person who violates Subsection 24-5.00(B) of this rule by declaring a property which is irrigable to be nonirrigable or who violates Subsection 24-6.00(A) of this rule by failing to declare a change in the property's status shall be liable, for each year to which declaration or failure to report applies, for:
 - (1) all unpaid Water Service Charges;
 - (2) reasonable interest calculated on any Water Service Charges determined to be due under paragraph (1) under this subsection; and
 - (3) any reasonable administrative fees incurred in collecting unpaid Water Service Charges.
- B. Pursuant to N.M. Stat. Ann. 1978 § 73-18-8.1(I) (1995 Supp.), all Water Service Charges of the District constitute prior liens upon the real property on which they are levied and such liens shall be enforced in the same manner as assessments of property taxes for state and county purposes are collected and liens thereof are enforced.
- C. Pursuant to N.M. Stat. Ann. 1978 § 73-14-52 and § 73-14-53, (Orig. Pamph.), the District's Board of Directors shall have all powers available by law to enforce these rules, including the right of injunction and mandamus. Any person wilfully failing to comply with these rules shall be guilty of a misdemeanor, and upon conviction, shall be punished by imprisonment of not less than six months or more than one year, or by a fine not to exceed \$3000, or both such fine and imprisonment within the discretion of the court.

24-8.00 Amendment procedure.

The District's Board of Directors shall have the power to amend these rules pursuant to the notice provisions in N.M. Stat. Ann. 1978 § 73-14-51 (Orig. Pamph).

24-9.00 Rules available upon request and to protestants.

A copy of these rules and subsequent amendments shall be made available to any person requesting them, and to any person who files a Protest.