

**Middle Rio Grande Conservancy District
1931 Second Street S.W.
Albuquerque, New Mexico 87102**

**RULE NO. 28
GATE REQUEST POLICY**

1.0 STATEMENT OF PURPOSE

The purpose of the Gate Request Policy is to provide guidelines for the administration, application, installation, operation and maintenance of gates on Middle Rio Grande Conservancy District (MRGCD) canals, laterals, acequias, drains, and other MRGCD facilities. Levee and Bosque gate access are governed by MRGCD Rule No. 32 Bosque Access Policy. The MRGCD Gate Request Policy is designed to:

- 1.1 Protect and conserve MRGCD land, waterways, natural resources, irrigation infrastructure, and other facilities managed by the MRGCD for river flood control, drainage and irrigation purposes;
- 1.2 Reduce prohibited facility uses, property damage, illegal activities, and unlawful dumping by restricting unauthorized motor vehicular access;
- 1.3 Develop joint management projects and agreements with local jurisdictions and agencies that focus on law enforcement, education, conservation, and recreation to enhance MRGCD facility use and reduce misuse;
- 1.4 Support the effort of partner agencies providing low impact recreation opportunities consistent with the conservation and protection of MRGCD facilities;
- 1.5 Permit reasonable accommodations to the public residing adjacent to an MRGCD facility who demonstrate the need to install gates;
- 1.6 Protect MRGCD access to canal/drain banks by preventing closures or encroachments that unreasonably impede MRGCD operations and maintenance;
- 1.7 Establish an application and approval process for gate installations that protects the operational requirements of the MRGCD and balances them with the interests of constituents and the general public;
- 1.8 Establish a process to permit access to gates for irrigation and farming purposes;
- 1.9 Establish a process for gate applicants and access requests to appeal decisions to MRGCD CEO/ Chief Engineer and/or Board of Directors.

2.0 GATE INSTALLATION BY THE MRGCD AND PARTNER AGENCIES

- 2.1 The MRGCD may, on its initiative, install gates to protect MRGCD lands, rights-of-way, facilities, and operations or for other purposes approved by the MRGCD CEO/ Chief Engineer. The MRGCD will make a reasonable attempt to follow the actions outlined in Section 4.5 (Public Notice) before installing gates. Under urgent or extreme circumstances, or to prevent excessive damage to an MRGCD facility, the MRGCD reserves the right to install temporary or permanent gates/ access control infrastructure with little to no notice.
- 2.2 The MRGCD may install gates at the request of local, state, regional, county, federal, tribal, and law enforcement agencies (partner agency) to support public health and safety and to protect shared property or project interests. The MRGCD may request a cost-share agreement for partner agency gate installations. The MRGCD and partner agencies will make a reasonable attempt to follow the actions outlined in Section 4.5 (Public Notice) before installing gates. The MRGCD will work closely with local jurisdictions and partner agencies to develop projects, strategies and management plans to enhance MRGCD facility use and reduce misuse.

3.0 GATE REQUEST PROCEDURE

A private landowner, community, homeowners/ neighborhood association, or other party residing next to an MRGCD facility may request gates if the following actions have been completed to address concerns of illicit or excessive vehicular use of MRGCD rights-of-way:

- 3.1 The applicant(s) shall contact the appropriate law enforcement agency to report illegal activity and the identification or description of any unauthorized vehicles and provide evidence of reporting or crime reports related to that facility to the MRGCD. If the vehicles cannot be identified, the times of heaviest use should be reported to law enforcement with a request to patrol the MRGCD facilities and cite trespassers. The MRGCD will work with law enforcement to assist in preventing prohibited uses of MRGCD rights-of-way. Violation of MRGCD rules may be subject to citation or prosecution under applicable local, state, and federal laws; and if these actions do not eliminate or significantly minimize vehicular use concerns, then
- 3.2 The applicant(s) shall submit a gate application form with supporting documents. MRGCD staff will inspect the area and post signs to notify the public that the area has been proposed to be closed to vehicular traffic, upon receipt of the application. The MRGCD may issue a notice letter to any landowner found to be violating MRGCD policy, rules, or regulations. If necessary, the MRGCD may involve law enforcement or pursue legal action to enforce this gate policy. Outlined in the following section are the gate application and approval process.

4.0 GATE APPLICATION

- 4.1 **Application:** The applicant must submit an application form to include a request letter, vicinity map, and any police reports, photos, exhibits, or other supporting documentation. Submittal of an application does not guarantee approval.
- 4.2 **Fees:** The applicant is responsible for an application fee and gate materials cost. If the gate installation is denied, the MRGCD will refund the application fee. Materials cost will vary depending on market prices, number of gates, and additional fencing length. The MRGCD will seek outside funding and cost-share opportunities with other jurisdictions. The MRGCD does not guarantee availability of outside funding sources.
- 4.3 **Minimum Criteria:** The applicant must submit documentation satisfying the following requirements:
 - 4.3.A. A petition outlining the details of proposed gate location and right-of-way closure that includes but is not limited to signatures, addresses, and telephone numbers of all landowners adjacent to the MRGCD right-of-way in the area of the proposed closure and all affected irrigators. The landowners to be petitioned shall be determined in consultation with the MRGCD. The gate applicant(s) must inform petitioners of access regulations outlined in Section 6.0 (Permitted Motor Vehicle Access-General, Irrigation, and Farming);
 - 4.3.B. Demonstration that the impacts of the gate on MRGCD operations, first responders, and irrigators are offset by the public safety, property damage, and health risks caused by the unauthorized facility use. The MRGCD will review all relevant documentation submitted by the applicant and researched by MRGCD staff to assess the severity of the problems associated with the unauthorized uses and weigh them against closure impacts.
- 4.4 **Site Suitability Analysis:** The MRGCD will initially determine whether adequate MRGCD right-of-way exists for gate construction and whether a gate will be an unreasonable burden to the MRGCD's operations and maintenance. The MRGCD will also evaluate the potential impacts of a gate on MRGCD facilities receiving off-site drainage. If approved, the MRGCD will make the final determination of location, the number of gates and additional fencing to adequately secure an area of concern.

4.5 **Public Notice:** Pursuant to the following requirements, adequate public notice shall be given. MRGCD makes an initial determination of the suitability of the proposed MRGCD gate site (see 4.4) and before acting on the Gate Application, public notice signs shall be posted at specified locations by the MRGCD for a minimum of thirty (30) consecutive days to notify and solicit comments about the closure request from the general public and users of the facility. The applicant shall be responsible for ensuring that the sign(s) remain posted for the entirety of the thirty (30) day period and contacting the MRGCD should the sign(s) become vandalized or removed;

5.0 GATE INSTALLATION APPROVAL

5.1 If approved, the MRGCD will issue an approval letter and submit an invoice to the applicant for materials cost. The MRGCD will determine the location, the number of gates, and additional access control infrastructure needed to secure an area subject to the proposed closure adequately.

5.2 The MRGCD will schedule the construction of gate(s) after all fees have been paid by the applicant(s). The MRGCD or its contractors will perform the construction and maintenance of approved gates. Gate access regulation will be the responsibility of the MRGCD. Permitted access to gates is described in Section 6.0 (Permitted Motor Vehicle Access-General, Irrigation, and Farming).

5.3 The gate will be installed per MRGCD STANDARD GATE DETAIL. Gate installations may vary depending on property interest, right-of-way width, facility type, partner agency use, and other site conditions.

5.4 The MRGCD shall maintain ownership and assume maintenance responsibility for all gates approved under this policy unless otherwise agreed upon by the MRGCD and partner agencies. The MRGCD shall have authority over the use of all gates on MRGCD facilities. The MRGCD will systematically take ownership and authority over any existing gate, licensed or not, as outlined in Section 7.0 (Gate Removal, License Revocation, Exceptions, and Appeal).

6.0 PERMITTED MOTOR VEHICLE ACCESS -GENERAL, IRRIGATION, AND FARMING

Access of gates and operation of motor vehicles on MRGCD canals, laterals, acequias, drains and other facilities shall be limited to MRGCD personnel, first responders, other officials, and qualified licensees.

6.1 General Motor Vehicle Access

- 6.1.A Any unauthorized use of MRGCD facilities by the public shall be discontinued (MRGCD Rule 70-1-8).
- 6.1.B Motor vehicles or trailers obstructing MRGCD facilities and gates will be towed at the owner's expense.
- 6.1.C Use of an MRGCD canal/ drain banks, operation/ maintenance access, or rights-of-way for parallel ingress/ egress to private property, or as a traffic thoroughfare, or detour is not authorized. MRGCD CEO/ Chief Engineer shall approve exceptions for landlocked properties.
- 6.1.D Recreational and general public off-highway vehicle (OHV/ ROV) use on MRGCD rights-of-way is strictly prohibited. This includes but is not limited to, all-terrain vehicles (ATV), motorcycles, off-highway motorcycles (OHM) / dirt bikes, utility terrain vehicles (UTV), side by sides, and snowmobiles.
- 6.1.E Operation of any off-highway vehicles (OHV) on MRGCD facilities shall be limited to MRGCD personnel, law enforcement, fire, search and rescue, other approved agencies, and qualified licensees.
- 6.1.F If qualifications are met, the operation of vehicles, OHVs, and farm equipment on MRGCD facilities for irrigation and farming purposes may be permitted by a Special Use License.
- 6.1.G Requests for keys or combinations to gate locking devices should be made to MRGCD Licensing and Lands staff. If the qualifications outlined in Section 6.2 (Irrigation Access) and 6.3 (Farming Access) are met, Special Use License stipulations will govern the issuance of keys or combinations. The installation of private locks on MRGCD gates is not permitted.

- 6.2 Irrigation Access: The MRGCD will make reasonable accommodations for irrigators who have access limitations;**
- 6.2.A** An irrigator may qualify for a Special Use License for seasonal access if they do not have a viable alternative for access to a turnout or check structure without use of an MRGCD gate or have a physical disability or limitation that requires motor vehicle access to operate a check or a turnout.
 - 6.2.B** If it is determined by the MRGCD that there is a viable alternate access, then the irrigator will be required to vacate use of MRGCD gate access in a period not to exceed 18 months. Irrigators will be required to create their own private side entry walk-through access of an MRGCD facility to operate turnouts and check structures.
 - 6.2.C** Community ditch irrigators whose properties do not adjoin an MRGCD facility may qualify for a Special Use License to access gates for operation of turnouts and checks.
 - 6.2.D** The MRGCD is not liable for any private property damage associated with the use of gates as further provided for in the Special Use License.
 - 6.2.E** Irrigators shall adhere to all rules and regulations of MRGCD Water Distribution Policy.
- 6.3 Farming access: The MRGCD will make reasonable accommodations for farmers who have access limitations;**
- 6.3.A** A farming operation that does not have a viable alternative to conduct operations without vehicular/ farming equipment access of an MRGCD gate/ facility may apply for a Special Use License for temporary access of gates.
 - 6.3.B** If it is determined by the MRGCD that there is a viable alternative for a farming operation which does not require vehicular/ farm equipment use of a gate/ MRGCD facility, then the MRGCD will require the farmer to discontinue MRGCD facility use immediately.
 - 6.3.C** The MRGCD will determine if canal/drain right-of-way is wide enough to consider farm operations access. Canal/drain banks with adequate width and proper compaction may be considered for farming operations according to Special Use License stipulations.
 - 6.3.D** The MRGCD is not liable for any private property damage associated with the use of gates as further provided for in the Special Use License.
 - 6.3.E** The MRGCD is not responsible for any MRGCD gate or facility improvement or modification required for farming operations. Special Use Licenses for farming operations will require maintenance stipulations and may require maintenance fees or damage deposits per Board approved fee schedule.
- 7.0 GATE REMOVAL, LICENSE REVOCATION, EXCEPTIONS, AND APPEAL**
- 7.1 Gate Removal: The MRGCD reserves the right to remove a gate that has been determined to be unsatisfactory, unreasonably interferes with MRGCD operations or maintenance, poses as a public health or safety risk, was installed without MRGCD approval, or is otherwise detrimental to MRGCD or public interest.**
- 7.1.A** Makeshift gates and fences, including but not limited to, cable, wire, trenches, dirt mounds, debris piles, are strictly prohibited.
 - 7.1.B** The MRGCD will make a reasonable attempt to identify and contact parties responsible for an unauthorized gate before removal.
 - 7.1.C** The MRGCD will give any existing gate licensee a written thirty (30) day notice of license revocation. The MRGCD may revoke a gate license and allow a gate to remain per MRGCD criteria and specifications.
- 7.2 License Revocation: The MRGCD is not limited to the following grounds for license revocation:**
- 7.2.A** The MRGCD reserves the right to remove locks or gates that prevent operations or emergency access at its discretion.

- 7.2.B All other uncorrectable gate conditions or defects that interfere unreasonably with MRGCD operations and maintenance or pose a public health or safety concern.**
- 7.2.C It is an undue burden on the licensee to regulate gate access of MRGCD facilities.**
- 7.2.D The licensee is in violation with the license agreement, this policy, or any other MRGCD policy or procedure.**
- 7.3 Exceptions: MRGCD staff will evaluate any gate access exceptions consistent with this policy and any other established MRGCD procedures, policies, rules, and regulations.**
- 7.4 Appeal: MRGCD's decision to deny a gate application and/or access exception may be appealed. Any appeal not resolved at the staff level, will then be heard by MRGCD CEO/ Chief Engineer first and, then if requested by the appellant, by the MRGCD Board of Directors.**