

Middle Rio Grande Conservancy District
Board of Directors
Governance Handbook

This Director's Handbook is provided to make clear the legal and fiduciary duties and responsibilities of the Directors of the Middle Rio Grande Conservancy District ("District"), for which they can be held accountable.

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Role of Directors/Purposes of District

The members of the Board of Directors are elected to serve as public servants to accomplish the purposes for which the District has been organized. The District was organized for the purposes of providing and maintaining flood protection, river control, drainage, water storage for supplementing irrigation needs, constructing and maintaining distribution systems for irrigation; and other improvements for public health, safety, convenience and welfare in cooperation with the United States government.¹

Responsibilities of Individual Directors

LEGAL OBLIGATIONS

Directors have a legal and fiduciary responsibility to the District that demands Loyalty, Obedience, Due Care & Diligence.

The Duty of Loyalty requires Directors to:

- Act only in the best long-term interest of the District;
- Place the interests of the District over personal interests;
- Avoid any conflicts of interest or any appearance of a conflict of interest;
- Represent and support the interests of the District to public officials when speaking as a representative of the District;
- Publicly support decisions of the Board except when the Director actually believes there is a clear and present threat to the survival of the District.

The Duty of Obedience requires Directors to:

- Review, understand, and abide by all obligations imposed by the Laws of the United States, State of New Mexico, District Rules, Regulations, Policies and contracts (See **References** listed below).

Under the Duty of Due Care & Diligence, Directors are required to:

- Attain and have the knowledge and skills necessary to direct the affairs of the District.
- Study Board meeting packages prior to meetings and make every attempt to attend all meetings of the Board and participate without distraction.

¹ NMSA 1978, §73-14-2.

NEW MEXICO GOVERNMENTAL CONDUCT ACT²

The Government Conduct Act sets forth ethical rules for public servants.

- Directors shall treat their government position as a public trust.
- Directors shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest.
- Directors shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.
- Directors shall fully disclose real or potential conflicts of interest.
- At all times Directors shall avoid undue influence and abuse of office in public service.
- Directors shall not request or receive, and no person may offer a Director any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

OATH

Before taking office, Directors shall take the following oath:

“I, _____, having been elected to the office of Director of the Board of Directors of the Middle Rio Grande Conservancy District, Position ____, Director At-Large/of _____ County, do solemnly swear that I will support the Constitution of the United States and the Constitution and laws of the State of New Mexico, that I will honestly, faithfully and impartially discharge the duties of said office to the best of my ability; and that I will not be interested directly or indirectly in any contract let by the Middle Rio Grande Conservancy District.”

REMOVAL

A member of the District board may be removed or suspended in the same manner and for the same reason that a county officer may be removed or suspended.³

Any Director or Officer of the District may be removed for cause after a hearing upon a motion filed by any interested person⁴ in the original proceeding in which the District was organized.⁵

² §10-6-3.

³ §73-14-23.

⁴ The courts have not determined whether the District itself as an entity can be considered an “interested person” for the purpose of filing a motion to remove a Director or Officer.

The following shall be causes for removal of any local official:

- i. Conviction of a felony or any misdemeanor involving moral turpitude⁶;
- ii. Failure, neglect or refusal to discharge the duties of the office;
- iii. Knowingly demanding or receiving illegal fees as an officer;
- iv. Failure to account for money coming into their hands as an officer;
- v. Gross incompetency or gross negligence in discharging the duties of the office;
- vi. Any other act or acts that in the opinion of the court amount to corruption in office or gross immorality rendering the incumbent unfit to fill the office.

Responsibilities of the Board of Directors

The responsibilities of the Board of Directors described in this section are derived from THE NEW MEXICO CONSERVANCY ACT.

GENERAL POWERS⁷

The Board is vested with all powers necessary and requisite for the accomplishment of the purposes for which the District is organized and capable of being delegated by the Legislature. No enumeration of particular powers in the Conservancy Act shall impair or limit this general grant of power.

PARTICULAR POWERS⁸

In order to protect life and property within the District, to protect or relieve land subject to overflow, washing, or flood, and to accomplish all other purposes of the district, the Board is authorized and empowered to:

- Clean out, straighten, widen, alter, deepen or change the course or terminus of any ditch, community ditch or acequia, drain, sewer, flume, river, watercourse, pond, lake, creek, arroyo or natural or artificial stream in or out of the District;
- Fill up any abandoned or altered ditch, community ditch or acequia, drain, sewer, river, flume, watercourse, pond, lake, creek, arroyo or natural or artificial stream;
- Concentrate, divert or divide the flow of water in or out of the District;
- Construct and maintain main and lateral ditches, community ditches or acequias, sewers, canals, flumes, levees, dikes, dams, sluices, revetments, reservoirs, or retarding basins, floodways, wells, pumping stations and siphons and any other works and improvements deemed necessary to construct, preserve, operate or maintain the works in or out of the District;

⁵ §73-17-8 (refers to a hearing before the Conservancy Court).

⁶ Moral turpitude refers to conduct that is considered contrary to community standards of justice, honesty or good morals. West Encyclopedia of American Law.

⁷ §73-14-48.

⁸ §73-14-39.

- Construct, reconstruct or enlarge or cause to be constructed, reconstructed or enlarged, any and all bridges that may be needed in or out of the District;
- Construct, reconstruct or elevate highways and streets;
- Construct or reconstruct any and all of said works and improvements along, across, through or over any public highway, canal, railroad right-of-way, track, grade, fill or cut, in or out of the District;
- Remove or change the location of any fence, building, railroad, canal or other improvements in or out of the District;
- Acquire by donation, purchase or condemnation, to construct, own, lease, use and sell, to hold, encumber, control and maintain any easement, water right, acequias, well, railroad right-of-way, canal, sluice, flume, reservoir site, reservoir or retarding basin, mill dam, water power, franchise, park, cemetery or any other public way or place, or any real or personal property, public or private, in or out of said district, for rights-of-way and such other things, or for materials of construction or for any other use not inconsistent with the purposes of The Conservancy Act;
- Re-plot or subdivide land, open new roads, highways, parks, streets and alleys, or change the location of existing ones;
- Make equivalent provision, by means of ditches or works constructed by the District at its expense, for supplying water users when the construction provided by The Official Plan⁹ interferes with an irrigation ditch, community ditch or acequia or other works used for applying water to beneficial use.
- Increase at its expense the storage capacity of any reservoirs and to store therein or release there from water in excess of the capacity of such reservoirs as developed by any person; but such additional storage so created by the District shall not interfere with the storage and regulation of flow of water as developed by such person prior to such increased storage capacity being added by the District; and, that in case the District shall increase the storage capacity of any such reservoir, either by adding to the dam, dams or other structures built, or by removing such dam, dams or other structures and rebuilding same, the damages, if any, to such person for the property so utilized or removed shall be ascertained and paid as provided in the case of property taken by the District by right of eminent domain.

⁹ State of New Mexico Middle Rio Grande Conservancy District, Report of the Chief Engineer Submitting a Plan for Flood Control, Drainage and Irrigation of the Middle Rio Grande Conservancy Project ("The Official Plan") August 15, 1928.

CONTRACT INDEBTEDNESS¹⁰

- The District may enter into a reclamation contract or contracts for the construction, purchase, extension or operations and maintenance of irrigation or drainage works with the United States. The District may serve as a fiscal agent for the United States to collect monies on behalf of the United States in connection with a federal reclamation project.

RECREATION & RESEARCH

- The Board may authorize the use of suitable District facilities and properties for the purposes of recreation and environmental studies and research.¹¹

NO INTERFERENCE WITH STATE OR FEDERAL RIGHTS¹²

- If the District's contemplated improvements interfere with any right or property of the federal or any state government, the Board shall enter into an agreement to obtain the necessary permission to make the improvements.

RECORDS¹³

- The Board shall adopt a seal and keep a well-bound book, which shall be open to inspection by all interested parties and includes all:
 - i. Proceedings;
 - ii. Meeting minutes;
 - iii. Certificates;
 - iv. Contracts;
 - v. Employee Bonds; &
 - vi. All Corporate Acts.
- Verbal allegations of wrongdoing on the part of District staff, management, or Board members shall only be considered and made part of the minutes if supported by written evidence of their truth by a person with first-hand knowledge and must be verifiable.¹⁴

¹⁰ §73-18-2.

¹¹ §73-14-37.

¹² §73-17-12.

¹³ §73-14-33(C).

¹⁴ Resolution BD-03-13-06-34 (March 13, 2006).

RULES AND REGULATIONS¹⁵

- The Board has the power to make and adopt rules and regulations, not inconsistent with The Conservancy Act, for the conduct of the business and affairs of the District. Rules and regulations shall be adopted in the form of a Board resolution.
- Once adopted, no rule or regulation shall be altered, amended or repealed except upon three days notice to each Board members; notice to be given by given by personal delivery, mail, or at a meeting of the Board.

PLANS

- The first Board was charged with preparing a plan for the improvement of the District, which included the maps, profiles, plans and other data and descriptions necessary to set forth properly the location and character of the work, the property benefited or taken or damaged, and with estimates of the cost and specifications for doing the work.¹⁶ The Official Plan for the District was issued on August 15, 1928.
- The Board has the full power and authority to develop, prepare for, execute, maintain and operate any and all works or improvements necessary or desirable to complete, maintain, operate and protect the works provided by The Official Plan.¹⁷

CONTRACTS¹⁸

- The Board shall order the advertising by publication of all contracts over \$50,000.
- The Board may reject any and all bids, may let the contract to the lowest or best bidder who can give a good, approved and secured bond.
- With the approval of the Conservancy Court, the Board may waive the advertising of contracts in the case of a sudden emergency when it is necessary to protect the District.
- Contracts over \$50,000 shall be let in accordance with the Procurement Code¹⁹ by the Chief Engineer, approved by the Board, and executed by the Board President/Chair and contractor in duplicate.

¹⁵ §73-14-33(C).

¹⁶ §73-14-36.

¹⁷ §73-14-35.

¹⁸ §73-14-40.

¹⁹ §13-1-28 through §13-1-199.

LICENSES²⁰

- Any license or permit sought by any entity or individual for any action other than private or utility crossing, gates or irrigation turnouts that closely conform to current standard District specifications shall be brought to the Board for approval. Staff shall provide the Board with all available information prior to the presentation of the action item.

OUTSIDE MEETINGS²¹

- Members of the Board shall request permission of the Board or Board Chair in advance to attend meetings for which per diem may be allotted.
- After such meeting, the attendee shall submit a written report detailing the information obtained from attending the meeting and justifying its benefits to the District and its constituents.

Officers of the Board of Directors

Officers are elected to serve as leaders of the Board. No directors will have authority to speak or act on behalf of the Board other than that authority specifically granted in the Conservancy Act, Board policy, or by a majority vote of the Board of Directors.

ELECTIONS

Upon taking the oath, the Board shall:

- Choose one of their members to be Chair of the Board and President of the District;
- Choose one of their members to be Vice-Chair of the Board; and,
- Elect some suitable person Secretary of the Board, who may or may not be a member of the Board.²²
- At the first regularly scheduled meeting in June of every year, the Board shall elect by a majority of the Board a Chair and Vice-Chair for a one-year term.²³

²⁰ Resolution No. M-7-28-08-100 (July 28, 2008).

²¹ Resolution No. BD-03-13-06-33 (March 13, 2006).

²² §73-14-33(B).

²³ Resolution BD-05-23-11-45 (May 23, 2011).

DUTIES AND FUNCTIONS OF THE CHAIR

- The Chair has inherent authority to control and preside over Board meetings, in accordance with the **Conduct of Meeting** guidelines set forth below.
- The Chair shall sign agreements and contracts previously approved by the Board.
- The Chair may serve as the public representative of the Board for press conferences.
- The Chair may serve as the public representative of the Board before the New Mexico Legislature.

DUTIES AND FUNCTIONS OF THE SECRETARY²⁴

- Serves as custodian of the District's records & corporate seal;
- Attests, under the corporate seal, all certified copies of the official records and files;
- Serves as Treasurer unless a Treasurer is otherwise appointed;
- The Secretary, Treasurer and other agents or employees as the Conservancy Court directs, shall furnish corporate security bonds conditioned on the faithful performance of their duties, at the expense of the District, in the amount and form fixed by the Conservancy Court.

STAFF²⁵

- The Board may employ a Manager or Chief Engineer, who may be an individual, partnership or corporation; an Attorney; other engineers and attorneys; and, other agents and assistants as may be needed.
- The Manager or Chief Engineer shall be the superintendent of all the works and shall make a full report to the Board once a year or more often if required by the Board.
- The Board may employ and secure men and equipment under the supervision of the Chief Engineer or other agents, or may let contracts for all or part of such work.²⁶
- Board members shall not interfere with the daily operations of the District and shall allow those managers hired by the Board to manage the District.²⁷
- The Board shall conduct an annual performance review of the Chief Engineer.²⁸
- The employment of the Secretary, Treasurer and other agents and employees shall be evidenced in writing which specify the amounts to be paid for their services.

²⁴ §73-14-35.

²⁵ §73-14-35.

²⁶ §73-14-357.

²⁷ Resolution No. M-12-22-87-42 (Dec. 22, 1987).

²⁸ Employment Agreement for Subhas K. Shah as Chief Engineer for the MRGCD (Feb. 23, 2004).

- Only the Chairman of the Board, the Chief Engineer and his designee are authorized to contact the District's Attorney regarding District matters. Any Director wishing to contact the District's Attorney on District matters must first get authority to do so from the Board Chairman.²⁹

Conduct of Meetings

GENERAL MEETING CONDUCT

- Directors shall conduct themselves in a professional manner. Directors shall maintain courtesy and respect for other at all times. The Board shall strive to conduct respectful, efficient and effective Board meetings.
- Board of Directors meetings shall be held on the second and fourth Monday of every month.³⁰
- Meetings held between March 1st and November 1st shall begin promptly at 3:00pm.
- Meetings held between November 1st and March 1st shall begin promptly at 3:00pm.³¹
- Meetings shall last no longer than three and one half (3½) hours, unless a motion is passed to extend the length of the meeting.³²
- All meetings shall abide by the New Mexico Open Meetings Act.
- Meetings shall abide by Robert's Rules of Order Newly Revised In Brief (2004) unless otherwise provided for in this section.
- A majority of the Directors shall constitute a quorum.³³
- A concurrence of the majority of Directors in any matter within their duties shall be sufficient for its determination.³⁴
- No formal debate on an issue shall be allowed until a motion has been made.
- Informal discussions may take place in order to properly frame a motion or resolutions and to ensure all Directors understand the motion or resolution before discussions begin.
- Any Director may make a motion.
- The Chair may make and second motions, discuss motions, and vote.
- The Director making the motion shall have the right to speak first during the discussion. The Chair shall have the right to speak last during the discussion.
- Every Director has the right to speak to every motion before it is finally acted upon.

²⁹ Resolution No M-11-14-94-68 (Nov. 14, 1994).

³⁰ NMAC §21.7.1.29 currently reads: "the regular meetings of the Board of Directors be held on the second and fourth Tuesday of each month at the hour of 1:30 p.m."

³¹ Resolution BD-02-28-11-40.2.

³² Resolution BD-02-28-11-40.2

³³ §73-14-34.

³⁴ Id.

- Directors shall not repeat information or opinions already expressed on the motion.
- The Chair shall restate motions and amendments prior to a final vote.
- The length of time for each Director to speak to a motion should be no longer than five (5) minutes, unless the issue under discussion is complex. This rule may be altered for a specific motion by a majority vote of the Board.
- Likewise, the Chair may limit length of time for each member of the public to speak during the public comment period to five (5) minutes.

RESPONSIBILITIES OF THE CHAIR

- The Chair is responsible for keeping discussions on topic.
- The Chair shall work with staff to compile meeting agendas with input from other members of the Board. The Chair does not have the authority to refuse to place items on the agenda if so requested by a member of the Board.
- The Chair and staff shall ensure adequate time is available for the presentation, discussion, and debate of relevant information at Board meetings.
- The Chair may request a Director limit the number of times he/she speaks to the same motion during a discussion.
- The Chair shall not unnecessarily interrupt a person who has not violated established meeting rules. However the Chair may interrupt when it is necessary to maintain control over a meeting or to give information necessary for the discussion.
- The Chair does not have the power to cut-off debate or discussion unless time periods set for that item have been exceeded.
- The Chair has the responsibility and authority to ask any person to leave who fails to comply with Board-approved rules, local or state laws, or causes a disturbance. Upon failure to leave, the person becomes a trespasser and may be arrested.

GOOD FAITH AND FAIR DEALINGS

- Directors shall engage in good faith and fair dealings with every other Director and District staff in expressing his or her views, questions and concerns relating to District policies and activities.
- Directors shall reveal all information and interests they have that are relevant to any actions being considered by the Board.

MOTIONS AND RESOLUTIONS

- Motions shall be used for implementation of existing District policies, approval of budgeted for expenditures, approval of budgeted for contracts, and issuance of licenses.
- Resolutions shall be used for expressing the formal opinion or policy of the Board, approval of the District's budgets, rule making, recognition of persons, master planning and election procedures.
- Resolutions may be used for more important, complex, or long-term issues, such as changes to existing rules, policies or procedures of the Board.

Committees

COMMITTEES

- The Chair, in consultation with the Board, may establish committees to help carry out its responsibilities and appoint members to its committees who are willing and able to serve.
- Committees shall investigate, consider and analyze special issues on behalf of the Board.
- The Board must establish the specific responsibilities, authorities, deadlines, and term of each committee established. The Secretary shall maintain a list of committees established by the Board.
- Committees with more than three (3) Directors shall abide by the New Mexico Open Meetings Act.
- Committees shall report their work and make recommendations for action to the full Board.
- Committees do not act or speak for the full Board or exercise authority over staff unless they have been given authority to do so by the Board for formal and time-specific purposes.
- Non-Board members may be appointed to a Board committee; however a Director shall serve as chair of the committee.

COMMITTEE CHAIRS

Committee chairs shall:

- Plan the agenda for committee meetings;
- Notify all committee members of meetings;
- Convene the meetings in a timely manner and keep them on point; and,
- Ensure that reports and recommendations from the committee are documented and presented to the full Board in a timely manner.

Committee staff shall:

- Prepare relevant background information for committee information;
- Synthesize data as needed for committee consideration;
- Record informal meeting minutes; and,
- Draft policy recommendations in accordance with committee guidance.

COMMITTEE MEMBERS

Committee members shall:

- Prepare for, attend, and participate in all meetings to which they are assigned;
- Promptly complete assignments from their committee; and,
- Support the presentation of committee recommendations to the full Board.

References

Members of the Board of Directors shall review, understand, and abide by the following:

- The New Mexico Conservancy Act
- The New Mexico Open Meetings Act
- The New Mexico Governmental Conduct Act
- The Middle Rio Grande Conservancy District Water Policy Plan
- The Middle Rio Grande Conservancy Act Code of Conduct
- Robert's Rules of Order