

BRAZOS MUTUAL DOMESTIC WATER

CONSUMERS ASSOCIATION, INC.

RULES AND REGULATIONS

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INDEX

	PAGE
I. INTRODUCTION	2
II. COMMUNICATIONS	2
III. DEFINITIONS	2-4
IV. MEMBERSHIP APPLICATION	5-6
V. WATER SERVICE	6
VI. CONNECTING TO THE WATER SERVICE; REPAIRS	6-8
VII. WATER USE AND USER OBLIGATIONS	8
VIII. BILLINGS	8-9
IX. RATE SCHEDULE	9-10
X. UNAUTHORIZED, ILLEGAL OR DELINQUENT CONNECTIONS	10-11

XI.	VIOLATIONS	11-12
XII.	TRANSFER OF MEMBERSHIP	12
XIII.	PROBLEMS OR GRIEVANCES	13

## I. INTRODUCTION

In accordance with the bylaws of the Brazos Mutual Domestic Water Consumers Association, Inc., hereinafter the “Brazos MDWCA” or the “Association”, these Rules and Regulations, hereinafter the “Rules”, are hereby adopted. In the event any provision of these Rules will be found to be in conflict with the bylaws or applicable State or Federal regulations, then the more stringent provisions will prevail.

These Rules may be amended as required by the Board of Directors of the Association and shall become effective upon approval by the Board of Directors. These Rules will be provided to each individual submitting an application for membership to the Association and, as amended, these Rules shall be made available to each member, other persons and State or Federal agencies as may be required.

## II. COMMUNICATIONS

1. Members of the Association are strongly encouraged to: (a) contact Board members regarding questions and concerns about system operation and status; (b) frequently monitor the Association website at [www.upperbrazoswater.org](http://www.upperbrazoswater.org), where members can find updates on system status, meeting announcements, contact information, and the latest version of the Rules; and (c) provide the Association with their e-mail addresses and telephone numbers to enable efficient communications.
2. In the event of water shortages, use restrictions and other situations that negatively impact the availability of water, the Board will make a reasonable attempt to notify all members of such shortages, restrictions and other situations. Notification methods may include signs in the Brazos area, announcements on the Association website at [www.upperbrazoswater.org](http://www.upperbrazoswater.org) and email messages to those members who have provided their email addresses to the Association.

## III. DEFINITIONS

1. Active User: A member, as defined below, whose property is connected to the Association's water distribution system and water service. An active user is entitled to use the water service provided by the Association for their approved residence, approved business and any outbuilding that is used to support their residence or place of business, such as an outbuilding with a clothes washer.
2. Administrative Fees: Fees charged by the Association for processing applications, including the following:
  - a. New Membership Fee: Fee charged to a new applicant for processing an application to join the Association.
  - b. Change of Status Fee: Fee charged for processing an application to change the category of membership status or the category of water use status.
  - c. Membership Transfer Fee: Fee charged for processing an application for transfer of a membership.
3. Annual Fees: Fees charged by the Association on an annual basis for membership in the Association, including the following applicable fees based on the category of membership: Residential Fee; Short-Term Vacation Rental Fee; Commercial Business Fee.
4. Board: The Association's Board of Directors.
5. Categories of Membership:
  - a. Residential: A single member-owned unit suitable for occupation by one or more persons for domestic use, as that term is commonly known.
  - b. Short-Term/Vacation Rental: A short-term rental (commonly referred to as a vacation rental), is the leasing out of a furnished property on a short-term basis, typically by the night, week or month, although a short-term rental period in excess of a month may qualify as a short-term/vacation rental depending on the circumstances.
  - c. Commercial Business: Membership for a commercial business that is separate and distinct from remote work. While not exclusive of such a finding, common indicators that a commercial business will be found to exist include but are not limited being open to the public, signage, storing goods, selling goods, industrial activities, manufacturing, point of sale transactions, employment of non-residents, regularity of the commercial activities, regularity of the transactions, and ongoing efforts to further the interests of the business.
6. Categories of Water Use:

- a. Residential Use of Water: The use of water in a residence by the owner or authorized occupant for normal household activities, such as cooking, drinking, bathing, cleaning. Residential use of water does not include outdoor use of water, including irrigation or washing of vehicles or equipment, and the outdoor use of water from the Association's water distribution system is strictly prohibited. Any use of water for repairs or maintenance to a structure will require board/water operator confirmation & water availability.
  - b. Commercial Use of Water: The use of water in the conduct of a business as defined in Section 5. c., above.
7. Change of Status: Changing the category of membership or category of water use granted by the existing membership certificate by filing an application to change the status and paying the required administrative fee.
8. Connection Fee: A fee charged to a member for physical connection to the water distribution system of the Association. This fee includes the costs of labor and materials to install a connection from the Association's main water lines to an insulated meter can located on the member's property, and includes but is not limited to: ¾" system meter with remote readout, insulated meter can, saddle tap, frost-free hydrant and meter can shut-off valve. The Connection Fee does not include a separate and required shut-off valve and all other plumbing and connections from the meter can to the residence or business, all of which shall be at the member's expense. The Connection Fee is a base fee, and additional charges in excess of the base fee shall be the responsibility of the member.
9. Member: Any natural person, group of persons, association, trust, incorporated or unincorporated group, entity or commercial business who by application, has been approved and received a water user membership certificate in the Association.
10. Membership Certificate: A written certificate of an approved membership in the Brazos MDWCA.
11. Service Fees, Charges and Fines: Fees charged by the Association to a member of the Association, including the following applicable fees and charges: Connection Fee; Disconnection Fee; Reconnection Fee; Late Payment Service Charge; Excessive Water Usage Charge; Excessive Leakage Fine; Late Membership Transfer Fee.
12. Standby/Non-Metered User: A member of the Brazos MDWCA whose property is not physically connected to the Association's water distribution system. Standby/Non-Metered users have priority over non-members for connection to the water distribution system. Applications for this category of membership were suspended in 1986, and new applications for standby/non-metered users may not be accepted.

13. Water Distribution System: The physical infrastructure of the Brazos MDWCA that delivers water to active users, excluding any and all infrastructure from an approved meter can to an active user's residence or business.

#### IV. MEMBERSHIP APPLICATION

1. Any natural person, group of persons, association, trust, incorporated or unincorporated group, entity or commercial business applying for membership shall complete an application form approved by the Association. The completed application, new membership fee, connection fee and a copy of a recorded deed or other proof of ownership shall be submitted to the Association's Secretary. Completed applications shall be included on the agenda of the next regular Board meeting pursuant to the provisions of NMSA 1978, 10-15-1 et. seq, the "Open Meetings Act".
  - a. Applicants not wishing to pay the connection fee shall be responsible for submitting a detailed work plan, including an itemized listing of the materials to be installed and proof of licensure, bond and insurance for the contractor who will perform the work. The detailed work plan shall strictly comply with any specifications or standards the Board deems necessary to ensure a quality connection to the water distribution system. Said applicants will also be additionally responsible for paying the costs of having the Association's licensed water operator oversee and approve the work. Water service will not commence until the water operator's approval has been granted.
2. The applicant(s) shall be given notice of the meeting during which their application will be considered and may appear before the Board and have these Rules explained and any questions answered.
3. Change of Status for Standby/Non-Metered Users. In order to become active users, standby/non-metered users shall submit an application for change of status and pay both the change of status and connection fees. Upon receipt of a completed application and payment of all fees, the Board shall include the change of status application at its next regular Board meeting pursuant to the provisions of the Open Meetings Act.
4. Change of Status for Water Use. A member who wishes to change the status of their water use shall submit an application for change of status, a written narrative explaining the circumstances behind the request and pay the change of status fee. Upon receipt of a completed application and payment of all fees, the Board shall include the change of status application at its next regular Board meeting pursuant to the provisions of the Open Meetings Act.
5. The Board will be under no obligation to approve an application for residential or commercial membership, or an application for change of status to an active user or

change of status for water use if such action would exceed the current capacity of the Brazos MDWCA water distribution system.

- b. The water usage of a new commercial business will be estimated based upon the type of business and standard New Mexico usage guidelines for that type of business. The water usage of a new residential membership will be based upon the most recent estimate for a single family residence in New Mexico.

## V. WATER SERVICE

1. Water service is for the sole use of the active user, agent or tenant and does not permit the transfer or use of water by any means to another dwelling, activity or place of business.
2. The Association's water service consists of present or future facilities of the Brazos MDWCA that supply water at normal operating system pressure to approved residences or places of business. Water service will be considered available when the Brazos MDWCA maintains the water supply at normal pressure at the point of delivery for the active user's use, whether or not the active user makes use of it. Charges will reflect service from the date of availability.
3. The Association will make a reasonable effort to supply continuous service of water at an adequate supply for all active users, but reserves the right to suspend water service for making repairs, connections, extensions, other necessary work, or in the event of emergency. Additionally, loss or reduction of well capacity due to unforeseen circumstances, such as well depletion, reduction in the water table or reduction in water infiltration into the well housing, may lead to disruption of continuous water service. In the event of an emergency or water shortage, the Board reserves the right to restrict water usage in any manner that will ensure an equitable availability of water to all active users. The Brazos MDWCA will not accept responsibility for losses occurring due to necessary and/or accidental interruptions of service or shortage of water.
4. Representatives of the Brazos MDWCA will have the right to enter an active user's property during reasonable hours for the purpose of meter reading, inspection, repair and/or service. This does not include access to any dwelling or other structure on the property.

## VI. CONNECTING TO THE WATER SERVICE; REPAIRS

1. The Brazos MDWCA assumes responsibility for the maintenance and integrity of the main water distribution lines in its water distribution system, extensions for service supply and meters. All other water distribution lines and plumbing from an approved meter to an active user's residence or business are the sole responsibility of the active user.

2. Upon approval of a membership application, the Association will schedule the installation of the insulated system meter, meter can, frost free hydrant and meter can shut-off valve, unless the process in Article IV, Section 1. a. has been requested by the member.
3. All properties to which water is supplied must have an operable nylon ball type shut-off valve separate and distinct from the meter can shut-off valve.
4. Shut-off valves shall be located in as close proximity to the meter can as is feasible, typically no more than 3 to 5 feet. Existing shut-off valves that are not in compliance with this rule shall be re-located during maintenance of the waterline or at the earliest opportunity, and shall be the responsibility of the active user.
5. Any active user with a private water system, such as a well, shall protect the Association's water system by the installation of a backflow prevention device approved by the Board to prevent water flow from the private water system into the Association's water system or vice versa. The cost of such a device and installation shall be the sole responsibility of the member. Connection of a private system to the Brazos MDWCA system may not be made without Board approval.
6. Only appropriately licensed and insured contractors are authorized to make connections to the Brazos MDWCA system. A copy of the contractor's license and a certificate of insurance with the Brazos MDWCA listed as insured on the policy shall accompany the request for installation.
7. Except in emergencies, all water system work must be approved by the Board and a purchase order issued before any maintenance is performed. The Board will not assume responsibility for payment of a bill without a purchase order number attached. Members needing maintenance or repair to the system may contact any Board member.
8. It is the policy of the Association that members of the Association or their companies may not charge or invoice the Association for providing their services to assist in resolution of operational or management problems faced by the Association unless a valid and binding contract between the Association and the member has been previously entered into. The Association may reimburse any member for costs of materials or supplies provided to the Association. The reason for this policy is that this is a "Mutual Domestic Association" and each member has a stake in the proper performance of operations and management of the Association and the contribution of any member is for the betterment of the Association and the community. This policy does not preclude the Association from contracting with any member for services that are in line with their normal area of expertise.
9. Except for system emergencies, repairs and/or extensive maintenance during the winter months will be made only if the Board deems the costs reasonable.

10. Installations requiring Brazos MDWCA water distribution system line extensions will require approval by the Board and meet the Association's specifications. All costs to install the line extensions will be the responsibility of the member requesting the extension. Line extensions of the water distribution system of the Association will become the property of the Association when installed.

## VII. WATER USE AND USER OBLIGATIONS

1. Water is permitted to be used only for approved residential or commercial uses. Residential uses of water for outdoor uses, including irrigation or the washing of vehicles, are strictly prohibited. Any use of water for repairs or maintenance to a structure will require board/water operator confirmation & water availability.
2. It is the individual active user's sole responsibility to properly shut off his/her water service completely when his/her cabin is not in use.
3. The Association reserves the right to read the individual water meters of any active user to determine whether there may be any leakage occurring at the property. In the event of a discovered leak, the water service will be shut off at the meter and a tag placed on the property indicating that the action has been taken, along with information on how to contact the Association to address the leak.
4. The Association shall investigate the causes and/or circumstances of a leak at its discretion. In the event that a discovered leak appears to be the result of a member's negligence or the failure to install and/or use an operable shut-off valve, an excessive leakage fine may be imposed administratively.
5. In addition to the excessive leakage fine, all costs associated with the repair of a leak on a member's property shall be the responsibility of the member.
6. Water service shall not be restored until such time as repairs are made to correct a leak.
7. Active users are prohibited from using the meter can valve to turn on and shut off the water to their property except in the event of an emergency or maintenance or repair of the member's shut-off valve; meter can valves are not designed for repetitive use. Active users will be held financially responsible for damage resulting from unauthorized use of the meter can valve. Active users are hereby notified that unauthorized tampering with a community water system is a federal offense.

## VIII. BILLINGS

1. The fiscal year of the Association is that which is set in the Bylaws.



2. All annual fees will be billed by April 15<sup>th</sup> of each year and shall be due on or before June 1<sup>st</sup>.
3. Service fees, including fines or charges based on meter readings, and any other charges will be billed within one month of the time the charges are incurred and shall be due and payable in full by the first day of the second month following the billing date.
4. All payments sent by U.S. Mail must be postmarked on or before the due date for the payment made. If the due date falls on a Saturday or Sunday, the payment must be postmarked on or before the following Monday.
5. All overdue accounts will be assessed a 5% late payment service charge monthly until the accounts are made current.
6. All annual and service fees are subject to New Mexico Gross Receipts Tax. In the event of disconnection or other exception, the fee(s) will not be pro-rated and are not subject to refund.

#### IX. RATE SCHEDULE

The rate schedule herein shall be subject to change if sufficient income is not being generated to cover the Association's anticipated expenses. The Board will notify the Association bookkeeper whenever a membership account should be billed any amount in excess of the annual fee.

1. New Mexico Gross Receipts Tax will be added where applicable. (\* Indicates a nontaxable item.)

2. **Administrative Fees:**

- |                             |          |
|-----------------------------|----------|
| a. New Membership Fee:      | \$50.00* |
| b. Membership Transfer Fee: | \$50.00* |
| c. Change of Status Fee:    | \$15.00* |

3. **Annual Fees:**

- |                                    |   |
|------------------------------------|---|
| a. Residential Fee:                | \$602.00 for Active Users<br>\$154.00 for Standby/Non-Metered Users |
| b. Short-Term Vacation Rental Fee: | \$1,050.00  |
| c. Commercial Business Fee:        | \$1,050.00  |

4. **Service Fees, Charges and Fines:**

- a. Connection Fee: \$6,000.00 base fee to be paid prior to connection. When connection work is completed, a final invoice for any costs in excess of the base fee shall be paid by member prior to activation.
- b. Disconnection Fee: \$75.00\* (whether for unauthorized, illegal, or delinquent connections or leak mitigation)
- c. Reconnection Fee: \$75.00\*
- d. Late Payment Service Charge: 5% of balance due monthly
- e. Late Membership Transfer Fee: \$25.00 per month after 90 days from date of property transfer.
- f. Excessive Water Usage Charge: At the discretion of the Board to determine based upon total number of gallons used.
- g. Excessive Leakage Fine: \$500.00 for first occurrence  
\$750.00 for second occurrence  
\*\*Leakage fines will double after 2<sup>nd</sup> occurrence  
(Disconnection and reconnection fees may also apply)

#### X. UNAUTHORIZED, ILLEGAL OR DELINQUENT CONNECTIONS

1. Pursuant to the New Mexico Sanitary Projects Act, Section 3-29-6D, the Board shall shut off unauthorized connections, illegal connections or connections for which charges are delinquent.
2. The Board hereby adopts the following rules regarding unauthorized, illegal or delinquent membership accounts:
  - a. When a membership account is four months delinquent, the Board shall send the member a written notice of delinquency by mail and/or posting on the premises.
  - b. The written notice of delinquency shall state the amount owed and inform the member that if payment is not received by the next regularly scheduled Board meeting, that the member's service meter will be shut off or locked in accordance with

Section 3-29-6D of the New Mexico Sanitary Projects Act and Section IX-2 of the BMDWCA By-Laws.

- c. Service meters that are locked or shut off for delinquent connections shall remain so until the account is paid in full.
- d. When an unauthorized or illegal connection is discovered, the Board shall send the landowner a written notice of the violation by mail and/or posting on the premises.
- e. The written notice shall state the details of the unauthorized or illegal connection violation and inform the landowner that the matter will be taken up by the Board at its next regularly scheduled meeting, and that the meter will be shut off or locked if full compliance with the Board's Bylaws and these Rules is not reached prior to said date.
- f. Liens. Without waiving or modifying the foregoing, the Board reserves the right to pursue the following remedy for unauthorized, illegal, delinquent or outstanding assessments, charges and fees associated with water service provided by the Association:
  - i. A lien may be placed by the Board upon the property to which water service has been extended in the amount of all outstanding assessments in accordance with the New Mexico Sanitary Projects Act, Section 3-29-6C.
  - ii. Liens will remain in place until all outstanding funds, charges and fees associated with water service have been received in full, including for liens placed on memberships cancelled involuntarily under sub-paragraph 9.c. above or voluntarily.
- g. Court Action. Without waiving or modifying the foregoing, the Board reserves the right to file suit in a court of competent jurisdiction to recover costs associated with an unauthorized, illegal or delinquent connection, including the cost of water delivered, charges for facility connection and disconnection, damages and attorney fees.

## XI. VIOLATIONS AND GRIEVANCES

1. Violations of these Rules shall be addressed by the Board.
2. Any member who is suspected of violating these Rules will be advised in writing by the Brazos MDWCA President of the allegations of the violation, the proposed penalty and the date, time and location of the meeting during which the Board will consider the violation.

3. The member and/or the member's representative will have the right to appear before the Board to explain any circumstances surrounding the violation prior to action being taken by the Board.
4. Based on the evidence presented and upon a two-thirds (2/3) majority, the Board may take the following action(s):
  - a. Warning
  - b. Individual assessment to recover costs or expenses
  - c. Disconnection of water service
  - d. Any combination of the above or other action as appropriate
5. Any member who has had an action taken against him or her by the Board will have the right of appeal to the Brazos MDWCA membership at large, either by mail-in appeal or at the next regular annual meeting. All costs associated with such an appeal will be the responsibility of the member.

## XII. TRANSFER OF MEMBERSHIP

1. It is the policy of the Association that memberships in the Association run with the land, and buyers or transferees of properties that have valid Association memberships must go through a formal transfer process as set forth below to maintain membership in the Association.
  - a. Anyone without a valid membership certificate shall not be considered a member of the Association.
  - b. Buyers or transferees of properties whose sellers or transferors had memberships in the Brazos MDWCA shall file an application for transfer of membership with the Brazos MDWCA Secretary within 90 days of the date of property transfer.
  - c. In the event the membership transfer is not requested within 90 days, the new potential member will be assessed a late transfer fee. This fee will continue for six (6) months. If the event that an application for transfer of membership is not requested with appropriate documentation at the end of the six-month period, the previous membership will be administratively terminated for failure to effectuate a transfer of membership and the water service will be shut off, if applicable.
  - d. A copy of the deed or other proof of transfer of the property in the name of the new owner and the membership transfer fee shall accompany the completed application for transfer form.
  - e. In the event that a property with a delinquent membership or a membership with outstanding fines, fees or assessments is sold or transferred, the new owner shall be

responsible for full payment of any and all outstanding assessments, fees or fines as a condition of transfer.

- f. Upon completion of the requirements herein, the Board will consider the application for transfer of membership at its next duly-noticed meeting.

### XIII. PROBLEMS OR GRIEVANCES

1. Problems or grievances that members have in regards to their membership, water service or billings shall be presented to the Board in writing by providing same to the Brazos MDWCA Secretary. The writing shall set forth with specificity the problem or grievance. The Board will be under no obligation to discuss a problem or grievance at a meeting that has not been previously submitted in writing.
2. Upon receipt of a problem or grievance from a member, the Secretary shall distribute same to the Board and shall include the problem or grievance on the agenda of the next regularly scheduled Board meeting.
  - a. The Secretary shall inform the member in writing that their problem or grievance shall be discussed at the next regularly scheduled Board meeting, and shall provide the date, time and location of said meeting.
  - b. The member submitting the problem or grievance may present his/her problem or grievance to the Board at the meeting.
3. The Board has the general power to act on behalf of the Association in any manner not prohibited by law, the Association's bylaws or its Articles of Incorporations in response to a member's problem or grievance. This general power does not give rise to an obligation on the part of the Board to resolve a problem or grievance to a member's satisfaction, and the Board retains the right to exercise its discretion in responding to a member bringing a problem or grievance before it.