

POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING THE DISTRICT’S USE OF CANALS, SIPHONES, DITCHES, AND PIPES

The following POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING THE DISTRICT’S USE OF CANALS, SIPHONES, DITCHES, AND PIPES (the “Crossing Policy” or “the Policy”))were initially adopted by the Board of Directors prior to April 2001, amended on several occasions prior to 2005, revised and re-adopted by the Board of Directors in April 2001, May 2005, December 2006, August 2011, and June 2015, and were most recently revised and re-adopted effective October 12, 2020.

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I. GENERAL STATEMENTS
(Supplemented and re-adopted October 2020)

A. THE DISTRICT. The Bexar-Medina-Atascosa Counties Water Improvement District No. 1 (the “District” or “BMA”) is a political subdivision of the State of Texas and a conservation and reclamation district created pursuant to the Texas Constitution, Article XVI, section 59 and holds the powers and has the duties described in Chapters 49 and 51 of the Texas Water Code.

B. PURPOSE. The District owns, holds and controls property to accomplish the purposes for which it was created. The purpose of this Policy is to protect District property, whether the property is considered real property or personal property, or ownership of said property is evidenced by a deed, easement or other legal instrument, or is implied by law.

C. APPLICABILITY. This Policy only applies to the District’s property that is located at and downstream of the District’s diversion works on the west side of Diversion Lake.

D. DISTRICT PERMIT REQUIRED. It is the position of the District’s Board of Directors that unless otherwise provided by laws of the State of Texas, no party other than the District has a right to use or encroach upon the District property described herein that the District uses, has used, or may use for canals, siphons, ditches, or pipes, or to substantially interfere with the operation, maintenance, repair, and replacement of the District’s water distribution system, nor does the District have an obligation to permit any other party the right to use or encroach upon District property described herein that the District uses, has used, or may use for canals, ditches, or pipes or to conduct activities adjacent to, over, or under the District’s planned or existing canals, siphons, ditches and pipes if the activities present a risk of substantial interference with the operation, maintenance, repair, and replacement of the District’s water distribution system.

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The District’s Board of Directors will consider requests for using District land and easements only if the proposed use is allowed by this policy or by another directive or order adopted by the Board of Directors and, if allowed, is undertaken in compliance with the District’s policies and application procedures. Each application will be considered on its own merits and the Board of Directors reserves the right to deny any application for any lawful reason or to impose special conditions on any approval.

E. FINDINGS. As part of this policy, the District’s Board of Directors makes the following findings:

1. The open canals, laterals, ditches, and buried pipe within the District’s water distribution system total approximately _____ miles in length.
2. The District, or its predecessors, has installed, maintained, operated, repaired, replaced and improved its water distribution system on land that the District owns in fee simple, or on easements created by express or implied grant, including but not limited to an express easement reserved in the deeds to predecessors in title to the land where the District’s water distribution system is located, whether or not that land is currently located within the District’s boundaries, using the following language or substantially similar language:

“A perpetual easement is hereby expressly reserved and excepted from this conveyance and is expressly retained by “Grantor” for the use and benefit of the Bexar-Medina-Atascosa Counties Water Improvement District Number One, its successors or assigns, for rights of way over, upon and across the land hereby conveyed, for canals, laterals, field ditches, drainage ditches, and auxiliary structures incident to or at any time necessary for conducting and supplying water to any and all lands at any time served by said Water Improvement District, together with the right of ingress and egress, free from obstruction, over, upon and across said land.”

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The District is the successor in title to Medina Valley Irrigation Company and the Medina Irrigation Company.¹ The District is also the successor to the Bexar-Medina-Atascosa Counties Water Improvement District.²

3. The District's water distribution system was designed and constructed over a hundred years ago and operates solely by gravity flow. Accordingly, the District's ability to deepen a canal or lateral, or install plastic pipe at a deeper depth is severely restricted. The District has learned over time from direct experience that roadway and utility crossings and fences across or within the District's property substantially interfere with the District's use, operation, maintenance, repair, and replacement of the District's water distribution system. For this reason, the District attempts to limit the number of crossings, to require that approved crossings or fences satisfy certain minimum construction standards, and to require that persons obtaining authorization to install and maintain a crossing do so at no expense to the District. Interference with the District's use and operations is compounded when a crossing is constructed without the District's approval, or constructed or installed in a manner that does not comply with the District's construction standards. Unauthorized or non-compliant utility crossings create a risk of serious injury or death for District employees, contractors, and others and threaten the safety and health of persons relying upon

¹ *Epps v. Bexar-Medina-Atascosa Cty. Water Improvement Dist. No. 1*, 665 F.2d 594, 595 (5th Cir. 1982); *Reitzer v. Medina Val. Irr. Co.*, 153 S.W. 380, 381 (Tex. Civ. App. 1913), *writ refused* (Apr. 23, 1913)

² See order of the ___ dated ___ granting the application to convert from a water improvement district to a water control and improvement district.

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the utility in the event the District unintentionally damages an unauthorized or non-compliant utility crossing.

4. During the past twenty years, the District has buried plastic pipe in the open canals and laterals in order to reduce water loss, to conserve water and to reduce maintenance costs. The length, width, and depth of the District's water distribution system that needs to be piped and the necessity to reduce costs, combined with the inability to materially increase the depth of the pipe, compels the District to use plastic pipe instead of concrete or steel pipe, and prevents the District from installing concrete sleeves or other means to protect the entire length of the buried plastic pipe.
5. As land within the District's service area is subdivided into smaller and smaller parcels and the use of the land changes from irrigated farmland to residential and other non-farm related uses, the number of unauthorized crossings and other encroachments have increased, as have the number of requests for crossings. As tracts of land have been removed from the District's boundaries, either by petition of the landowner or otherwise, the District has retained its property and easements on excluded tracts.

F. **APPROVALS.** In this Policy, the District's Board of Directors will consider and act on any application for permit or other authorization that may be required under this Policy or the initiation of any litigation to enforce this Policy or to address the violation of the District rules set forth in this Policy. If other action or approval is required by the District under this Policy, such action or approval may be taken by the District's Field Manager, or other employee or contractor who may be designated by the District's Board of Directors or by the Field Manager.

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G. NO WARRANTY. If the District performs any work, or provides any labor or materials, such work, labor, and materials are provided without any warranty of any type. THE DISTRICT EXCLUDES AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

H. LIMITS ON APPROVALS. In this Policy, if the District, acting by and through its Field Manager, reviews any plans, the limits of any District approval are as follows:

(A) The District and its employees may furnish consultation services as a reviewing body only, and its employees may neither act as design engineers nor furnish detailed estimates.

(B) The District and its employees do not examine plans and specifications for construction projects with regard to the structural features of design, such as strength of concrete or adequacy of reinforcing, but only to determine if the District’s minimum technical requirements will be satisfied.

II. RULES
(adopted September 2020)

A. LEGAL AUTHORITY. The District is a conservation and reclamation district created pursuant to Article XVI, Section 59 of the Texas Constitution and currently operates as a water control and improvement district under Chapter 51 of the Texas Water Code. Pursuant to Section 49.002 of the Texas Water Code, Chapter 49 of the Texas Water Code applies to all conservation and reclamation districts, including the District, unless there is a conflict between Chapter 49 and the chapter under which a district is operating.

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See also, Texas Water Code, Section 51.122. A district may adopt and enforce reasonable rules and regulations to:

...

(4) regulate privileges on any land or any easement owned or controlled by the district; or

...

B. RULES. The District adopts the following rules and regulations in order to preserve and protect land and easements held by the District and located downstream of the District's diversion works on the west side Diversion Lake; to protect and safeguard District facilities located thereon, specifically including its canals, ditches, siphons, and pipes; to promote water conservation; and to deliver water to users in a timely and efficient manner at reasonable costs:

1. Any use of District land or easements, expressly including but not limited to the crossing by roadway, driveway, or any other vehicular crossing, or crossing by above-ground or buried wire, cable, fiber optic line or other communication equipment, or by pipe, tubing, or otherwise or any other encroachment upon any District land or easement used by the District for a ditch, canal, pipeline or siphon, or any interference with the District's use of its property without authorization by law or adopted by the District in accordance with this Policy shall be a violation of District rules and regulations.
2. Any failure to comply with the terms and conditions for use of District property subject to this Policy imposed by law or by a permit or other authorization issued by the District shall be a violation of District rules and regulations.
3. Any unauthorized crossing, other encroachment, or other interference with the District's use of its property, expressly including but not limited to a roadway,

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utility, or fence upon, over, or through District land or easement that does not comply with the terms and conditions imposed by law or by permit or other authorization from the District shall be removed by the person(s) who appear to have installed the offending improvement or who own the land adjacent to District property affected by same, or land benefitted by the crossing or encroachment, upon receiving notice of a violation from the District. The District may deliver the notice by mail at the address of the person according to the District's records or by affixing the notice to the crossing or other encroachment deemed to be in violation of District rules and regulations.

4. Altering, changing, defacing, damaging, or removing any property (real or personal) or equipment owned or controlled by the District shall be a violation of District rules and regulations.
5. Marring or defacing any building, equipment, or other property (real or personal) owned or operated by the District shall be a violation of District rules and regulations.
6. Injuring, removing, or destroying any canal, lateral, siphon, ditch, pipe, or any other component of the District's water distribution system, and any fence, gate, or other enclosure owned or controlled by the District or any sign or emblem on any structure or equipment owned or operated by the District shall be a violation of District rules and regulations.
7. Encroaching or trespassing, in any form or manner, upon property owned by the District or any easement used by the District shall be a violation of District rules and regulations.

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8. Preventing, restricting, or interfering with access to District property or facilities by District officers, employees, contractors, or agents, or any other interference with the District's use of or access to its property, shall be a violation of District rules and regulations.

III. ENFORCEMENT OF RULES
(added July 2020)

A. LEGAL AUTHORITY. Texas Water Code, Section 49.004. PENALTY FOR VIOLATION OF DISTRICT RULES. (a) The board may set reasonable civil penalties for the breach of any rule of the district that shall not exceed the jurisdiction of a justice court as provided by Section 27.031, Government Code.

(b) A penalty under this section is in addition to any other penalty provided by the law of this state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office or meeting place is located.

(c) If the district prevails in any suit to enforce its rules, it may, in the same action, recover reasonable fees for attorneys, expert witnesses, and other costs incurred by the district before the court. The amount of the attorney's fees shall be fixed by the court.

Texas Water Code, Section 49.066(f). A district or water supply corporation shall not be required to give bond for appeal, injunction, or costs in any suit to which it is a party and shall not be required to deposit more than the amount of any award in any eminent domain proceeding.

B. VIOLATION. Any and every instance of a violation of a District rule set forth in this Policy constitutes a separate violation and breach of District rules and regulations. To the extent

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allowed by law, each and every day that a violation of a District rule set forth in this Policy occurs or continues to occur is a separate violation and breach of District rules and regulations.

C. DEFENSE. A person does not violate this section if the person is a District employee acting within the scope of their employment with the District or if the District, acting by and through its Board of Directors or its officers or employees, grants permission to the person to conduct the activity.

D. BURDEN OF PROOF. The District shall bear the burden of proof in support of any action taken by the District under this Section related to interference with the District's property. Photographic evidence or any other reliable and credible evidence may be used by the District to satisfy its burden of proof. In every instance in which action is taken by the District in relation to interference with the District's property, evidence used by the District to satisfy its burden of proof shall be accompanied by an affidavit sworn to by a member of the District's staff. A court finding of a violation of the District's rules and regulations may alone satisfy the District's burden of proof.

E. DAMAGE CHARGE. If the violation of a rule results in damage to District property or facilities and the person violating the rule and responsible for the damage as determined by the District's field manager is a customer of the District, before the District will continue or initiate water service to the violator, or land owned by the violator, the violator must pay the District the District's Damage Charge as set forth in the Schedule of Fees of this Policy.

F. PROSECUTION IN THE EVENT OF VIOLATION. Each and every instance of a person violating a District rule as stated above in this Policy may be prosecuted to the fullest extent allowed by law. In the event that the District prevails in a suit to enforce one or more of the rules stated above in this Policy, the District shall be entitled to recover reasonable fees for

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attorneys, expert witnesses, and any and all other costs incurred by the District in prosecution of the suit as fixed by a court.

G. CIVIL PENALTY.

1. A civil penalty for violation of a District rule set forth in this Policy will accrue for each day the violation of the District rule remains unabated after thirty calendar days following the date on which written notice of the violation is issued by the District.
2. The civil penalty will accrue at a rate of \$100 per day until the maximum civil penalty allowed by law (currently \$20,000) is accrued.
3. If the violation of the District rule results in damage to District facilities, delays the timely delivery of water, the loss of water, or increased operation and maintenance costs, the civil penalty will accrue at a rate of \$200 per day until the maximum civil penalty allowed by law (currently \$20,000) is accrued.
4. The maximum civil penalty allowed by law shall be exclusive of interest or additional damages and fees awarded by a court, the imposition and enforcement of which is authorized by Texas Water Code § 49.004.
5. Any and every civil penalty imposed by the District may be enforced by complaint filed in a court of appropriate jurisdiction in Medina County, Texas. In the event that the District prevails in a suit to enforce one or more civil penalties, the District shall be entitled to recover reasonable fees for attorneys, expert witnesses, and any and all other costs incurred by the District in prosecution of the suit as fixed by a court.

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H. NO SERVICE. The District will not initiate or continue water deliveries to any land adjacent to or benefitted by an unauthorized encroachment or subject to terms and conditions of a permit or other authorization that are not satisfied, or if the District has not been paid for damages to its facilities, all additional charges that may be imposed, and legal fees and other professional fees and costs relating to an encroachment in violation of the District's rules set forth above in this Policy.

I. SUIT. If the District files suit to enforce its rules, the District may seek injunctive relief to remove the unauthorized encroachment and/or compel a person to comply with the terms and conditions of a crossing permit or other authorization, and may seek to recover damages to District facilities, the costs incurred by the District to remove the unauthorized crossing or to bring the crossing into compliance with District technical requirements, as well as seek to recover any accrued civil penalties, reasonable fees for attorneys, expert witnesses, and other costs incurred by the District as a result of litigation related to a violation of this Policy or other applicable law.

J. REMOVAL. The District reserves the right to remove, destroy, confiscate, render unusable, or modify an unauthorized crossing or other encroachment, or a crossing or other encroachment in violation of the terms and conditions of a permit or other authorization without notice to the person(s) who installed, uses, or otherwise benefits from the crossing or other encroachment and retain or dispose of any related material without notice or compensation to the owner or the alleged or imputed owner. If the District exercises its rights under this subsection, the District reserves the right to recover its costs relating to the exercising of such rights and to condition continuation or initiation of service from the District upon the payment of the costs, or the recovery of such costs, as damages in a suit against the person violating the District rules.

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K. LIEN. In addition to any judgment lien that may be authorized by court order, to the extent allowed by law, the District’s recovery of its damages, fees, and costs relating to the violation shall be secured by a lien on the property owned by the person in violation located adjacent to District property or otherwise benefitted by the unauthorized crossing, encroachment, or other use.

L. NO PERMITS. The District will not grant an application for a permit required by this Policy if the applicant owes damages, charges, or civil penalties to the District for violations of the District rules set forth in this Policy or an application for a permit that benefits a tract of land if a current or prior owner of the land owes damages, charges, or civil penalties to the District for violation of District rules as set forth in this Policy.

IV. PERMITS

A. Unless otherwise required by the laws of the State of Texas, a permit or other authorization is required if a person wants to cross, encroach upon, or otherwise use District property, whether held by fee simple title or an easement, where a District canal, ditch, or siphon, or pipe is located. A permit is not required if the ditch is installed or maintained by the landowner or a predecessor of the landowner.

B. Types of permits issued by the District in accordance with this Policy.

1. Roadway.

Authorizes ingress and egress across District property and the installation and/or maintenance of (i) a bridge over a District canal; (ii) a culvert pipe within the canal or ditch; or (iii) a reinforced commercial-grade concrete slab over an existing District pipe, and shall be identified upon filing as one of the following:

a. Existing Private, unapproved

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- b. New Private
- c. New Public
- d. Implement or Livestock
- e. Replace or Modify

2. Utility

Authorizes the installation and maintenance of utility-related facilities within District property, and shall be identified upon filing as one of the following:

- a. Above-ground
- b. Below-ground

In addition, for purposes of determining the fee payable for the proposed crossing, utility crossings will be distinguished between a crossing intended to service a single customer, that being a utility service lateral where the utility's meter is located on one side of the District property and the place of use of said utility crossing is located on the opposite side of the District property, and a crossing intended to service more than one customer, which shall be all other crossings.

3. Fence or Gate.

Authorizes the installation and maintenance of a fence or gate constructed on or over District property using any type of material, provided that such fence or gate is allowed under this Policy.

4. Other.

Authorizes any other type of encroachment or use of District property described by this Policy where a District canal, siphon, lateral, ditch, or pipe may be located.

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C. Roadway crossings.

1. Roadway crossings across the District's Main Canal are allowed on a case-by-case basis except for roadway crossings installed and/or maintained by the Texas Department of Transportation. The Main Canal is defined as the canal beginning at Diversion Lake and ending at Hwy 2790 outside of LaCoste, Texas. If the District approves a roadway crossing to the Main Canal, the crossing must be designed by a professional engineer and the signed and sealed plans must be reviewed and approved by the District prior to commencement of construction to confirm that the District's minimum requirements for Main Canal crossings are satisfied. The District reserves the right to engage the services of a professional engineer to review the design and plans and if the District does so, the permittee must reimburse the District's costs for such review prior the commencement of construction of the crossing. The crossing must be installed by a contractor and the contractor must be approved by the District. The installation shall be in strict accordance with the plans approved by the District, unless expressly approved in advance by the District in writing. If a person installed a roadway crossing across the Main Canal prior to January 1, 2000, and the roadway crossing must be replaced or repaired, upon application, the District may issue a roadway crossing, but any replaced or repaired crossing must satisfy the District's technical requirements as set forth in this Policy.
2. Roadway crossings increase the District's maintenance expenses. It is the District's policy to allow **one roadway crossing per each separately metes and bounds described tract and comprising less than ten (10) acres**. Exceptions

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are made based on the need to provide access for agricultural equipment and livestock. The determination by the District's Board of Directors of the boundaries of the original tract of land will be final.

3. Roadway crossings for proposed subdivisions or other commercial development will be issued on a case-by-case basis. As used in this policy, the term "proposed subdivisions" means the division of a tract of land situated into two (2) or more parts, whether or not a plat must be filed with and approved by a county or city.

Crossing requests will be denied by the District unless the applicant agrees to:

- (1) install pipes to convey water through the entire width of the tract subject to the subdivision or the planned development; and

- (2) if the proposed subdivision requires the approval by a city or county, or results in a tract less than six acres in size, then either:

- (i) request and obtain District authority to exclude the area located within the District, for those subdivisions, or portion thereof, that require approval by a city or county, or exclude any tract less than six acres for any subdivision of land that does not require approval of a plat by a city or county; or

- (ii) install the facilities required by the District, acting by and through its field manager, to supply water to each and every tract within the subdivision that may be located within the District's boundaries at that time, and such facilities shall be located within exclusive express easements dedicated or otherwise conveyed to the District in the width

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determined to be required by the District, acting by and through its field manager.

The District's issuance of a roadway permit and the continued validity of same shall be contingent upon the subdivider either excluding the property as required above or installing the facilities required by the District to the satisfaction of the District, acting by and through its field manager or other designated employee or agent.

4. The type, size, and slope of the pipe and related appurtenances and the manner of installation will be determined by the District's Board of Directors, but must comply with the District's technical requirements for commercial crossings and public road crossings. At every location where a roadway crossing is requested, the applicant must apply for and receive a roadway crossing permit and, if such permit is issued, must satisfy the District's minimum construction requirements for piped crossings for commercial purposes. The District reserves the right to install the pipeline and related appurtenances at the applicant's request, provided the District does not warrant the quality of the labor or materials used in such installation; otherwise, the applicant will be solely responsible for ensuring the installation complies with applicable District requirements. No additional encroachments across District property will be expressly or impliedly allowed by the District, including but not limited to any other utility easements or fences not specified in a permit issued by the District. As a condition to the approval of the application and issuance of a permit, the District may require the applicant, or the owner of the subject property if the applicant does not own said property in fee

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simple, to convey an express easement for the pipe in the width required by the District, acting by and through its field manager, using the easement form provided by the District. The District reserves the right to exclude property from its boundaries as may be authorized under the law. To the extent the terms of this Policy conflict with the terms of any easement conveyed hereunder, the terms of the easement will control, but only to the extent of a direct conflict.

5. Approval of roadway crossings includes the grant of a non-exclusive access easement across District property so that the Applicant may sell or mortgage the property and obtain title insurance for access.
6. The installation, maintenance, repair, or modification of a crossing is prohibited and is violation of the District's rules unless the crossing was installed by the District or the crossing or repair or modification of the crossing was previously approved or authorized by the District's Board of Directors. A person who violates any rule or regulation of the District shall be subject to the penalties allowed under the law, including but not limited to the civil penalty as allowed by Section 49.004 of the Texas Water Code and this Policy.
7. The District will not approve utility crossing permits for pipelines transporting substances which could impair the use of the water in the canal for irrigation and public water supply purposes if the substance were to be released into the water in the canal. If the District is obligated by law to allow crossings by pipelines transporting such substances, the Board of Directors reserves the right to condition authorization for such crossing upon terms intended to protect the

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quality of the water within the canal for irrigation and domestic use, which terms and conditions may be more stringent than those set forth in this policy.

8. To the extent that a person demonstrates that the person holds authority under the law to cross the District canal or to use District property without the approval of the District's Board of Directors, then to the extent allowed by law, prior approval is not required but the use of the District property will be subject to the technical requirements contained within this policy and such other or additional technical requirements as may be deemed necessary by the Board of Directors to protect the District's property. As of June 9, 2015, the District's Board of Directors will not allow utility crossings proposed or made by utilities based upon agreements with the Districts or easements granted by the District to such utilities prior to June 8, 2015, expressly including but not limited to the East Medina County Special Utility District or the Atascosa Rural Water Supply Corporation, unless the crossing is made pursuant to a utility crossing permit approved and issued by the District pursuant to this Policy.
9. The District is required to comply with Texas Underground Facility Damage Prevention and Safety Act by providing notification prior to removing or disturbing soil to a depth of sixteen inches or more even though within property owned by the District in fee simple. Nothing in this policy is intended to circumvent the District's duty to notify. If a utility marks the location of its facilities within District property in accordance with the Act, the District and its employees and contractors are entitled to rely upon the accuracy of the marked

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location and the District is not under a duty to review a permit to determine whether or not the location was accurately marked.

10. Any roadway crossing that will or might become a public road or roads owned and maintained by a subdivision homeowners association, water district, city, or county, must comply with the District's technical requirements for public road crossings. Public Road crossings must be designed by a professional engineer and the signed and sealed plans must be reviewed and approved by the District prior to commencement of construction. The District reserves the right to engage the services of a professional engineer to review the design and plans and, if the District does so, the permittee must reimburse the District's costs prior the commencement of construction of the crossing. The crossing must be installed by a contractor and the contractor must be approved by the District. Should the entity that owns, controls, or is otherwise responsible for maintaining the public road crossing in compliance with the District policy or permit fail to do so, the District reserves the right perform the repair or maintenance and recover it costs or otherwise pursue the remedies available to the District under the law or this policy.
11. Except as provided by this Policy or other law, under no conditions will the District approve any fence, gate, or other barrier across a District canal, ditch, siphon or buried pipe. Any such encroachment or structure is an unauthorized crossing that is subject to immediate removal by the District in addition to any other remedies available to the District under applicable law or under this policy.

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Under no conditions will the District approve any fence, gate, electrified wire or other livestock barrier on property owned by the District in fee simple.

12. On land for which the District holds an express easement that specifies the width of the easement, under no circumstances will the District approve a permit under this Policy unless the facility to be installed, such as a fence or utility facility or related equipment, extends beyond the easement.
13. If the District's canal, ditch, or pipe is located on property for which the District holds an easement that does not specify the width of the easement, such as a blanket easement in favor of the District reserved in deeds in the chain of title for the property, the owner of the land may construct or install a fence, gate, electrified wire, or other livestock barrier parallel to the District's canal, ditch, or pipe, but there must be at least twenty feet between the fence, gate, electrified wire, or other livestock barrier and the top of the canal or ditch on the side where the fence , gate, electrified wire, or other livestock barrier will be located or, in the case of a District pipe, at least twenty feet from the center-line of the pipe.
14. If the District's canal, ditch, or pipe is located on property for which the District holds an easement that does not specify the width of the easement, such as a blanket easement in favor of the District reserved in deeds in the chain of title for the property, utilities may construct facilities, such as poles, guy wires, brace posts, and pipes, parallel to the District's canal, but there must be at least twenty feet between the top of the canal or ditch on the side where the utility's facilities will be located and any utility facility, or in the case of a District pipe, at least twenty feet from the center-line of the pipe. This minimum spacing requirement

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does not apply if the utility's equipment or facilities are located within the right of way for a then-existing public road maintained by a city or a county.

15. The District is subject to the Texas Public Information Act. Upon receipt of a request for a document in accordance with the Act from a title company or otherwise, the District will either produce a copy of the crossing permit if one exists once any costs are paid, or provide a statement that the District did not locate a permit. Prior to responding to requests that are beyond the scope of the Texas Public Information Act or responding to requests prior to a deadline imposed by state law, the District will respond to questions from title companies regarding the status of permits or expedite handling of a response relating to permits upon receipt of payment of a processing fee in the amount set forth in the schedule of fees in this Policy.
16. A landowner may request the BMA to pipe a canal or ditch located on the landowner's property and the District, acting by and through its field manager, may perform the requested work provided that the landowner pay the District, in advance, for the estimated cost of the pipe and other material. All pipe and other material shall become and remain the property of BMA. If the District subsequently pipes the canal or ditch on adjacent or nearby property, the District will not reimburse the landowner for the amounts paid by the landowner.
17. Regarding the maintenance of canals and ditches across county roads and the maintenance of bridges and culvert across District canals and ditches, Texas courts have held:

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The County may not recover for expenditures upon construction, repair or maintenance of bridges for roads laid out and opened by the County across pre-existing district canals. If the roads were in operation first, the duty to build and maintain bridges at intersections with subsequently built canals rests upon the district; if the canals were there first, then the duty rests upon the County to build and maintain its bridges thereover. We are of the opinion, it should be added, that the questions of limitation and laches are not in this case, as it was developed below.

Hidalgo Cty. Water Control & Improvement Dist. No. 1 v. Hidalgo Cty., 134 S.W.2d 464, 468 (Tex. Civ. App. 1939), *writ refused*.

On the question of whether the requirement that an entity build bridges includes by implication “the duty and obligation” that it maintain them, the court held in the affirmative.

It has been held that an authority given a governmental agency to expend funds to ‘build’ a public improvement carries with it, by necessary implication, the further authority in that agency to use such funds to repair and maintain the completed improvement. *Bell County v. Lightfoot*, 104 Tex. 346, 138 S.W. 381. *Id.* at 468.

Tex. Att’y Gen. Op. LO-88-86 (1988).

V. PROCEDURES

If a utility, common carrier, or other person alleges that the person is authorized by the laws of the State of Texas to cross, encroach upon, or otherwise use District property as described in this Policy without obtaining a permit or other authorization from the District, the person shall notify the District in writing at least sixty days before attempting to use or otherwise encroach upon District property and describe in detail the state law upon which the person relies for authority, together with any state issued permits or other proof of prior authorization from the District. If a permit or other authorization is not required from the District, the person must satisfy applicable regulatory and engineering requirements and the minimum technical requirements of the District, including a detailed description of the location of the crossing, encroachment, or other use.

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The crossing permit application process requires a minimum of 60 days to complete. The Applicant should consider the application process when planning and preparing for any projects involving District property. No person can begin construction on a crossing without final approval from the Board of Directors. No person may modify or make substantive modifications to an existing bridge or culvert without approval by the Board of Directors unless an emergency exists. The roadway crossing permit must be signed within thirty (30) days after approval of the application by the District’s Board of Directors, and all roadway construction must be completed within 90 days from the date the applicant signs the Permit.

A. SUBMISSION OF APPLICATION AND PROCESSING FEE. All applications shall be submitted to the District’s Office using a standard form provided by the District. The application will not be processed until all processing fees and required information are received by the District. A non-refundable application processing fee in the amount specified on the Schedule of Fees in this Policy in effect at the time the application is submitted, and the applicant must specify that the payment represents the required “application processing fee.” The application processing fee is non-refundable and is in addition to the total consideration required by the District for application approval, except that the application processing fee will be the total consideration fee for certain approved agricultural crossings.

B. SUBMISSION OF SURVEY TO DISTRICT. The Applicant is required to prepare and submit to the District office a survey of the District property involved and exact location of road crossing. If the intended use is either above or below the District property, a vertical profile must accompany the survey. Effective July 1, 2011, the width of roadway crossing easements shall not exceed twenty (20) feet, unless the roadway is for access to subdivisions requiring

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approval of plats by a city or county, in which case the maximum width shall be the minimum width of the roadway required by the county or the city. District survey requirements are as follows:

All surveys, plats, reports and descriptions shall:

- a. Be prepared by a Registered Land Surveyor holding active registration in the State of Texas;
- b. Be prepared in strict compliance with the Texas Professional Land Surveying Practices Act and the current minimum Professional and Technical Standards established by the Texas Board of Professional Land Surveying;
- c. Include the following certification:

“I hereby certify to the Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1 that this survey, plat, description or report was prepared in compliance with the Texas Professional Land Surveying Practices Act.”

C. **MANAGEMENT REVIEW OF APPLICATION.** The District’s management, by and through the general manager or field operations manager, will review each application for compliance with District’ Policies and Technical Requirements and to determine if the request would adversely affect the delivery of water or the structural integrity of the canals. All applications for use of District property are considered unique, and each proposed design will be reviewed and considered individually. The District Manager may request the review of the Applicant’s proposal by an engineer and the fees for such review will be paid by the Applicant. When the district’s management determines that the application is complete and ready for review

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by the Board of Directors, the District's management will set the application and the agenda and notify the Applicant of the setting.

D. **PROOF OF OWNERSHIP OF PROPERTY.** The Applicant will present a title report or other evidence satisfactory to the District's general counsel, demonstrating that the Applicant holds title, or the right to acquire title, to the property for which access is needed.

E. **BOARD REVIEW.** After all requirements listed above have been met, the District's Board of Directors will review each application in open session as an agenda item. It is highly recommended that applicants whose name is on the agenda be present to answer any questions and to fully understand any provisions requested by the Board of Directors on that specific crossing. If the Board rejects the application, no revised application may be resubmitted for six months following the Board's denial. In any event, the Applicant will be required to pay a new application fee for any resubmission. Upon Board approval, an applicant can proceed with approved plans only after paying any additional fees and receiving a permit from District management.

F. **ADDITIONAL FEES. All application fees are NON-REFUNDABLE.** Any additional costs incurred by the District through the use of engineers, attorneys, surveyors, or other personnel and materials will be charged to the Applicant **in addition** to the application fee. Any additional fees incurred will be due before Applicant can receive a permit.

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G. ISSUANCE. After approval of the application by the Board of Directors, an easement or permit will be prepared by the District's administrative staff. The form of the easement or permit will be provided by the District. The president of the Board of Directors, or other person designated by the president or the Board of Directors, will execute the easement or permit on behalf of the District. The permit shall only be delivered after inspection of crossing.

H. INSTALLATION. At the option of the applicant, any approved installation for roadway crossings shall be done by a District approved contractor or by the District, with said installation being done in accordance with the District's construction specifications; provided, however, after July 1, 2011, the pipe required for a roadway crossing across an open canal shall be furnished by the District. The District does not warrant any labor or materials provided by the District or a District contractor or supplier. If the Applicant elects to have the District perform the installation, the District will submit a bid to the Applicant for installing a crossing and the Applicant shall prepay the bid prior to construction beginning.

I. INSPECTION AND APPROVAL. The Applicant or its pre-approved contractor must notify the District at least forty-eight (48) hours prior to beginning the work authorized by the permit. The work may not be performed on a Saturday, Sunday or holiday unless prior arrangements are made with the District. If inspection of the work is acceptable to the District, the work will be approved by the District, acting by and through its general manager or field operations manager. If the work is not acceptable to the District, the District's general manager or field operations manager will inform the Applicant of the deficiencies and the corrective work required to obtain District approval. If the deficient work is not corrected or removed, the District will remove the deficient work and dispose of the material at the Applicant's expense. Additional inspection/trip fees for work that is not approved at the initial inspection must be paid

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in accordance with the schedule of fees set forth in this Policy.

J. REPAIR OR MODIFY. If the Applicant requests authorization to repair or modify an existing, previously authorized crossing, the process will generally be the same, but the Applicant will not be required to submit a survey if a survey already exists for the crossing and remains on file with the District office. The District may choose to make the repair or modification at the Applicant's request or authorize the Applicant to make the repair or modification. If the District allows the Applicant to make the repair or modification, the material and work will be subject to the District's requirements and subject to inspection and approval by the District. If the repair or modification is needed immediately to reduce the risk of harm to the public, the Applicant must inform the District of that fact, and if the District, acting by and through its general manager or field manager, concurs with the Applicant's assessment of the situation, the District's general manager or field manager may proceed with the repairs or authorize the Applicant to proceed with the repairs immediately without prior approval by the Board of Directors, but after the emergency repairs are completed, the process of obtaining Board of Directors approval shall apply. Labor and material for the repairs or modifications shall be obtained or provided at the Applicant's expense.

VI. TECHNICAL REQUIREMENTS

The requirements described below are minimum requirements and a permittee or authorized user may install the facilities to satisfy applicable engineering requirements so long as the District's minimum requirements are satisfied. In the event a question arises as to the applicability of a particular requirement, the District's Field Manager, or his or her designee, shall make the determination and that determination shall be final.

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A. ROADWAY CROSSINGS.

1. Generally, culvert pipe shall have a minimum diameter of 30 inches. The pipe diameter shall be sufficient to pass the flow specified by the District with head loss kept to a minimum velocity, consistent with adequate cleaning, of approximately three feet per second.
2. Concrete culvert pipe shall be reinforced in accordance with ASTM Designation C76-72, Class III, Wall B, using "O" ring gasket joints in accordance with ASTM Designation C443-79, Type 6. Where required, pipe having higher-wall strength will be used.
3. Corrugated metal pipe shall be in accordance with Interim Federal Specification WW-P-0045, Class I and II, Shapes 1, 2 and 3. All pipes must be aluminum coated.
4. All technical and requirements are subject to change at the District's discretion.
5. Maintenance of the pipe crossing shall be the responsibility of the person placing same, and if a pipe becomes broken, battered or generally insufficient to pass irrigation flow it will be removed by the District's maintenance department and a new application for crossing will have to be filed.
6. If the crossing is not installed in accordance with the District's technical requirements and the terms and conditions of the District's approval, the District, acting by and through its general manager or field operations manager, may review the pipe for compliance at any time.

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7. Every roadway crossing approved by the District after July 1, 2011, will be designed, constructed, and maintained in a manner that protects the buried pipe and prevents the buried pipe from being crushed, damaged, or distorted by the weight of material above the pipe and/or the weight of vehicles and equipment using the roadway crossing. This shall be accomplished by means of a reinforced, commercial-grade concrete cap with dimension of at least twenty feet by twenty feet and at least four inches thick being installed over the pipe in compliance with the construction specifications provided by the District or by other means acceptable to the District, acting by and through its Field Manager. The Field Manager may require additional specifications for commercial crossings.
8. All driveway material needed to cover crossings will be the responsibility of the permit holder.

B. UTILITY CROSSING.

1. Applications for underground utility crossings, except for customer service lines, shall be accompanied by proposed plans and specifications and profile drawings. As revisions to the drawings are approved by the design engineer, the revised drawings shall be delivered to the District. Upon completion of the crossing, "as built" drawings should be submitted to the District.
2. Utility crossings under the canal shall be from property line to property line with protective sleeve across full width of ditch and a minimum of five feet below the bottom of the canal.
3. Utility crossing over the canal shall be in accordance with the latest edition of NEC (ANSI C1) standards of the National Fire Protection Association; the latest

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edition of NEC (ANSI C2); the latest regulations issued by the Occupational Safety and Health Administration Safety Code; and the adopted electrical code of Texas, unless otherwise required by the above, a minimum clearance of 22 feet shall be provided for communication lines and 28 feet for electric supply lines.

4. The location of line poles, guy poles, and guy lines will not be allowed within 30 feet of each side of the canal in order not to interfere with maintenance and operation of the District.
5. The utility must install the service line in accordance with the following requirements:
 - a. Underground pipe and cable shall be installed at least five feet below the bottom of the ditch.
 - b. Above-ground wires shall be installed at a minimum height specified for utility crossings requiring a permit.
 - c. The utility must restore the surface of the ground within the District's property and within ten days after demand by the District, restore the surface of the ground if settling of the soil occurs.
 - d. The authorization is subject to the terms and conditions applicable to all crossings.
 - e. No underground facilities should be located at or above the surface of the ground and no poles or guy wires shall be located on the District's property.

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C. The District's Board of Directors reserves the right to modify the technical standards from time to time or for a particular application if deemed necessary to protect the District's property or the health and safety of the public or users of the District's water distribution system.

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VII. TERMS AND CONDITIONS

By signing the application, the Applicant agrees that, if issued by the District, the easement or permit and the rights under the easement or permit will be subject to the following terms and conditions:

- A. Terms and conditions applicable to all easements and permits.
1. The Applicant must acknowledge that the property, whether fee simple or easement, is held by the District.
 2. The facilities or activities authorized by the easement or permit shall remain secondary and inferior to any and all functions, operations, and uses of the property by the District; and the Applicant must acknowledge that the District relinquishes none of its superiority to rights in or uses of said property.
 3. The Applicant must agree not to impair the use of the property by the District, or obstruct in any way the water flowing through the canal.
 4. Applicant shall at all times abide by the rules and regulations of the District and all amendments and modifications thereof, and any other applicable law.
 5. Applicant must acknowledge that the authorization granted by the permit is for the limited purpose specified in the permit and no other use shall be made of the property, and property rights of the District shall at all times be respected and acknowledged.
 6. The Applicant shall pay the Crossing Permit fee as well as all costs incurred by the District during the review and approval process, which shall be itemized and set out in a separate document.

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7. The Applicant agrees that if the Applicant accepts the permit, the terms of the permit shall be binding on the Applicant. If more than one person submits the application as an applicant, the rights and duties of each person and the permit will be joint and several.
8. Approval of the application for the crossing shall not be final and effective until a permit is signed by an authorized representative of the District.
9. The Permit and the property and activities authorized by the permit are subject to revocation by the District upon failure to comply with the terms and conditions of the permit, but a revocation is not effective until notice of the revocation is filed in the deed records of the county where the activity authorized by the permit is located.
10. Upon completion of the installation of the crossing in accordance with the applicable policies, District personnel may affix a device or mark showing the crossing as approved and permitted. The Applicant will not remove the device or the mark.
11. The permit incorporates by reference the application and attachments to the application and the rules, regulations, and policies of the District in effect at the time the application was submitted and any subsequent amendments thereto.
12. In the event the District must deepen or otherwise modify the canal and the District determines, in its sole discretion, that the roadway crossing or utility crossing must be modified to accommodate the District plans and remain in compliance with District policies, the Applicant shall relocate the crossing or

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utility at the Applicant's sole expense within a reasonable time before the District starts construction of the proposed canal modification.

13. A crossing permit will not be issued if the Applicant is delinquent in payment of flat rate assessment or water charges or otherwise owes money to the district or possesses district property without its consent or if the Applicant has encroachments upon District which are not authorized under the law or approved by the Board of Directors.
14. District may revoke a crossing permit if Applicant is delinquent in payment of District water charges, taxes, or flat rate assessments. If District revokes the easement for non-payment of fees, taxes, or assessments, the revocation will be effective only after notice of revocation is filed in the deed records.
15. **INDEMNITY. APPLICANT SHALL HOLD HARMLESS, DEFEND, AND INDEMNIFY THE DISTRICT AGAINST ANY SUIT, LIABILITY, CLAIM, DEMAND, OR DAMAGE ARISING FROM THE EXERCISE OF APPLICANT'S PRIVILEGES UNDER THE PERMIT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR PERSONAL INJURY OR DEATH AND ATTORNEY FEES.**
16. If any controversy, claim, or dispute arises relating to this permit or its breach, the District shall be entitled to recover from the Applicant reasonable expenses, attorney's fees and costs.
17. Applicant shall maintain the canal and the work authorized by a permit in a state of good repair and efficiency so that no unreasonable damages will result to the District's canal by Applicant's use of the crossing authorized by the Permit.

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18. Any notice, communication, request, demand, reply or advice (severally and collectively referred to as "Notice") in this Permit required or permitted to be given, made or accepted must be in writing. Notice may, unless otherwise provided herein, be given or served:

- (i) by depositing the same in the United States Mail, postage paid, registered or certified, and addressed to the person to be notified, with return receipt requested; or
- (ii) by delivering the same to such person, or an agent of such person; or
- (iii) by regular mail, facsimile transmission, electronic mail or other commercially reasonable means addressed to the person to be notified.

Notice sent by registered or certified mail in the manner described above will be effective from and after the expiration of three (3) calendar days after such deposit or on the earlier of actual receipt. Notice given in any other manner will be effective only if and when received by the person to be notified. Applicant will be the address shown on the application. For purposes of this Policy, an Applicant may change their respective address to any other address within the United States of America by not less than 10 days prior written notice to the District.

19. Applicant agrees to promptly pay all damages which may be caused to District's canal in the exercise of any rights granted herein.

20. Applicant will notify the District at least twenty-four hours prior to starting work on District property and, in the event of work on weekends and holidays, will pay the District its overtime costs for District employees dispatched to observe or

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inspect the work or the District's actual out-of-pocket costs for third-party inspectors, if any, hired by the District to observe or inspect the work.

21. If any of Applicant's culverts or pipes, cable, or wire interferes with District's operation of its canals, Applicant shall within 90 days after receiving written notice from District relocate such pipeline(s), wire or cable to another location under the District's canals as mutually agreed to by both District and Applicant in writing. Such relocation shall be at Applicant's sole expense; provided, however, that Applicant shall only be required to make one relocation of its pipeline(s) under this section.

B. Terms and Conditions applicable only to roadway crossings.

1. A roadway permit will authorize only one roadway crossing.
2. A roadway permit shall service all of the property described in the application and permit. The Applicant acknowledges that no other permits shall be granted to service the property, even though said tract may be subdivided or partitioned.
3. The Applicant accepts this permit with full knowledge that the culvert pipe authorized by a roadway permit may be temporarily removed from time to time by the District, their employees, agents or successors, for the purposes of carrying out the business of the District;
4. The Applicant, by acceptance of the permit, shall acknowledge that the District does not assume any responsibilities for backup waters, repairs to any of the crossing structures, such as culverts or bridges, or any responsibility or liability for accidents, injuries or damages, occurring near or on the above described permitted crossing area.

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5. Upon completion of the installation of the crossing in accordance with the applicable policies, District personnel may affix a device or mark showing the crossing as approved and permitted. The Applicant will not remove the device or the mark.
6. The permit is subject to revocation in the event a public road is dedicated and constructed adjacent to the property to be served by the roadway crossing, unless the Applicant demonstrates that the road crossing is necessary for the movement of domestic animals, farm equipment, commercial equipment, or for other reasons the District board of directors finds justify an exception.
7. This Permit must be assigned, in whole or in part, as part of the conveyance of the property to be served by the crossing, and this Permit may not be reserved or transferred separate and apart from the conveyance of the dominant tract to be served, or part thereof.
8. District may revoke this permit if District determines in its sole discretion that the crossing is unsafe, has been abandoned by nonuse, or the easement holder is in violation of the terms of this easement; provided, however, any revocation by District under this authority is effective only after notice of revocation is filed in the deed records.
9. District reserves the right to adopt and revise from time to time an annual road crossing fee based upon the projected additional costs for maintaining, repairing, and improving District canals resulting from the existence of the roadway crossing. If District adopts such a fee, a Permittee must pay the annual fee or this

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permit is subject to revocation. The District reserves the right to charge a fee in different amounts for non-District landowners.

10. The holder of a roadway permit must install and maintain base material on the roadway located within the District property which is adequate to support track and wheeled vehicles commonly used by the District for canal maintenance and repair.
11. The roadway permit and the rights evidenced by a roadway permit are non-exclusive, and the District reserves the right to use the roadway and to allow others the right to use the roadway within District property.
12. A Permit is not a dedication of District property to public use and does not authorize the Applicant to allow any member of the public to use the roadway crossing except Applicant’s invitees and guests. Applicant may not dedicate for public use any crossing authorized by a Permit. If Applicant wants to dedicate the roadway for public purposes, the Applicant will need to file an application for approval for such purposes.

C. The District’s board of directors reserves the right to condition approval of the application and issuance of the Permit subject to any special conditions or terms that the Board of Directors determines, in its sole discretion, to be necessary to protect District property.

D. If the utility is classified as an operator of a Class A underground facility under the Texas Underground Facility Damage Prevention and Safety Act, the utility will provide the District the same information that the utility provides the notification center under the Act, to the extent the utility’s facility are located within District property or pertain to property within the District.

VIII. SCHEDULE OF FEES AND CHARGES PURSUANT TO THIS POLICY

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All payments should be made payable to “Bexar-Medina-Atascosa Counties Water Control and Improvement District No. 1” and may be made by check or credit card or debit card.

Application Processing Fee. \$100.00 (Fee is non-refundable, but if application is required and filed, \$100 credit will be applied towards the Administrative Fee. If applicant paid, or caused to be paid, a Title Company Inquiry Charge, the Application Processing Fee will be reduced to \$50.00.

Administrative Fee. If the District approves the application, the applicant shall pay an administrative fee to the District based upon the type of approval as follows:

- a. Roadway crossing to access land in District: \$150.00
- b. Roadway crossing to access land outside District: \$1,100.00*
- c. Utility Crossing:
 - i. Intended to service a single customer: \$400.00
 - ii. Intended to, or capable of, service more than one customer: \$1,500.00**
- d. Repair or Modify an approved crossing: \$150.00
- e. **Fence or Gate.**
- f. Other use or encroachment: To be determined by the board of directors on a case by case basis.

The administrative fee is in addition to any cost for labor or material provided by the District and any third-party fees incurred by the District, such as engineering, legal, and recording fees.

* The difference in cost between the roadway crossing to access land in the District compared to land outside of the District is intended to recover a portion of the additional maintenance costs incurred by the District for roadway crossings and to recover a portion of the administrative costs relating to the crossing program.

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** The difference in the cost between the utility permit for single customers and multiple customers is to address the increased risk incurred by the District if service to more than one utility customer is affected by action of the District and the increased voltage or water pressure.

Re-inspection/trip fee: \$100 per re-inspection or trip.

Labor: The salary plus over-head cost paid by the District for the employees or contractors performing the work.

Materials: The District actual cost of materials, plus a five percent administrative fee.

Damage Charge: The District's Labor and Materials Cost to respond to and repair the damage caused to District property or facilities and, if incurred, payments to third parties and legal fees if incurred.

Title Company Inquiry Charge. \$100, which includes one trip fee to observe and investigate what structures, if any, may be at the location. If permit is required and application is filed, \$50 credit will be applied to the Application Processing Fee.

Civil Penalty.

- A. The civil penalty will accrue at the rate of \$100 per day until the maximum civil penalty allowed by law is accrued.
- B. If the violation of the District rules results in damage to District facilities, delays the timely delivery of water, the loss of water, or increased operation and maintenance cost, the civil penalty will accrue at the rate of \$200 per day until the maximum civil penalty allowed by law is accrued.
- C. Maximum Civil Penalty: \$20,000. The maximum civil penalty allowed by law shall be exclusive of interest or additional damages and fees awarded by a court,

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the imposition and enforcement of which is authorized by Texas Water Code §
49.004.

IX. FORMS

The Board of Directors adopts the following forms to implement this policy. The Board of Directors authorizes the General Manager, Office Manager, and General Counsel to modify the text in the forms as necessary to conform the form to the situation; provided the modifications maintain the intent of the policy and the protection of the District's property and functions.

APPLICATION/CROSSING REQUEST

UTILITY CROSSING PERMIT

ROADWAY CROSSING PERMIT

AGRICULTURAL ROADWAY CROSSING PERMIT

RESOLUTION AUTHORIZING INITIATION OF LITIGATION

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

BMA WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1
P.O. BOX 170, NATALIA, TEXAS 78059
(830) 665-2132 Telephone
(830) 663-3519 Facsimile

Application No. _____

CROSSING REQUEST

(Subject to applicable law and approval by District Board of Directors)

Name of Applicant: _____

Mailing Address: _____

Contact Name: _____ **Telephone:** _____

Fax and/or e-mail: _____

Type of Crossing (roadway, utility, implement, livestock, or other): _____

Proposed Crossing: (Attach Plans) _____

Location of Property: (Survey Plat and Description Required) _____

Lot and Block No.: _____

I agree to comply with all laws, rules, regulations, policies, and procedures concerning this application and any license or right that may be granted. I agree to pay a nonrefundable application fee upon submission of this application, along with all associated costs and fees required by the District. I further understand that no construction may begin without final District approval.

Date

Signature of Applicant or Authorized Agent

For District Use Only	
Application fee:	\$ _____
Attorney fees:	\$ _____
Other:	\$ _____
Date application received _____	Date of Management Approval _____
Date of Board Action _____	Date permit issued _____ Date Inspected _____ Date Work Approved _____
Comments:	

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
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UTILITY CROSSING PERMIT

The Board of Directors of the Bexar-Medina-Atascosa Counties Water Control And Improvement District #1 (“District”) authorized the issuance of this Utility Crossing Permit to _____ (“Permittee”) on the ___ day of _____, 200_, subject to the following terms and conditions:

1. **Permittee’s Rights.** Subject to the terms and conditions of this Permit, Permittee is authorized to erect, construct, install, lay and thereafter use, operate, inspect, repair, maintain, replace and remove facilities within that area of the District property as shown and described in the attached Exhibit “A” in the manner described by the plans, drawings, and specifications submitted by Permittee as part of the application of this Permit for the specific purpose described.
2. **Terms and Conditions.** This Permit and the rights under this Permit are subject to the general terms and conditions attached to this Permit as Exhibit “B” and the special terms and conditions, if any, attached to this Permit as Exhibit “C” and subject to the rules and regulations of the District in effect on the date the application was filed and any subsequent amendments to the rules and regulations, a copy of which may be obtained from the District’s office. Permittee’s application for this Permit and all associated drawings and specifications and the District’s rules and regulations are incorporated by reference the same as if fully set forth at length.
3. **Assignability.** This Permit shall be assignable by Permittee and shall bind and inure to the benefit of the Permittee, Permittee’s personal representative, successor and assigns and to the benefit of the District and the District’s successors and assigns, but an assignment is not effective unless and until notice of the assignment is filed in the deed records of the county where the crossing is authorized by this Permit and Permittee shall give written notice to the District.
4. **Revocation and Abandonment.** This Permit along with its rights and privilege shall be subject to revocation by the District if Permittee fails to comply with any term or condition incorporated by reference into this Permit; or if the Permittee ceases to use and abandon the rights and privileges granted by this Permit for a period of two consecutive

BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES

years or fails to install the authorized utility facilities across District's canals on or before two years after the date of this Permit; or if the Permittee requests the District to revoke the Permit. The Permittee's agreement to indemnify the District shall survive the revocation of the Permit by four years and one day, unless a claim or action is presented prior to revocation of the Permit or within the four-year period following revocation, in which event the Permittee's duty to indemnify the District will survive until the claim or action is resolved.

5. **Duration of Permit.** This Permit along with its rights and privilege shall become effective upon acceptance by the Permittee and filing in the deed records of the county where the crossing is or will be located and shall remain in effect until this Permit is revoked upon the filing in the county deed records a notice of revocation by the District.
6. **Indemnity.** **THE PERMITTEE AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY THE DISTRICT AND ITS OFFICERS AND EMPLOYEES AGAINST ANY SUIT, LIABILITY, CLAIM, DEMAND, OR DAMAGE ARISING FROM THE EXERCISE OF APPLICANT'S PRIVILEGES UNDER THE PERMIT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR PERSONAL INJURY OR DEATH AND ATTORNEY FEES.**

Issued this ____ day of _____, 2020.

By: _____
Title: _____

ACCEPTED by Permittee on this ____ day of _____, 2020.

PERMITEE:

By: _____

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF MEDINA §

This instrument was acknowledged before me on the _____ day of _____, 2020 by _____, President of BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, on behalf of said Water District.

Notary Public, State of Texas
My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF TEXAS §
COUNTY OF MEDINA §

This instrument was acknowledged before me on the _____ day of _____, 2020 by _____, President of _____ on behalf of said _____.

Notary Public, State of Texas
My Commission Expires: _____

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

a culvert crossing, in accordance with the plans showing _____ for the permit and the District's technical specifications;

4. This Crossing Permit shall service all of the above described property. The Permittee understands that no other permits shall be granted to service said Tract, even though said tract may be subdivided;

5. The Permittee hereunder accepts this grant with full knowledge that the culvert on the _____ Canal may be temporarily removed from time to time by the BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, their employees, agents or successors, for the purposes of carrying out the business of the Water District;

6. The Permittee, his heirs and assigns, by acceptance of this Permit shall acknowledge that the Grantor herein, its successors or assigns, does not assume any responsibilities for backup waters, repairs to any of the crossing structures, such as culverts or bridges, or any responsibility or liability for accidents, injuries or damages, occurring near or on the above described permitted crossing area;

7. The Permittee, his heirs or assigns, agree not to impair the use of the canal property by the Grantor herein, or obstruct in any way the water flowing through the Canal;

8. Permittee, his heirs or assigns, shall at all times, abide by the rules and regulations of the Grantor, BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 and all amendments and modifications thereof.

9. Permittee, his heirs and assigns, acknowledge that the grant made hereby is for the purpose of ingress and egress only and no other use shall be made of the Canal property, and property rights of the Grantor shall at all times be respected and acknowledged;

10. The Permittee shall pay the Crossing Permit fee as well as all costs incurred by the Grantor, which shall be itemized and set out in a separate document;

11. The Permittee agrees that the terms of this document shall be binding on him, his heirs, assigns and successors, in and to the above described tracts.

12. The Permittee agrees that the terms and conditions stated in the District's crossing policy as of the date of the issuance is incorporated into this Permit by reference as if duplicated herein and that such terms shall be binding on him, his heirs, assigns and successors.

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

13. THE PERMITTEE AGREES TO HOLD HARMLESS, DEFEND, AND INDEMNIFY THE DISTRICT AND ITS OFFICERS AND EMPLOYEES AGAINST ANY SUIT, LIABILITY, CLAIM, DEMAND, OR DAMAGE ARISING FROM THE EXERCISE OF APPLICANT'S PRIVILEGES UNDER THE PERMIT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR PERSONAL INJURY OR DEATH AND ATTORNEY FEES.

AGREED, GRANTED AND ACKNOWLEDGED this _____ day of _____,
2020.

GRANTOR:
Bexar-Medina-Atascosa Counties
Water Control and Improvement District No. 1

By: _____

PERMITTEE

By: _____

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

3. BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 does hereby authorize the installation and maintenance of an agricultural culvert crossing, in accordance with the plans showing in Exhibit "A" for the permit and the District's technical specifications;

4. This Crossing Permit shall service all of the above described property. The Permittee understands that no other permits shall be granted to service said Tract, even though said tract may be subdivided;

5. The Permittee hereunder accepts this grant with full knowledge that the culvert on the _____ **Canal** may be temporarily removed from time to time by the BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, their employees, agents or successors, for the purposes of carrying out the business of the Water District;

6. The Permittee, his/her heirs and assigns, by acceptance of this Permit shall acknowledge that the Grantor herein, its successors or assigns, does not assume any responsibilities for backup waters, repairs to any of the canal crossing structures, such as culverts or bridges, or any responsibility or liability for accidents, injuries or damages, occurring near or on the above described permitted crossing area;

7. The Permittee, his/her heirs or assigns, agree not to impair the use of the canal property by the Grantor herein, or obstruct in any way the water flowing through the Canal;

8. Permittee, his/her heirs or assigns, shall at all times, abide by the rules and regulations of the Grantor, BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 and all amendments and modifications thereof.

9. Permittee, his/her heirs and assigns, acknowledge that the grant made hereby is for the purpose of agricultural ingress and egress only and no other use shall be made of the Canal property, and property rights of the Grantor shall at all times be respected and acknowledged;

10. The Permittee shall pay the Agricultural Canal Crossing Permit fee as well as all costs incurred by the Grantor, which shall be itemized and set out in a separate document;

11. The Permittee agrees that the terms of this document shall be binding on him, his/her heirs, assigns and successors, in and to the above described tracts.

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

12. The Permittee agrees that the terms and conditions stated in the District's canal crossing policy as of the date of the issuance is incorporated into this Permit by reference as if duplicated herein and that such terms shall be binding on him, his/her heirs, assigns and successors.

AGREED, GRANTED AND ACKNOWLEDGED this _____ day of _____, 2020.

GRANTOR:

Bexar-Medina-Atascosa Counties
Water Control and Improvement District No. 1

By: _____
Grantor

PERMITTEE:

By: _____
Permittee

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF MEDINA §

This instrument was acknowledged before me on the _____ day of _____, 2020 by _____ of BEXAR-MEDINA-ATASCOSA COUNTIES WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1, on behalf of said Water District.

Notary Public, State of Texas
My Commission Expires:

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

ACKNOWLEDGEMENT

STATE OF TEXAS §

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2020 by _____.

Notary Public, State of Texas
My Commission Expires on:

AFTER RECORDING RETURN TO:
Bexar-Medina-Atascosa Counties
Water Control & Improvement District No. 1
P.O. Box 170
Natalia, Texas 78059

**POLICIES, RULES, PROCEDURES &
ENFORCEMENT FOR PROTECTING
THE DISTRICT’S USE OF CANALS,
SIPHONES, DITCHES, AND PIPES**

The following POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING THE DISTRICT’S USE OF CANALS, SIPHONES, DITCHES, AND PIPES (the “Crossing Policy” or “the Policy”)) were initially adopted by the Board of Directors prior to April 2001, amended on several occasions prior to 2005, revised and re-adopted by the Board of Directors in April 2001, May 2005, December 2006, August 2011, and June 2015, and were most recently revised and re-adopted effective October 12, 2020.

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Resolution No. _____ Authorizing Initiation of Litigation

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

WHEREAS, the Board of Directors of the Bexar-Medina-Atascosa Water District ("District") wishes to enforce rules, and recover any damage, fees, costs and civil penalties assessed and that may continue to accrue against _____ by and through litigation against the same pursuant to Texas Water Code §49.004.

NOW THEREFORE IT IS RESOLVED BY THE BOARD OF DIRECTORS THAT:

The District's general counsel, or other attorneys designated by the District's general counsel, be retained and instructed to file suit in a court of appropriate jurisdiction against _____ for the enforcement of the District rules, and the recovery and collection of damages, fees, costs, and civil penalties under Texas Water Code §49.004.

PASSED, APPROVED AND ADOPTED by the Board of Directors this _____ day of _____, 2020.

, President

ATTEST:

, Secretary

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

**X. HANDLING VIOLATIONS OF DISTRICT'S
RULES AND REGULATIONS**

In the event that the District discovers the violation or breach of its Rules and Regulations:

1) The alleged violation or breach should be investigated and photographed by a District staff member as soon and in as much detail as possible.

2) The District staff member should prepare a signed, written report of what he or she witnessed and/or discovered in connection with the violation. If at all possible, the report should detail the specific nature and location of the violation, all actions taken to investigate the violation, the name(s) and address(es) of the suspected violator(s), any person(s) who might be benefiting from the violation, the date(s) upon which the violation occurred and was discovered and any actions taken by the District in response to the violation as described in the following paragraph.

3) If possible, the District should then immediately notify the party deemed responsible for and/or with knowledge of the violation and demand that the violation ceases. In the event that the violation is not corrected in a timely manner or if the violation poses as threat to the general safety or welfare of the public or to the integrity of the District's services, the District shall immediately take any actions necessary to cease the violation.

4) Any and every instance of a violation or breach of the District's rules and regulations subjects the violator(s) to a civil penalty of \$5,000.00_not to exceed \$20,000.00 total, exclusive of interest or additional fees awarded by a court. If possible, the District should forward written notice to any and all violator(s) that a civil penalty in the imposed amount has been assessed against them for violation of the District's Rules and Regulations. Any and every

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS, SIPHONES, DITCHES, AND PIPES**

civil penalty imposed by the District may be enforced by complaint filed in an appropriate court of jurisdiction in Medina County, Texas.

5) In the event that any civil penalties imposed are not paid in full, such failure or refusal to pay should be reported to the Board so that the Board may determine whether to pursue litigation against the violator in order to collect such penalties.

6) If the District Board chooses to pursue collection of the civil penalties through litigation, the District should forward to counsel the written report of the staff member, as described above. The report should be accompanied by prints of all photographs taken in the investigation of the violation, along with a written accounting of the total balance of civil penalties due from the person against whom they were assessed. In addition, the minutes of the Board meeting at which the Board resolved to initiate litigation should be forwarded to counsel.

7) Counsel will initiate litigation after receiving the above-referenced items along with correspondence from a representative of the District instructing counsel to pursue collection of the penalties through litigation against specifically named defendants. In the litigation, counsel will pursue a judgment under Texas Water Code §49.004 for the civil penalty imposed as well as for fees for attorneys, expert witnesses, and all costs incurred by the District before the court as fixed by the court. Upon obtaining a judgment, the firm will abstract the judgment in various counties, thereby placing a judgment lien on any of the defendant(s) real property. Counsel will also obtain a writ of execution seeking to collect the judgment amount against the defendant(s) personal property.

**BMA POLICIES, RULES, PROCEDURES & ENFORCEMENT FOR PROTECTING
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ADDENDUM No. 1
(Adopted October 12, 2020)

**POLICIES, RULES, PROCEDURES &
ENFORCEMENT FOR PROTECTING
THE DISTRICT'S USE OF CANALS,
SIPHONES, DITCHES, AND PIPES**

In accordance with a motion made and passed by the Board of Directors, effective immediately, the Board of Directors authorized staff to approve applications that comply with the requirements of this policy and deny applications that do not.

George Weimer,
President, Board of Directors

James Hughes,
Secretary, Board of Directors