

Title 33: River and Waters

Part 201: Authority and Procedures

Introduction. These regulations are adopted and promulgated by the Board of Directors of the Pearl River Valley Water Supply District pursuant to the authority granted by and in conformity with the provisions of Section 51-9-127, Mississippi Code of 1972, as amended, to secure, maintain, and preserve the sanitary condition of all water in and to flow into the Reservoir, to prevent waste of water or the unauthorized use thereof, and to regulate residence, hunting, fishing, boating, camping, circulation of vehicular traffic on land, the parking of vehicles, and all recreational and business privileges in, along, or around the Reservoir, any body of land or any easement owned by the District.

Part 201 Chapter 1: Inspection and Copy of Public Records Pursuant to the State Public Records Act.

Introduction. In accordance with Section 25-43-2.102 of the Mississippi Administrative Procedures Law, this chapter describes the Pearl River Valley Water Supply District's duties and responsibilities, the organization of the Pearl River Valley Water Supply District's Office, its methods of operation, and how the public can contact the agency to make submissions or requests. The procedure for "Production of Public Records" is set forth in Part 210 of these Regulations.

Definitions.

Identifiable Public Record: A public record is identifiable if a reasonably specific description of the record, such as the date, the subject matter and persons involved, or other identifier that will permit location or retrieval of the record, is given in the request for production. Identification of leases or assignments of leases require a subdivision name and lot number.

Working Day: A working day is any day other than a weekend, state holiday, federal holiday, or other day on which by executive order the District is authorized to be closed.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Procedure.

Records Available: All identifiable public records of the District not exempt pursuant to §25-61-9 and §25-61-11 of the Public Records Act or other applicable law or judicial decision are available for inspection or copying, or both, pursuant to the procedures herein.

Hours for Inspection of Records: Public records are available for inspection and copying during normal business hours of the Pearl River Valley Water Supply District, Monday through Friday 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the offices of the District. The time, place and manner of inspection and

copying of records will not be allowed to interfere with other essential duties of the District.

Request in Writing: All requests shall be in writing, shall request the production or copying of identifiable public records, shall be signed by the person or persons requesting the records, and shall list the requester's address, e-mail address and telephone number. A form is available for use by requestors at the office of the Pearl River Valley Water Supply District and on-line at www.therez.ms.gov.

District Response: Within five working days after the date of the receipt of the request, the District shall notify the requesting party whether the record(s) requested can be located and whether the record(s) can be legally disclosed. If the record is to be disclosed, the District shall give an estimate of the total fee for compliance with the request. Upon payment of the fee estimate, the District shall produce the record(s) requested for inspection or copying no later than seven (7) working days from the date of the request, but in no event shall production of the record(s) be later than fourteen (14) working days from the date of request for the production of the records.

Denials: Any denial of a request shall be in writing signed by the General Manager of the District, and shall contain a statement of the specific exemption relied upon for the denial.

Consequences of Failure to Respond: If the District does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for failure to respond.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Confidentiality Notice.

(a) Notice to Affected Third Parties: When any person files or submits documents with the Pearl River Valley Water Supply District which the filer contends are exempt from disclosure under the Public Records Act, the filer shall provide a written statement at the time of filing which shall describe the documents filed and which shall fully explain why the documents are designated as exempt from disclosure and must specifically cite any statute or other legal authority in support of such designation. Such written statement shall itself be a public record subject to disclosure.

Any document filed with the District which contains trade secrets or confidential or financial information subject to the protection of any applicable law or court decision shall be clearly designated as such by the filer on its face and accompanying cover letter at the time of filing and shall be placed in an envelope other than white. Each page of each document shall be marked confidential. Upon request to inspect or copy any document so designated, the District shall notify the person who filed the document. Thirty (30) days after such notice, the document will be made available for public inspection or copying unless the filer shall have obtained a court order protecting such records as confidential pursuant to Section 25-61-9, Miss. Code of 1972.

Any person filing documents with the District shall, prior to filing, redact from the documents any social security numbers, account numbers or dates of birth not required to be listed. The District shall determine on a case-by-case basis whether similar information may be redacted by the filer to prevent identity theft. In no event will the District bear any responsibility for a filer's failure to redact such information which leads to or may lead to identity theft or other crime or loss.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Fees.

Costs: A fee reasonably calculated to reimburse the District the actual cost of searching, reviewing, reproducing and transmitting copies of public records shall be paid in advance of complying with a request, as follows:

Basic search, review and reproduction charge: \$10.00 minimum search fee plus \$.50 per page. Search, review and reproduction must be performed at District offices during a work day, and must be performed by District personnel except as provided in Part 208 Rule 1.5 (a) (vii). Search, review and reproduction fee includes transmittal by U.S. first class mail.

Certification of authenticity: \$5.00 for each certificate.

Records delivered via FAX: additional charge per transmission of \$1.00 per page.

Records delivered by overnight delivery: additional charge of \$25.00 per delivery. This charge will be waived for customers who provide an account number for direct billing through Federal Express.

Records delivered via USB: additional charge of \$6.00.

Additional charge of \$5.00 per item for documents retrieved from off-site storage.

Database printout requests from available database will be charged a fee calculated on a per-request basis, depending on the volume and complexity of information requested, but not less than \$ 15 per page.

Costs for electronic records. The cost of electronic records shall be six (6) dollars for information on a USB. The cost of scanning existing District paper or other non-electronic records is \$.15 per page. There will be no charge for e-mailing electronic records to requestor, unless another cost applies such as a scanning fee or system costs allowed under Section 25-61-7(2), Miss. Code of 1972.

Costs of mailing. The District may also charge actual costs of mailing, including the cost of the shipping container.

For extensive searches and reproduction of records, the General Manager may allow the person making the request to perform a search and reproduction on District premises in lieu of these tasks being performed by staff of the District, provided it is done in a non-disruptive manner.

Search: Charges for searching, reviewing and redacting. The actual cost of searching for and reviewing and, if necessary, redacting exempt information from public records shall be based upon the hourly rate of compensation for the lowest paid agency employee qualified to perform the task, which shall be multiplied by the actual time to complete the task.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Part 201 Chapter 2: Miscellaneous.

Rule 2.1 Expedited Requests. Expedited requests for services in emergency situations that cannot wait for scheduled handling will be charged an additional handling fee of \$20.00.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 2.2 Method of Payment. Fees and charges shall be paid by cash, check or money order made payable to the District or by Visa or MasterCard credit or debit cards. A charge of \$40.00 per item will be assessed for checks returned for insufficiency of funds.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 2.3 Repeal of Previous Rules and Regulations.

(a) All previously promulgated rules or regulations that are inconsistent with any provisions set forth above are hereby repealed.

(b) Conflicts between this regulation and existing statutes or statutes hereinafter make relating to access to public PRVWSD records and fees charged shall be resolved in favor of the statute as then in effect.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Part 201 Chapter 3: Rulemaking Oral Proceedings.

Introduction. This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and regulations and amendments to rules and regulations before the District pursuant to the Administrative Procedures Law. This rule does not apply to actions not subject to the Administrative Procedures Law.

Rule 3.1 Procedures For Requesting an Oral Proceeding. Where an oral proceeding has not previously been held or scheduled, the District will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

(a) Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter size paper (8-112 inches by 11 inches).

(b) The request may be the form of a letter addressed to the District or as a pleading filed with a court. The request should be mailed to the attention of the General Manager.

(c) Each request must include the full name, telephone number, and mailing address of the requestor(s).

(d) All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 3.2 Scheduling an Oral Proceeding. The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 3.3 Presiding at Oral Proceeding. The General Manager or designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 3.4 Participation at Oral Proceeding. Public participation shall be permitted at oral proceedings in accordance with the following sections.

(a) At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

(b) Persons wishing to make oral presentations at such a proceeding shall notify the District at least ten (10) business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate who have not previously contacted the District.

(c) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding

officer. Each group or organization should nominate only one person to make the presentation unless the presiding officer determines that the group or organization cannot reasonably be represented by a single spokesperson.

(d) The presiding officer shall place time limitations on individual oral presentations to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(e) Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, may be submitted at the oral proceeding.

(f) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires or when the allotted time has expired.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 3.5 Conducting Oral Proceeding. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the District for the proposed rule; (iii) call on those individuals who have contacted the District about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participant's comments; (v) adjourn the proceeding.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 3.6 General Discussion. The presiding officer where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rulemaking proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 3.7 Record of Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the District, become part of the rulemaking record, and are subject to the District's public records request procedure.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 3.8 Recording of Oral Proceeding. The District may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Part 201 Chapter 4: Requests for Declaratory Opinions.

Introduction. These sections set forth the District's rules governing the form and content of requests for declaratory opinions, and the District's procedures regarding the requests, as required by Mississippi Code § 25-43-2.103. These sections do not apply to actions of the District not subject to the Administrative Procedures Act.

Rule 4.1 Who May Request a Declaratory Opinion. Any person with a substantial interest in the subject matter may request the District for a declaratory opinion by following the specified procedures.

(a) "Substantial interest in the subject matter" as used in this chapter means: that a party is directly affected by the District's administration of the laws within the District's primary jurisdiction.

(b) "Primary jurisdiction of the District" as used in this chapter means the District has a constitutional or statutory grant of authority in the subject matter at issue.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 4.2 Issuance of a Declaratory Opinion. The District will issue declaratory opinions regarding the applicability to specified facts of:

- (a) a statute administered or enforceable by the District,
- (b) a rule promulgated by the District, or
- (c) an order issued by the District.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 4.3 Reasons For Refusal of Declaratory Opinion Request. The District may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- (a) the matter is outside the primary jurisdiction of the District;
- (b) lack of clarity concerning the question presented;
- (c) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;

- (d) the statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- (e) the facts presented in the request are not sufficient to answer the question presented;
- (f) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- (g) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule statute or order on which a declaratory opinion is sought;
- (h) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;
- (i) the question presented by the request concerns the legal validity of a statute, rule or order;
- (j) the request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- (k) no clear answer is determinable;
- (l) the question presented by the request involves the application of a criminal statute or sets for facts which may constitute a crime;
- (m) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- (n) the question is currently the subject of an Attorney General's opinion request; or,
- (o) the question has been answered by an Attorney General's opinion.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 4.4 Similar Pending Request. A declaratory opinion will not be issued where a similar request is pending before this agency, or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 4.5 Litigation. A declaratory opinion will not be issued if it may adversely affect the interests of the State, the District, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 4.6 Question of Law. Where a request for a declaratory opinion involves a question of law, the District may refer the matter to the State Attorney General.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 4.7 Preemptive Determination. A declaratory opinion will not be issued where the question involves eligibility for a license, permit, certificate or other approval by the District or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Part 201 Chapter 5: Written Requests Required.

Rule 5.1 Written Request. Each request must be printed, typewritten or in legible handwriting. Each request must be submitted on standard business letter size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the District or in the form of a pleading as might be addressed to a court. Information should be sent to the attention of the General Manager.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.2 Mailing of Request. All requests must be mailed or delivered to the District. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.3 Certification of Request. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.4 Limit of Request. A request must be limited to a single transaction or occurrence.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.5 Requirements of Request. Each request must contain the following:

- (a) a clear identification of the statute or rule at issue;
- (b) the question for the declaratory opinion;
- (c) a clear and concise statement of all facts relevant to the question presented;
- (d) the identify of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts, name, mailing address and telephone number; and,
- (e) a statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.6 Form and Content of Opinion. The terms of the proposed opinion suggested by the requestor may be submitted with the request but the form and content of the opinion remains within the discretion of the District.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.7 Argument. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The District may request that the argument and memorandum of authorities be submitted by any interested party.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.8 District's Actions. Within forty-five (45) days after the receipt of a complete request for a declaratory opinion which complies with the requirements of these rules, the District shall, in writing:

- (a) issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
- (b) agree to issue a declaratory opinion or a written statement by a specified time but no later than ninety (90) days after receipt of the written request; or,
- (c) decline to issue a declaratory opinion, stating the reasons for its action.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.9 45-Day Period. The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the District.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.10 60-Day Holding Period. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the District may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains or was based on a legal or factual error.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.11 Notice to Third Parties. The District may give notice to any person that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons other than the requestor.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 5.12 Schedule of Interested Persons. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the District within twenty days of the date of this request."

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Part 201 Chapter 6: Hearings Optional.

Rule 6.1 Scheduling a Hearing. If the District in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the District may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail 7 calendar days prior to the hearing shall be deemed appropriate.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 6.2 Procedure for Conducting a Hearing. Procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the District.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 6.3 Participation in a Hearing. The District shall allow the requestor to participate in any hearing. The District may allow any other persons or entities to participate in the hearing in its discretion. Submission of a request for a declaratory opinion or for a hearing does not automatically entitle the requestor to a hearing.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)

Rule 6.4 Inspection. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with Part 210 of these Regulations. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: *Miss. Code Ann. § 51-9-127* (Rev. 2000)