

WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT



**RULES AND REGULATIONS FOR
DISTRIBUTION OF WATER**

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TABLE OF CONTENTS

<u>SECTION</u>	<u>PAGE</u>
1. <u>DEFINITIONS</u>	6
2. <u>AUTHORITY OF THE ENGINEER-MANAGER AND EMPLOYEES</u>	6
a. Engineer-Manager.....	6
b. District Employees:	6
c. Right of Access	6
3. <u>WATER SERVICE</u>	7
a. Surface Water Service Area:	7
b. Additions of lands to Surface Water Service Area:	7
c. Exclusion of Lands From the Surface Water Service Area.....	8
d. Concurrent Additions / Exclusions.....	8
e. Unscheduled Water Service	9
f. Temporary or In-Lieu Water Service	9
g. Industrial Water Service:	9
h. Supplemental Water:	10
4. <u>DELIVERY, USE AND MEASUREMENT OF WATER</u>	10
a. Annual Water Deliveries:	10
b. Daily Water Orders:	10
c. Authorization of Agent:	11
d. Interruptions in Service:	11
e. Emergency Turnoffs by Water User:	11
f. Use of Other Water Supplies:	11
g. Waste of Water:	11
h. Farm Turnouts:	12
i. Connections:	12
j. Combined Turnouts:	12
k. Temporary Water Service Deliveries.....	12
l. Industrial Water Service Deliveries:	12
m. Farming Unit Operation:	13
n. Priority of Requests:	14
o. Supplemental Water:	14
p. Intra District Water Transfers:	15
q. Intra Kern Water Transfers:	15

5.	<u>PAYMENTS FOR WATER</u>	15
	a. Contract Water Service	15
	b. Unscheduled Water Service	16
	c. Temporary In-Lieu Water Service	16
	d. Industrial Water Service	16
	e. Supplemental Water	17
	f. Delinquency in Payments.....	17
6.	<u>PAYMENT OF SPECIAL SERVICE CHARGES</u>	18
7.	<u>PROCEDURE FOR FIXING TOLLS AND CHARGES NOT ESTABLISHED BY CONTRACT</u> ...18	
8.	<u>WATER SHORTAGES</u>	18
	a. Allocation of Water	18
	b. Supplemental Water	19
	c. Industrial Water	19
	d. Conveyance of Ground Water (or User Input Program)	19
9.	<u>DISPOSAL OF WATER</u>	20
10.	<u>CONTROL, USE AND RECAPTURE OF WATER</u>	20
11.	<u>CARRYOVER</u>	21
12.	<u>SECOND PRIORITY USE OF KERN WATER BANK</u>	21
13.	<u>PRESERVATION OF PUMPING RIGHTS</u>	23
14.	<u>PROTECTION OF DISTRICT FACILITIES</u>	24
15.	<u>SUBSIDENCE</u>	24
16.	<u>ENCROACHMENT ON DISTRICT PROPERTY</u>	25
17.	<u>MODIFICATION OF THE PROJECT FACILITIES</u>	25
18.	<u>SALE OR TRANSFER OF TITLE TO LANDS</u>	26
19.	<u>MISCELLANEOUS PROVISIONS REGARDING ASSIGNMENTS AND TRANSFERS</u>	26
20.	<u>REAPPORTIONMENT OF ASSESSMENTS</u>	27

21.	<u>MUNICIPAL AND INDUSTRIAL WATER</u>	27
22.	<u>SECTION 592 OF THE PENAL CODE OF THE STATE OF CALIFORNIA</u>	29
23.	<u>AUTHORITY OF CONTRACTS</u>	29
24.	<u>ENFORCEMENT OF RULES AND REGULATIONS</u>	29
25.	<u>APPEAL OF DECISION OF ENGINEER-MANAGER</u>	30
26.	<u>CHANGES IN RULES AND REGULATIONS</u>	30
27.	<u>SEVERABILITY OF PROVISIONS</u>	30

WHEELER RIDGE-MARICOPA WATER STORAGE DISTRICT

**RULES AND REGULATIONS FOR
DISTRIBUTION OF WATER**

These Rules and Regulations are established pursuant to the requirements of the California Water Code by the Board of Directors of the Wheeler Ridge-Maricopa Water Storage District for the distribution and use of water within the District to enable the District to perform its functions most efficiently and to deliver water to Water Users at the least possible cost and are the Rules and Regulations mentioned in those certain water service contracts between the District and various landowners within the District. These Rules and Regulations were first adopted July 8, 1970, and have been amended from time to time. **This edition of the Rules and Regulations supersedes all Rules and Regulations previously adopted by the Board of Directors, and is recorded with the Official Records of Kern County pursuant to Water Code §43003.5.**

1. DEFINITIONS

Terms and expressions employed in these Rules and Regulations are as defined in the Water Service Contracts executed by the District and its landowners with the exception of certain terms or expressions used herein which do not appear in said contracts but which terms or expressions are defined or explained at the point where they are introduced in these Rules and Regulations. Where appropriate in these Rules and Regulations, words used in the singular shall include the plural and words used in the masculine shall include the feminine or an entity.

2. AUTHORITY OF THE ENGINEER-MANAGER AND EMPLOYEES

- a. Engineer-Manager:** The District's Distribution System is under the exclusive management and control of the Engineer-Manager, who is the person appointed by the Board of Directors of the District to manage the affairs of the District pursuant to its direction. No other person except the Engineer-Manager or his designee shall operate any of the facilities of the District's Distribution System.
- b. District Employees:** The Engineer-Manager shall supervise the activities of all District employees in connection with operation and maintenance of the District's Distribution System and all other activities of the District. The authority of the employees of the District shall be designated by the Engineer-Manager and any controversy between a Water User and a District employee that cannot be settled directly shall be appealed to the Engineer-Manager. In the event the Engineer-Manager is unable to reach a satisfactory decision, an appeal may be made to the Board of Directors. The decision of the Board of Directors shall be final and conclusive.
- c. Right of Access:** District employees authorized by the Engineer-Manager shall have reasonable access to lands and irrigation facilities within the District for the purpose of conducting District business, which may include the following:

 - (1) Inspection of the lands upon which water delivered from the Project is being applied for the purpose of determining Water User's compliance with the terms of the Water Service Contract or other conditions of service provided by the District.

- (2) Operation, maintenance inspection, repair or modification of facilities of the District's water supply, conveyance and Distribution System.
- (3) Determination of improper use or wasting of water.
- (4) Measurement of ground water levels and obtaining water quality samples from wells.
- (5) Determination of the type and area of specific crops grown.

Except in cases of emergency or where otherwise considered impracticable by the Engineer-Manager, the landowner, lessee or person in possession shall first be contacted before entering landowner's property other than upon District easements.

3. WATER SERVICE

- a. **Surface Water Service Area:** Contract Water Service will be provided only to lands in the District's Surface Water Service, which service area has been amended by the Board of Directors from time to time. The lands included in said Surface Water Service Area at any given time are those certain parcels of real property described in the Exhibits A of those certain water service contracts, which have been executed by the District and landowners and are on file in the District office. Lands within the Surface Water Service Area are shown on a map on file at the District office designated as "Surface Water Service Area," as amended from time to time. In case of a conflict between the lands described in Exhibit "A" to said certain water service contracts and said map, the description contained in said Exhibits shall govern. Pursuant to provisions of Division 14 of the California Water Code, an Original Project Assessment in the amount of the estimated costs of the District's project for providing water service to the affected lands was levied upon the lands in the Surface Water Service Area as contemplated by Resolution No. 349 and upon certain other benefitted lands in the District and said assessment became final on October 18, 1968.
- b. **Additions of lands to Surface Water Service Area:** Lands may be added to the Surface Water Service Area pursuant to an application filed with the Board therefor by the owner or owners of said lands, only if: (1) such addition is determined by the Board to be feasible and in the best interests of the District and in accordance with the criteria established in Board Resolution No. 349; (2) the owner or owners of said lands execute a contract with the District for water service for said lands generally in the form established by Board Resolution No. 69-60; (3) the owner or owners of said lands pay a charge equal to the sum of all charges which would have been paid to the District if said lands had been included within the originally adopted Surface Water Service Area unless said charges have been paid by another parcel of land; and (4) the owner or owners of said lands agree in writing to pay any special charges at such time as calls might be made as hereinafter described, which special charges would be in lieu of calls on the Original Project Assessment on said lands, which charge will be the same as the amount which would be due if the lands subject hereto had received an Original Project Assessment by the same procedures whereby the Assessment was levied on all lands in the District's Adopted Surface Water Service Area and that, at such time as the project may be reassessed, the lands would receive the same treatment as all lands within the District's Adopted Surface Water Service Area.

Lands may also be added to the Surface Water Service Area by amendment of a Water Service Contract so as to increase the area described in Exhibit "A" therein provided the Contract Amount of Water is not increased and provided further that it is determined by the Board that such additions are: (1) in the best interest of the District, and (2) are not detrimental to other District Water Users. Any such additions shall be pursuant to an application filed with the Board of Directors by the owner or owners of said lands and each such application will be considered on a case-by-case basis. Such applications will not be approved unless it is determined that the proposed change does not unduly reduce the effective return flow to the ground water basin and unless it is demonstrated that the final amount of water will be sufficient for the type of crop involved. In the event of the approval of such an application *where exclusion of lands from the SWSA is involved, the original acreage of the excluded lands shall be the acreage used in determining the allocation of water pursuant to Rule 8 of these Rules and Regulations.*

- c. **Exclusion of Lands From the Surface Water Service Area:** Lands may be excluded from the Surface Water Service Area pursuant to an application filed with the Board therefor only if: (1) the Board of Directors determines that such exclusion will not be detrimental to the best interests of the District, and (2) the obligations of the contract for water service, if any, binding said lands are assumed by other lands within the District which are added to the Surface Water Service Area as provided in Section 3(b) above. Assumption of said obligations must be under terms and conditions, which will result in no financial loss to the District.

- d. **Concurrent Additions/Exclusions:** To facilitate the addition of lands to the SWSA and exclusion of lands therefrom, the District will receive and maintain applications for the addition of lands to or exclusion of lands from the SWSA. Applications for exclusion of land from the SWSA will only be processed to the extent that there are applications for an equal area of land to be added to the SWSA, and applications for addition of land to the SWSA will only be processed to the extent that there are applications for an equal area of land to be excluded from the SWSA. Requests to add land to the SWSA will only be considered involving a minimum of 40 acres and all requests to exclude land from the SWSA will be considered.

Contracts for the addition of lands to the SWSA or exclusion of land therefrom will be processed for execution with an effective date of January 1 of the year following the Board's approval of the application—Applications for addition or exclusion to the SWSA which meet all the applicable criteria herein provided will be given priority in the order in which they are received, and said priority for unfulfilled applications shall carry over from year to year. Provided, however, the Board may consider applications for lands of similar acreage independent of said priority when landowner(s) wish to transfer contract(s) from one property to another, and have agreed to all the District's terms and conditions of addition/exclusion as prescribed by the Board and including Sections 3(b) and (c) above.

The addition of land to the SWSA will be subject to the criteria set forth in Rule 3(b) and the exclusion of land will be subject to the criteria set forth in Rule 3(c). The District's costs of evaluating and preparing documents for said additions and exclusions shall be paid by the applicants.

To prevent adverse water supply impacts on other Water Users, the area of excluded land and related Contract Amount of Water (CAW) must be equal to the area of added contract land and related CAW. Provided however, that minor differences between the areas of land excluded and added will be permitted if the owner of land added agrees to accept use of the area of excluded land as the basis for allocation of water in years of water shortage as set forth in Rule 3(a).

To prevent adverse financial impacts on other Water Users, a new "NAL" category of service (Non-Sprinkler Added Land) shall be established. The bond debt obligation and the OM&R obligation from all lands excluded from the SWSA pursuant to this Rule 3(d) will be melded into this category. This category shall have separate components for bond debt and OM&R obligations in general conformance to Exhibit A of the Contracts. The bond debt obligation and the OM&R obligation of the lands added to the SWSA pursuant to this Rule 3(d) shall be equal to the melded obligation of the excluded lands, and rates applicable to the added lands shall be determined in general conformance to Exhibit A of the Contracts. From time to time, as lands are excluded under this Rule 3(d), the obligations and acreage of the "NAL" category of service will increase, and the unit rates applicable to this category of service may increase or decrease accordingly.

The Board will evaluate each request to confirm such requested addition or exclusion or concurrent addition/exclusion to the SWSA will not adversely affect, *or unequally benefit*, the District or its landowners, and may from time to time adopt further policies to implement Rules 3.b., 3.c. and 3.d.

- e. **Unscheduled Water Service:** Unscheduled water is water made available to a contract Water User in any year in excess of the Contract Amount of Water, delivered through Water User's turnout, as provided in Section 2(f) of the Contract. Such water may be made available at the request of Water User and is delivered on an interruptible and non-dependable basis. Such service will be made available if the Board determines that it is in the best interest of the District and will only be made if it does not interfere with the obligations of the District under its Water Service Contracts.
- f. **Temporary or In-Lieu Water Service:** Temporary or In-Lieu Water Service means the delivery of water on an interruptible and non-dependable basis for agricultural use to lands outside the Surface Water Service Area or a Farming Unit Operation, under conditions established by the Board. Such Temporary or In-Lieu service will be made available if the Board determines that it is in the best interest of the District, will be for a limited period of time and will only be made if it does not interfere with the obligations of the District under its Water Service Contracts.
- g. **Industrial Water Service:** Industrial Water Service means the delivery of water on an interruptible and non-dependable basis for industrial use, including construction work, and shall be made under conditions established by the Board. Industrial water service may be made pursuant to provisions for temporary water deliveries or pursuant to long-term contracts for Industrial Water Service. Such industrial water is not a potable water supply and shall not be used for domestic purposes or for human consumption unless specifically authorized by all agencies responsible for administering the Safe Drinking Water Act(s). It will be made available upon such terms as the Board determines is in the best interest of the District, will be for a limited period of time and will only be made if it does not interfere with the obligations of the District under its Water Service Contracts.

Subject to the foregoing, the District may also enter into long-term contracts to provide Industrial Water Service and/or to reserve system capacity which contracts shall be substantially uniform, which contractors are hereinafter referred to as "Industrial Water Users." Water Service pursuant to said contracts shall be subject to water being made available from the District pool established pursuant to Section 9 hereof. Upon finding that sufficient capacity exists within the District distribution system, the District may by contract reserve a portion of such capacity for the conveyance of water for industrial use, whether from supplies available to the District or supplies made available to the Industrial Water User.

Water Service Contracts may be amended to provide for delivery of water for Municipal and Industrial Use as further described in Rule 21 hereto.

- h. Supplemental Water:** Supplemental water means the water supplies acquired in addition to the water supply available under the Agency contract and includes district wells, Banking programs and water purchases. Supplemental water will be allocated pursuant to these Rules and Regulations up to the Contract Amount of Water in Water Users Water Service Contract. The quantities of Supplemental Water allocated to Water User shall only be available after Water User has submitted a signed order in a form provided by the District for such purposes in which the Water User agrees to the terms and conditions of delivery and payment for Supplemental Water.

4. DELIVERY, USE AND MEASUREMENT OF WATER

- a. Annual Water Deliveries:** Unless formally advised by Water User to the contrary, it will be assumed that Water User will desire delivery of his full contract amount of water each year. The District will make every effort to provide said contract amount of water on a demand basis as requested by Water User but does not assume any obligation if it is unable to do so. It should be recognized that the District's delivery capability is limited in the month or months of maximum demand by the capacity of the District's distribution facilities and such limitations must be considered in meeting Water User's request.

If Water User wishes to dispose of a portion of his contract amount of water, the District will attempt to do so in accordance with Article 5(k) of the Water Service Contract. If the allocation of the Contract Amount of Water in any year includes Supplemental Water and the District has not yet acquired or produced the Supplemental Water, it shall be the first water returned to the District for disposal. To the extent Supplemental Water has not already been acquired or produced the Water User shall receive full credit for the cost of the Supplemental Water so returned. To the extent the Supplemental Water has already been acquired or produced said Supplemental Water shall be pooled in accordance with paragraph 9 hereof. If Water User wishes more than his contract amount of water, the District will attempt to meet Water User's request to the extent water can be made available.

The District will notify Water User as to the availability of water and the ability of the District to meet Water User's request from time to time, as information is available to the District to do so.

- b. Daily Water Orders:** Orders to turn on or to turn off water, or orders to increase or decrease the rate of water delivery, shall be made at the District office through telephone communication, facsimile transmission, e-mail or personal communication from Water User or his designee as provided in these Rules and Regulations. Water orders shall be placed before 8:00 AM for water service for the following day, and water orders placed after 8:00 AM will be for water service the second succeeding day. In the event of an emergency, or when a change is in the delivery point within the service area of the same lateral, or when it may otherwise be practical to do so, changes in deliveries may be approved on lesser notice but the District assumes no obligation to do so. Although the District will make every reasonable effort to comply with the requested water orders, there may be times when, because of system capacity limitations, or limitations in the amount of water available from the Agency, such compliance may not be possible, and the

District assumes no obligation therefor. Orders shall normally be made based on continuous use of water during the 24-hour period commencing between 7:00 AM and 9:00 AM. **Provided however**, that the Board may establish special conditions for short-run deliveries and/or for deliveries at lower flow rates than for normal irrigation practices.

- c. **Authorization of Agent:** In the case of leased land, or for any other reason, Water User shall provide District written notice as to its primary contact, billing address and additional contact information, if applicable, of who is authorized to place water orders; said notice shall be construed to be the consent of the Water User to all charges and the collection thereof, in any manner authorized under the Water Service Contract and by Sections 47181 to 47185 inclusive of the California Water Code. Said notice may authorize agent to receive copies of District billings and water data arising from the affected Water Service Contract. This authorization shall remain in effect until the date of termination stated thereon, or until superseded, or until revoked in writing by Water User.
- d. **Interruptions in Service:** Attention is directed to Section 3(h) of the Water Service Contracts which provides as follows: "District may temporarily discontinue or reduce the amount of water to be furnished to Water User as herein provided, for the purpose of investigation, inspection, maintenance, repair or replacement, as may be reasonably necessary, of any of the Project facilities for the furnishing of water to Water User, or of the facilities of the State Water Project, but so far as feasible, District will give Water User due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In no event shall any liability accrue against District or any of its directors, officers, agents or employees, for any damage, direct or indirect, arising from such temporary discontinuance or reduction of water deliveries." In case of emergency shut-off by the District, an effort will be made to notify Water User as soon as possible.
- e. **Emergency Turnoffs by Water User:** Water User may in an emergency, including but not limited to Acts of God, turn off the supply of water at Water User's turnout. If Water User effects such emergency turnoff, he must notify the District office immediately by telephone or in person. Water User and anyone affecting such an emergency turnoff does thereby agree to assume the defense of and hold harmless the District and its directors, officers, agents and employees from any and all loss, damage, liability, claims or causes of action of every nature whatsoever, for damage to or destruction of property including District's property, or for injury to or death of persons, in any manner, arising out of or incidental to such emergency turnoff.
- f. **Use of Other Water Supplies:** Water User may use water furnished by District concurrently with water from other sources, provided that Water User can demonstrate to the satisfaction of the Engineer-Manager or his designee that project water is not being used on land other than that for which it is intended, as set forth in the Water Service Contracts and provided in these Rules and Regulations.
- g. **Waste of Water:** Water delivery may be discontinued by the District for any Water User found to be wasting water either willfully, carelessly, or on account of, but not limited to, defective or inadequate ditches, pipelines, inadequate tailwater facilities, inadequately prepared land or improper management; said water delivery will not be resumed until such conditions are corrected.

- h. Farm Turnouts:** Except as hereinafter provided for temporary deliveries of water and as provided in Sections 3(c) and 3(d) of the Water Service Contracts, all deliveries will be made only through District owned and operated turnouts.
- i. Connections:** All connections to District's system shall be made in a manner so as to prevent damage from occurring to District's system resulting from operation of Water User's system and so as to prevent water from Water User's system from entering District's system. Plans for the connection of Water User's system to District's system shall be submitted to the Engineer-Manager or his designee for approval, and no such connection will be permitted until such approval has been given.
- j. Combined Turnouts:** In accordance with District's design criteria, water service will be provided to parcels less than twenty acres in size within the Surface Water Service Area only in conjunction with service to an adjacent larger parcel or several adjacent smaller parcels where the total combined area is twenty acres or more. Such service will be made through a single turnout designated a "Combined Turnout." Water will be furnished through such a Combined Turnout to a group of Water Users only upon condition that said group of Water Users first files with District an agreement in a form approved by the District, executed by each and every Water User in said group, and providing, among other things, the following:

 - (1) Acceptance of delivery of water through the combined turnout.
 - (2) Granting of an easement to the other Water Users as necessary to convey water from the combined turnout to their respective lands.
 - (3) Authorization for one individual to represent said group in all matters relating to delivery of water by District through said combined turnout.

In the event a parcel served by a single turnout is conveyed to two or more different parties, and each of the parcels is larger than 20 acres, the new owner(s) of the parcel(s) upon which the turnout is not located shall pay for the cost of constructing a new turnout, and any pipeline necessary to serve such turnout, and shall provide to the District a permanent easement in a form acceptable to the District to accommodate such new turnout and pipeline, unless the Board of Directors approves some other arrangement to serve said parcel.

- k. Temporary Water Service Deliveries:** As a condition of temporary water service, the owner of lands to be served shall have executed an agreement establishing a covenant running with the land, in a form provided by the District, wherein the landowner expressly acknowledges that the affected lands have no right to firm water service from the District. Delivery of temporary water service to lands for which such an agreement has been properly executed and recorded will be made in such a manner as may be approved by the Engineer-Manager or his designee.
- l. Industrial Water Service Deliveries:** For Industrial Water Users with long-term contracts, the District will attempt to provide the full contract amount of water each year from water supplies excess to the needs of the Surface Water Service Area from the District pool established pursuant to Section 9 hereof. To the extent such excess water supplies are not available the District shall be under no obligation to supply water for Industrial Water Service users. However, at such times water is not available from the pool, the District will make District system capacity reserved under the terms of the long-term Industrial Water Service Contract to wheel water

supplied to Industrial Water Users from other sources and conveyed to District turnouts from the California Aqueduct. The District will also make its unused California Aqueduct capacity available for conveyance of water supplied by the District or by Industrial Water User under the terms of the long-term Industrial Water Service Contract to the extent such capacity is not being used for other District water deliveries.

However, at times when unused California Aqueduct capacity is not available from the District, the Industrial Water User shall be responsible for the delivery of water from the California Aqueduct into District facilities.

In the event an Industrial Water User wants to receive more or less than the quantity of water specified by the contract, it shall notify the District in writing of the difference by January 1, of the year of delivery.

If Industrial Water User orders less than the Contract Amount of Water, the District will reserve a correspondingly lower quantity of excess pool water for Industrial Water User for that year. If Industrial Water User orders more than the Contract Amount of Water the District will attempt to meet Industrial Water User's additional request to the extent water can be made available.

The District will notify Industrial Water User as to the availability of water and the ability of the District to meet Industrial Water User's request from time to time as information is available to the District. From January 1 through May 31 of the year of delivery Water Users request for water will be provided from the monthly pools to the extent of availability. If the District is unable to provide for the balance of Industrial Water Users annual request on or before May 31 of the year of delivery Industrial Water Users may secure water from alternate sources for the balance of the year and will not be required to purchase water from subsequent pools.

Absent a long-term contract, delivery of Industrial water will be made in such a manner as may be approved by the Engineer-Manager or his designee.

m. Farming Unit Operation:

(1) General. Water User may assign all or part of his water entitlement through designated turnouts to a Farming Unit Operation. A Farming Unit Operation is a grouping of two or more parcels of land which is under the ownership or control (by lease or otherwise) of a single Water User which includes Contract Land and may include Non-contract Land. Such assignment authorizes the Farming Unit Operator or his designee to file water schedules and order water, and authorizes District to deliver said water through, and assign water charges to, any of the several turnouts, which have been designated by all Water Users similarly assigning water to said Farming Unit Operation. Such assignment shall be made on a Farming Unit Operation Agreement provided by the District.

(2) Non-Contract Lands. If a Farming Unit Operation includes Non-contract Lands, the owner of the Non-contract Lands shall have executed an agreement establishing a covenant running with the land, in a form provided by the District, wherein the landowner expressly acknowledges that the Non-contract Lands have no right to firm water service from the District. The Farming Unit Operation Agreement shall reference the lower priority for purchase of Unscheduled Water for Non-contract Lands as set forth at 4.n.(2) of the Rules and Regulations, and acknowledge that allocation of water and/or system capacity will be based only on the area

of Contract Land. Water delivered to Non-contract Land prior to the completion or modification of Farming Unit Operation Agreements shall be made pursuant to conditions for Temporary Water Service.

(3) Term. The assignment shall remain in effect from year to year until superseded or revoked in writing by Contributing Water User, Farming Unit Operator, or the District. Revocations and modifications made after July 1 (or other date established by the Board) in any given year shall not take effect until the following calendar year.

n. Priority of Requests: In the event the District is not able to meet all requests for water, and without detracting from the provisions of Section 3(b) of the Water Service Contracts, priority of requests shall be considered on the following basis:

- (1) Contract Water Service for the Contract Amount of Water in the Agricultural Water Service Contract of Water User, for use upon contract lands and lands within the Water User's Farming Unit Operation, shall receive the first priority.
- (2) Unscheduled water for the amount of unscheduled water requested by a Water User with the priority of such requests in the order as follows:
 - (a) Unscheduled water for that portion of the requested Contract Amount of Water not allocated to Water User because of shortage of water supply provided the total water supply allocated under each of the Water Service Contracts will be in accordance with the provisions of Section 3.(1) of said Water Service Contracts.
 - (b) Additional Unscheduled Water for use in a Farming Unit Operation up to an aggregate quantity of water, including both the Contract Amount of Water and Unscheduled Water, equal to 4.0 acre-feet per acre on the contract lands within the Farming Unit Operation. Any additional water shall be prioritized as Temporary Water.
- (3) Industrial Water Service under long-term contracts for the Contract Amount of Water requested in the annual delivery schedule submitted by an Industrial Water User.
- (4) Temporary water service for the amount of water requested by temporary Water Users, including temporary industrial water service.
- (5) Temporary water service for areas annexed after October 9, 1975 (other than where the annexation was coupled with a detachment of an equal number of acres) for the amount of water requested by the landowner in said area.

The above priorities are applicable to the allocation of available water at any point in time when the demand exceeds the available water supply. The water supply once allocated in accordance with the above priorities shall remain so allocated notwithstanding any subsequent increase in demand of a higher priority.

o. Supplemental Water: Supplemental Water allocated to Water Users as part of the Contract Amount of Water may be delivered by Water User through Water Users' turnout(s) pursuant to water orders submitted by Water User. Provided, however, that the Board may establish special

conditions, which limit the quantities of Supplemental Water available to Water User on a monthly or seasonal basis including, but not limited to, limitation of groundwater withdrawals from District banking projects or District wells for District Water Users as a whole.

- p. **Intra District Water Transfers:** In Any Year, Water User may transfer all or portions of his water supplies to a designated Water User (and designated turnouts) by completing information required on a District approved transfer form. Supplies developed through the User Input Program may not be transferred. Such transfer authorizes the District to deliver said water through, and assign appropriate Water Use charges to, any of the turnouts, which have been designated. If Water User transfers supplies to Non-contract Lands, the owner of the Noncontract Lands shall have executed an agreement establishing a covenant running with the land, in a form provided by the District, wherein the landowner expressly acknowledges that the Non-contract Lands have no right to firm water service from the District, and that the landowner of the Non-contract Lands shall pay all appropriate Water Use charges associated with the transfer. Intra District Water Transfers provides an alternate option to Water Users to dispose of excess supplies other than those provided in Rule 9: "DISPOSAL OF WATER", and Section 5(k) of the Contract.
- q. **Intra Kern Water Transfers:** In any year when the District has made an additional Supplemental Water supply available to Water Users and that supply is undersubscribed (total demands are less than the supply available) and the District otherwise elects not to obtain such unsubscribed supply, Water User may transfer all or portions of that Supplemental Water supply to other districts in Kern County subject to appropriate approvals. Such a request authorizes the District to deliver said Water, and furthermore authorizes the District to assign any appropriate charges pertaining to the transfer to the Water User.

5. PAYMENTS FOR WATER

- a. **Contract Water Service:** Under conditions of Contract Water Service, Water User shall pay the Water Availability Charge and Water Use Charge as provided in the Water Service Contract. On or before December 1 of each year, District will notify Water User in writing of the estimated total amount of these charges for the following year, and said total amount shall be paid by Water User in eight equal installments, said installments to become due and payable on the tenth day of the months of February through September. **Provided however,** the Board of Directors may elect to delay and/or consolidate the payment schedule if information for computing rates is not timely available. On or before July 1 of each year or as soon thereafter as practical, District will mail to Water User a final accounting of water charges for the previous year. District will include with said final accounting either (1) a statement of credit owing to Water User for overpayment, or (2) a statement of Water User's additional payment obligation, which shall be due and payable on August 1. Any credit owing to the Water User for overpayment shall first be applied to cure any delinquency outstanding and then may be deducted from the Water User's next installment of Water User's payment obligation to the District. In the event such credit exceeds the amount of the next installment, then upon written request of Water User, the excess amount may be remitted to Water User. In the event of a change of ownership, the Board of Directors, upon written request by the then current and previous Water User, may authorize that the amount of such credit, refund, or additional payment due, as applicable, be remitted to or paid by the immediately previous Water User; otherwise, the credit, refund or any additional payment due shall apply to or be paid by the current Water User. If the final accounting adjustment reveals that an additional payment is due, and the previous Water User fails to timely pay such additional payment due, that obligation shall be assessed against the then current Water User.

- b. Unscheduled Water Service:** Payments for unscheduled water service shall be made at the rate or rates established therefor by the Board. If the request for unscheduled water service has been made before the Statement of Estimated Annual charges has been completed, the charges for said service will be included in said Statement of Estimated Charges for the year. If the request is made subsequent thereto, payments shall be made monthly. Advance payment or establishment of credit may be required.
- c. Temporary or In-Lieu Water Service:** Under conditions of temporary or in-lieu water service, payment shall be made each month at the rate or rates and under conditions established by the Board of Directors for such temporary or in-lieu water service. Advance payment or the establishment of credit by the Water User may be required.
- d. Industrial Water Service:** (i) Payment for temporary Industrial Water Service shall be made at the rate or rates and under conditions established by the Board of Directors for such service. Advance payment or the establishment of credit may be required. (ii) In such cases where Industrial Water Service is provided under a water service contract entered pursuant to Section 3(g) hereof in which capacity is made available, then the contract for Industrial Water Service shall provide, in addition to other customary terms, that the Water User annually pay a wheeling fee based on the Contract Amount of Water as provided in the Water Service Contract. In years and at times in which Industrial Water is furnished by the District, Industrial Water User shall also pay the Fixed Obligation (F.O.) component of the Water Availability Charge (WAC) and the Water Use Charge (WUC) for water ordered and delivered as provided in the Industrial Water Service contract. Payment for water furnished in excess of the Contract Amount of Water shall be at rates for Temporary Industrial Water Service.

In those years and at times in which Industrial Water is not furnished by District the Industrial Water User shall pay only the wheeling fee for water service. The contract may provide that should the F.O. and WUC exceed an indexed water cost that the Industrial Water User may secure its own water supply and the District deliver same upon paying the wheeling fee. Such wheeling fee shall, commencing in 2000, be the higher of \$100 per acre-foot of Contract Amount of Water each year of the long-term obligation to make capacity available, or \$50 per day of water delivery, adjusted annually by the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of less than 1,500,000, for December of the calendar year immediately preceding utilizing the index for December 2000 as a base to determine adjustments.

On or before December 1 of each year, District will notify Industrial Water User under long-term water contract in writing of the estimated total amount of these charges for the following year and said total amount shall be paid by Industrial Water Users in four equal quarterly installments. Each installment is to become due and payable on the last day of the first month of each quarter. **Provided however** that in the event the District is unable to provide water for Industrial Water User or other credits are due to the Industrial Water User the second and subsequent quarterly installment payment for the Water Availability and Water Use Charges will be recomputed by the District and Industrial Water User will be notified of the change. On or before July 1 of each year following the first year of Industrial Water Service, District will mail to Water User a final accounting of water charges for the previous year. District will include with said final accounting either (1) a statement of credit owing to Industrial Water User for overpayment, or (2) a statement of Water User's additional payment obligation, which shall

be due and payable on August 1. Any credit owing to the Industrial Water User for overpayment may be deducted from the Industrial Water User's next installment of Water User's payment obligation to the District. In the event such credit exceeds the amount of the next installment, then, upon written request of Industrial Water User, it may authorize that the remaining amount of such credit be remitted to the Water User.

- e. **Supplemental Water:** Payments for Supplemental Water shall be made at the rate or rates established therefore by the Board. Payment for Supplemental Water, either allocated as part of the Contract Amount of Water or in addition thereto, for Water User and ordered by Water User shall be spread over the remaining regular monthly payments set forth in the Water Service Contract. Payment for Supplemental Water shall be subject to and a part of a final accounting of costs in the same manner as set forth in paragraph 5(a) of these Rules and Regulations. Water User shall be entitled to any credit due for overpayment and shall be responsible for any additional payment obligation as a result of underpayment identified in said final accounting adjustment.

f. **Delinquency in Payments:** Pursuant to Section 5(g) or 5(f), as applicable, of the Water Service Contract the total amount of water charges of Water User is divided into eight equal installments, which are due and payable on the tenth day of each of the months of February through September. If there is a delinquency in payments for water service for any turnout, the District shall impose penalties for such delinquency as follows:

- (1) If the payment for any turnout which Water User is required to make to District is not received by the District by 5:00 PM 30 days after the date it becomes due and payable, said payment is delinquent within the meaning of Section 5(j) or 5(i), as applicable, of the Water Service Contract, and delivery of water to said Water User will be discontinued. No further water deliveries will be made to said Water User until all delinquencies, plus penalties and interest if applicable, are paid, except as provided at subparagraph (3) hereof.
- (2) Any payment remaining unpaid for a period of 30 days after the date it becomes due and payable (the 10th of the month) is delinquent as provided in Section 5(j) or 5(i), as applicable, of said Contract, and a penalty of 10% of the payment will be charged plus interest at 12% per year until all payments are brought up-to-date. On the 10th of the month the District will deposit the remaining allocation of water from delinquent accounts in the current monthly pool and apply the credits therefrom to the Water Users account. Said credits will be applied before the assessment of penalty or interest on the delinquent account. In the event Water Users subsequently cures the delinquency, District will give Water User first priority upon any water in the pool remaining unsold, or water from other sources, which may be available to the District, up to that quantity of water originally placed in the pool from the delinquent account. Should a Water User be delinquent on October 10, the District will commence proceedings to collect the charges as provided in Sections 47181 to 47185, inclusive, of the Water Code. Provided, however, the District may commence such proceedings at an earlier date if the Board determines it is in the best interest of the District to do so. This may lead to a sale of the property affected by the Water Service Contract, or any other remedies available to the District, and to continued refusal of water service, all as provided in the Water User's Water Service Contract and these Rules and Regulations. Nothing herein contained shall be construed to limit in any manner of enforcing any remedy, either at law or in

equity, for any breach by Water User in failing to timely pay any assessments, tolls or charges.

- (3) If the District is in possession of a Certificate of Sale (executed by the County Treasurer pursuant to Water Code §46761) for delinquent charges for Contract Water Service, and Water User demonstrates that he has no available means to satisfy the charges which are covered by the Certificate of Sale, water service may be provided to Water User so long as the Water User is otherwise entitled to Contract Water Service, and the Water User (and his tenant in the event Water User leases his land) enter into a form of agreement approved by the Board. Said agreement shall include the following provisions: (a) The Water User acknowledges the existence and priority of the Certificate of Sale; (b) The term of the agreement shall only be for one year and there shall be no automatic right of renewal; and (c) The Water User (and/or the tenant if the tenant as Operating Agent is paying water bills) must pay in advance contract water charges as determined by the District during the term of the agreement. Said agreement may also, at the discretion of the Board, provide for repayment of prior delinquent charges, which are the subject of the Certificate of Sale. Service to such lands subject to a Certificate of Sale shall only be provided in accordance with terms and conditions of such agreement.

6. PAYMENT OF SPECIAL SERVICE CHARGES

Special Service Charges, as provided by law and as set forth in the Water Service Contracts will be collected periodically as provided by law. Such charges may include the Administrative and General Service Charges, Project Service Charge and Deferred Service Charge, all as set forth in the contracts, and such other tolls and charges as may be provided for under Water Storage District Law.

7. PROCEDURE FOR FIXING TOLLS AND CHARGES NOT ESTABLISHED BY CONTRACT

In accordance with Section 43003 of the Water Code, the following procedures are established for fixing Tolls and Charges authorized by Sections 43006 and 47180 other than those established by the Water Service Contract. Before fixing any such Toll and Charges, the Board shall pass a resolution declaring its intent to do so and in the resolution fix a time not less than two weeks from the date of the resolution as the time when the Board will meet to consider the matter of fixing such Tolls and Charges. A copy of the Resolution of Intention shall be published in a newspaper of general circulation in Kern County once a week for at least two weeks before the time appointed by the Board for the open meeting. At the time appointed for the open meeting, the Board shall consider the matter of fixing the Tolls and Charges, hear any objections thereto and may adjourn the matter from time to time.

8. WATER SHORTAGES

Pursuant to powers granted by Section 43003 et seq., of the California Water Code, the Board has established the following policy to provide for the sharing of the burden of any shortages in the quantity of water available for distribution to Water Users and the cost thereof during any year.

- a. Allocation of Water:** The water supplies available to the District will be allocated to the District's Agricultural Contract Water Users as follows:

- i. If the District's available water supply in any year is less than the total of Contract Amount of Water for all Water Users, but more than two acre-feet per acre when averaged for all lands in the Surface Water Service Area, the available supply will be apportioned to all Water Users in the proportion that each Water User's Contract Amount of Water for that year bears to the total of Contract Amount of Water for all Water Users.
 - ii. If the District's available supply in any year, averaged for all lands in the Surface Water Service Area, is less than two acre-feet per acre, the available supply will be apportioned among all Surface Water Service Area lands on an equal acre-feet per acre basis provided that Water User shall not be apportioned more water under this paragraph (ii) than Water User would receive under paragraph (i) above. Notwithstanding the above, in the event of a severe long-term water shortage, the Board reserves the right to make such other allocations as it deems appropriate, taking into consideration the type of crop, critical water needs, and the economic effect of losses which may occur as a result of such allocations and may provide for adjustments of charges as a result of such allocations.
- b. **Supplemental Water:** The District during years of short supply may obtain water supplies in addition to that available under the Agency Contract, including District wells, Banking Programs and water purchases. Such water supplies shall be allocated first to provide the full Contract Amount of Water provided for in the contracts for Agricultural Water Service under terms as the Board then determines appropriate and the costs thereof borne by the beneficiaries of such supplies, Provided, however, in any year the Board may determine and limit the amount of water made available for Supplemental Water from District wells and banking programs. The method of allocation of Supplemental Water shall be as set forth in the contracts for Agricultural Water Service and recited in paragraph 8(a) above.
- c. **Industrial Water:** Apportionment of water under an Industrial Water Service Contract shall be governed by the terms of that Contract.
- d. **Conveyance of Groundwater (or User Input Program):** In any year the District declares a water shortage exists, District facilities may be used to convey ground water for use upon land within the District for agricultural purposes so long as the lands to be served are within the common ownership or Farming Operation of the land from which the water is pumped, provided the affected parties enter into an Agreement in a form provided by the District which shall include but not be limited to the following provisions:
 - i. Nothing therein contained shall be interpreted as a waiver, relinquishment, and/or abandonment of the District's title to water stored in the underground as a result of the District's project.
 - ii. The District shall not involve itself with any disputes regarding the right of a landowner/Water User or others, nor any disputes regarding continuation of such service, nor any dispute regarding payment for such a ground water conveyed, and any landowner/Water User desiring to utilize the District's facilities for such purposes shall hold the District harmless from any such claims.

- iii. Wheeling from one system to another generally is only possible if the water being delivered to the District system is of sufficient quality to discharge into the California Aqueduct as determined by the State. Only to the extent the District is taking delivery of surface water, may ground water be delivered to the District and “banked” for later uses with the District at times when the District would be taking delivery of surface water. Such restriction must be applied on a system by system basis unless water quality of the ground water is sufficient to discharge it into the California Aqueduct.
- iv. The wheeling charge shall be sufficient to recover all costs to the District associated with the Storage, conveyance and delivery of ground water. The wheeling charge shall be estimated based on available information on costs and estimated quantities of ground water production. The estimated wheeling charge shall be paid by Water User within 30 days of notice. When the final costs are determined by the District, any overpayment will be credited to the Water User, and any additional charge will be paid by Water User within 30 days of notice. The cost of power and energy for pumping shall not be included in the wheeling charge and shall be charged separately based on the unit rate for transferring water between pump zones.
- v. Water User shall indemnify and hold the District harmless from any damages resulting from loss of pumped ground water due to causes beyond the control of the District.
- vi. The cost of providing connections to District systems, including any protective devices required by District as a condition of such connection, shall be paid from funds deposited by Water User for this purpose in advance of construction.

9. DISPOSAL OF WATER

As provided in Section 5(k) of the Contract, the District will make reasonable efforts to dispose of any water made available to but not required by Water User, and to the extent of Water User's obligation, any net revenue from such disposal shall be credited to Water User. In disposing of any such water, District will make reasonable effort to obtain the maximum amount of credit for Water User. If in the event such water is made available to the District by Water Users in accordance with Section 5(k) of the contract, over a period of time covering two or more calendar months, then such water will be accumulated into monthly pools which may be established by the District, and all the water from the first such pool will be sold and credits applied to its contributors before any sales are made from the second pool, and all water from the second pool will be sold before any sales are made from the third pool, etc., thus following a "first-in-first-out" policy in increments of monthly pools. **Provided however**, if any water in the second or subsequent monthly pools is sold at rates higher than any individual rate for water sold from the first pool, then the pool sales shall be adjusted so that the highest rates for water sold are credited to the first pool and successively lower rates are applied to the second and subsequent pools.

10. CONTROL, USE AND RECAPTURE OF WATER

- a. District will not be responsible for the control, carriage, handling, use, disposal or distribution of water delivered to Water User hereunder outside the facilities then being operated and maintained by District. Water User shall indemnify and shall assume the defense of and hold harmless the District and its directors, officers, agents and employees for any and all loss, damage, liability, claims or causes of action of every nature whatsoever for damage to or

destruction of property, including the District's property, for injury to or death of persons, in any manner arising out of or incidental to the control, carriage, handling, use, disposal or distribution of water outside such facilities.

- b. Pursuant to the provisions of Section 3 of the Contract dealing with conditions of delivery, place of use of project water, and Water User's liability and indemnification, water delivery may be discontinued by the District for any Water User who permits water delivered by District to escape beyond the boundary of the lands described in said contract whether willfully, carelessly, or on account of defective or inadequate ditches or pipelines, or inadequate tailwater facilities, or inadequately prepared land or improper management, and said water delivery will not be resumed until such conditions are corrected. For the purposes of administration of this section, for lands included in a Farming Unit Operation as described in Section 4(m) of these Rules and Regulations, the contract lands shall be deemed to include all lands within said Farming Unit Operation; provided, however, that nothing herein contained shall limit or detract from the obligations assumed by Water User.
- c. Without obligating District to assume any responsibility therefor, District shall have the right to the use of all waste, seepage, and return flow resulting from water supplied by the District, including but not limited to Project Water, which escapes or is discharged beyond Water User's recovery facilities, if any, and nothing herein contained shall be construed as an abandonment or relinquishment of District of the right to recapture and the use of any such water; **Provided however**, that nothing herein contained shall limit or detract from the obligations assumed by Water User.

11. CARRYOVER

Carryover is the ability to use undelivered State Water Project entitlement in the year following its allocation as part of the Contract Amount of Water. Water Users are permitted to carry over undelivered State Water Project Entitlement allocated to them as part of their Contract Amount of Water and not pooled as of December 31 of the year of allocation. Water from the District's supplemental water programs and previous year carryover supplies may be carried over by Water Users. Water derived from the User Input Program may not be carried over by Water Users. In administering this rule, the first water delivered during the year will be counted as SWP entitlement up to the quantity of entitlement allocated to Water User. Other water supplies including supplemental water and pool purchases will be the last water supplies delivered to Water Users. Payment for Carryover shall be at rates or rates established by the Board, to recover the costs associated with delivery of carryover water. Carryover water is subject to loss without notice, and the District shall not be responsible for losses or damages from the loss of Carryover water.

12. SECOND PRIORITY USE OF KERN WATER BANK

It is the policy of the District to manage the Kern Water Bank (KWB) for the benefit of all Water Users on a first priority basis. To the extent the District is not using KWB recharge or recovery capacity for said benefit, the District's rights and access to the KWB may be used by Water Users, on a second priority basis, to recharge and recover supplies for use upon land within the District for agricultural purposes, provided that Water User(s) enter into an agreement in a form provided by the District which shall include but not be limited to the following provisions:

- a. Water User priority to use of the KWB is secondary to the District. Use of the KWB by Water User may be superseded by the District at anytime.

- b. Water User may request to recharge and recover supplies, at District's discretion, within the KWB for in-District use only. District's consideration of requests shall take into account what is feasible and practical. Such requests shall be in writing in a form acceptable to the District. Recovery of supplies in excess of Water User's Second Priority Bank Account balance are not allowed.

Water User shall submit request for recharge/recovery to District, which has the discretion to refuse such request provided such request shall not be unreasonably refused. In certain circumstances, the District may deny requests due to reasons beyond the District's control, including but not limited to reasons of maintenance of the KWB, or due to scale, e.g. the Water User order is too small for recharge/recovery, or there is not enough time to perform the request. In some cases, it may possible or desirable to accomplish said request by exchange rather than direct recharge or recovery.

- c. Water User may recharge specific water types as established by the Board. User Input supplies may not be banked. The Board shall from time to time establish which water types and quantities are eligible for second priority recharge to mitigate local groundwater impacts or for other purposes. It is the District's intent to manage second priority use to avoid increasing local groundwater overdraft consistent with the District Project purposes and the Sustainable Groundwater Management Act.
- d. District shall record all second priority use by Water User, maintain an accounting thereof, make adjustments thereto for losses due to conveyance, recharge, recovery, mitigation, overdraft correction, and such other losses as may occur, and provide an accounting to Water User from time to time. Such accounting shall identify the quantity of water available to Water User for second priority recovery (the Second Priority Bank Account).
- e. Water User may transfer all or part of its Second Priority Bank Account to other Water Users; provided such transfer shall not be made until Water User provides written notice thereof to the District on a form provided therefor, and further provided the District shall not involve itself with any disputes regarding the right of a landowner/Water User or others, nor any disputes regarding continuation of such service, nor any dispute regarding payment of accounts conveyed, and any landowner/Water User desiring to utilize the District's facilities for such purposes shall defend, indemnify and hold the District harmless from any such claim. Transferred Accounts must still be delivered in-District.
- f. Water User payment for second priority use of the Kern Water Bank shall include any and all conveyance, mitigation, delivery, recharge and/or recovery costs, plus any additional fees as established by the Board. Payment of all fees and charges due under the agreement, including delinquencies under the agreement, would be on the same terms and conditions, as the Water User Water Service Contract. The Board may establish a procedure for forfeiture of the Second Priority Bank Account to cure delinquency in payments not timely made and due under the agreement.
- g. Water User is subject to all the same restrictions and obligations to which the District is subject in the KWB Joint Powers Agreement, KWB Memorandum Of Understanding, and the policies of the Kern Water Bank Authority, including but not limited to water banking losses.
- h. Water User Second Priority Bank Accounts may be limited as established by the Board. Such Accounts are subject to partial or complete loss in favor of the District due to Kern Water Bank Authority policy, or because of the District's loss of recharge capability due to Water User(s) second priority recharge. Water User loss of Second Priority Bank Accounts to the District may receive some compensation at rates established by the Board, which rates may be less than Water User's costs. The District shall

periodically notify Water Users of the quantities of water stored in the KWB so Water Users can periodically assess their risk of loss of said Accounts.

- i. Second priority use of recharge and recovery capacity of the Kern Water Bank by Water Users shall be allocated in proportion to Water Users' Contract Amounts of Water.
- j. The initial term of the agreement shall be until December 31, 2020, with 5-year renewals thereafter. The District reserves the right to modify the agreement during the renewal period. If a Water User finds the modified contract unacceptable, the Water User has a five-year period to either recover their Second Priority Bank Account or transfer said Account to another Water User. Until such time as that Account has been recovered or transferred, the Water User would be subject to the terms of the current agreement. If the Account has not been transferred or recovered, the Account will forfeit to the District.

13. PRESERVATION OF PUMPING RIGHTS

In order that no Water User be prejudiced by utilizing Project Water in lieu of exercising whatever rights he may have to pump ground water and in recognition of the anticipated benefit to the District's underground water supply arising from the implementation of the District's project, the Board of Directors has adopted the following policies:

- a. All Water User's contracts with the District for water service shall include a Section 3(m), which is quoted following:

*"In the interest of preserving to Water User his rights to pump ground water for use on his lands which will be served with water under this contract, it is agreed that, during all the years that District delivers water to Water User, to the extent that Water User shall reduce his pumping of ground water and shall make use of water so delivered to him by District, Water User's said use of water so delivered to him by the District shall be deemed the same as if he had pumped from the underground a quantity of water equal to the quantity of water so delivered to him by District. Water User also agrees to recognize and be bound by the pumping rights similarly preserved to other Water Users in the District pursuant to water service contracts heretofore and hereafter executed. It is further agreed that, in the event District were to carry out a program for spreading of water and percolation thereof to underground storage, District shall have the right to use of the underground storage for spreading and recovery of water in connection with supplying water service to Water User and to all other Water Users, and it is further agreed that, to the extent that District may pump water from underground supplies for furnishing to Water Users, District shall be deemed to be exercising said Water User's rights to pump water from underground water supplies; **Provided however**, that nothing herein contained shall prevent or hinder Water User from exercising his rights to pump ground water."*

- b. During the lifetime of District's adopted project, District will maintain records of ground water level and quality, and, in accordance with Water Storage District Law, if future conditions should indicate the need therefor, will levy a service charge on lands irrigated from ground water and/or seek to have an Assessment Commission appointed to readjust the Original Project Assessment to reflect project benefits to lands within District irrigated from ground water; and such action will be taken in a timely manner in order to maintain financial equity between the Water Users and ground water users in District.

In effecting this policy it is declared that without obligating District to assume any responsibility therefor and without limiting or detracting from the obligations assumed by Water Users in this regard, District shall have the right to the use of all waste, seepage and return flow resulting from Project Water which escapes, percolates or is discharged beyond Water User's recovery facilities, if any, and nothing herein contained shall be construed as an abandonment or relinquishment by District of the right to the recapture, use and benefit of all such water, and any use made of any resultant benefit to ground water conditions arising from project water is made with the consent of the District, which consent is revocable at any time, and such use is not to be considered a use adverse to District's rights nor shall any such use under any circumstances create an estoppel in asserting such rights at any time.

Further in effecting this policy, it is declared that, during all the years that District delivers water to a Water User, to the extent that such Water User shall have reduced his pumping of ground water and shall make use of water so delivered to him by District, any use made of the resultant benefit to ground water conditions is made with the consent of said Water User, which consent is revocable at any time, and such use is not to be considered a use adverse to his right to the continued exercise of his rights to pump and utilize ground water nor shall any use under any circumstances create an estoppel in asserting any such right at any time.

14. PROTECTION OF DISTRICT FACILITIES

Without limiting rights otherwise reserved and except for drains and waterways built by the District expressly for the conveyance of drainage water, no persons will be allowed to drain irrigation water upon District-owned property, and any person doing so will be subject to fine and damages, will be in violation of these Rules and Regulations and water service may be terminated.

It is the duty of Water User to furnish reasonable protection for the individual Farm Turnout to prevent damage to said turnout. In the event that damage occurs to Farm Turnout as a result of failure by Water User to provide such protection, the repair of such damage will be made by the District, the expense of such repair will be charged to Water User and no water will be furnished through the affected turnout until such repairs are made and the charges therefor paid to the District.

15. SUBSIDENCE

It is known that portions of the District to be served with project water consist of soil which, with continued application of water, may consolidate to a considerable degree. It is also reasonable to assume that this phenomenon may result in damage to District's facilities. This factor is recognized in the District's Project Report, which contains estimates of an amount of money necessary to pay the added cost of construction required to minimize danger and an estimate of the cost of increased maintenance on facilities in said subsidence areas. Such factors were again considered during final design of project facilities and in connection with the District's right of way program. It is also recognized that the use of water in such areas for normal agricultural purposes may nevertheless result in unforeseen damage to District's facilities arising from this natural phenomenon. It has been suggested that paragraph 3(e) of the Water Service Contract and various portions of these Rules, particularly Rule 13, can be interpreted as rendering a Water User liable for any and all damage occurring to District's facilities by reason of the ordinary use of his lands for agricultural purposes. It is to be noted that nothing contemplated in the Water Service Contracts or these Rules and Regulations is intended to make any Water User strictly liable for damage to District's facilities attributable to subsidence; that the philosophy of the Project Report is such that the Water Users will pay the estimated cost of minimizing such damage and the

increased maintenance attributable thereto as a District expense, and that the consideration paid, or to be paid, to Water Users for the acquisition of District's rights-of-way has not included an element of damage for assumption of any liability arising from such risk.

In this regard, and notwithstanding anything contained in the Water Service Contract and/or these Rules and Regulations, District will repair, at District's own expense, damage to District facilities due to subsidence occasioned by the normal, ordinary and reasonable use of land of Water User related to application of Contract Water, provided that Water User's uses incorporate every reasonable precaution to prevent, eliminate or minimize such damage; **Provided however**, nothing herein contained shall modify in any manner the provisions of Paragraph 3(h) of the Water Service Contract or in any manner render District liable for any damage to a Water User occasioned by disruption of Water Service.

16. ENCROACHMENT ON DISTRICT PROPERTY

Without limiting rights otherwise reserved, consent for encroachment will be required from the District before any drains, fences, pipelines or other encroachments from private sources will be permitted to be used upon the District's property. Consent forms will be furnished by the District to the applicant and must first be approved by the Engineer-Manager or his designee before any construction begins. Where District rights in any property are an easement, no encroachments will be permitted which will in any manner interfere with the rights under said easement, and the District's consent must first be obtained before any pipelines or other encroachments are constructed in any easement area. The work shall be constructed to specifications approved by the District at the sole expense of the permittee and maintained to the satisfaction of the District. If such consent is granted, then the permittee shall be solely responsible for and shall indemnify and shall assume the defense of and hold harmless the District and its directors, officers, agents and employees from any and all loss, damage, liability, claims or cause of action of every nature whatsoever, for damage to or destruction of property, including the District's property, or for injury to or death of persons, in any manner, arising out of permittee's exercise of the rights and privileges given in the granting of such consent. Issuance of consent does in no way grant a permanent right, and if the District determines at a future date that said works do in fact interfere with its operations, said works shall be removed and the District's property restored to its original state at the sole expense of the permittee. Granting of such consent does in no way and in no extent surrender or subordinate the District's control or supervision over the encroachment. Any person or his authorized agent who uses the property of District for the movement of equipment shall be responsible to District for any damage to District property. No livestock will be allowed to enter upon or graze on District's fee property without the specific written approval of the District. Any persons using a District rights-of-way for any purpose assumes all risks associated therewith and assumes the responsibility for any damage to District property resulting therefrom and also for any damage to private property caused by such damage to District property.

17. MODIFICATION OF THE PROJECT FACILITIES

No changes shall be made in the constructed project facilities except by District personnel or its contractors and in accordance with the District's specifications. If a modification is made at the request of a Water User, and for his benefit, the cost thereof shall be paid in advance by the Water User requesting said modification. The advance payment shall be determined by the Engineer-Manager based upon an estimate of the costs including but not limited to reasonable charges for engineering performed by the District and overhead, and after completion of the work a final accounting shall be submitted to the Water User. Within thirty (30) days after submission of said final accounting, the Water User will pay the difference between the actual cost and the estimate thereof, or the District will make a refund if the

actual cost is less than the advance payment. Any additions to project facilities so constructed shall become the property of the District.

18. SALE OR TRANSFER OF TITLE TO LANDS

- a. Without limiting the provisions of Paragraph 10 of the Water Service Contracts, when land affected by a Water Service Contract is sold or title otherwise transferred to another party, District will be under no obligation to deliver water to such lands until the Water Service Contract is assumed by the new landowner. Such assumption shall be on forms provided by the District, executed and completed timely in a manner satisfactory to the District. In the event of a transfer of ownership as to a portion of the lands described in an Exhibit "A" to a Water Service Contract and in the absence of written instructions from the affected landowner, the Assumption Agreement will be prepared so as to allocate the rights and obligations under said Water Service Contract on an acreage basis.
- b. Notwithstanding any transfer or change of ownership, the District shall be entitled to administer a Water Service Contract in reliance upon and in accordance with matters in the files at the District office including but not limited to matters regarding title to land, address of Water User, authorizations, appointments, designations, credits and refunds and the like, until or unless District has received actual notice in writing that any or all of such matters are changed, modified or revoked.

19. MISCELLANEOUS PROVISIONS REGARDING ASSIGNMENTS AND TRANSFERS

- a. The execution by the District of any assignment and/or the giving of its consent to transfer of the rights of a Water User under a Water Service Contract or to a disposal of water by the District pursuant to Rule 10 hereof, shall be without any warranty of title on the part of the District and shall not be interpreted as any representation, express or implied, by or on behalf of District, that such assignment, transfer or disposal is free and clear of outstanding encumbrances.
- b. Without attempting to establish or in any manner affect the rights of any person arising from a deed of trust, any person or entity having any interest in a deed of trust on property subject to a Water Service Contract, may file with the District a written request for notice of failure to make the payments required by such Water Service Contract or a request for notice of any specific act that the District may be requested to undertake or to consent to under the Water Service Contract or these Rules and Regulations that such person alleges will detrimentally affect its interest, including but not limited to (1) a request for exclusion from the Surface Water Service Area; (2) a request for written permission to utilize water on lands other than those described in Exhibit "A" to a Water Service Contract for a period in excess of a year; or (3) a request for assignment of rights under Water Service Contract for a period in excess of a year. Upon receipt of such notice, District shall give such person written notice of default or of any request that it take such action as is set forth in the request for notice, at least fifteen (15) days prior to foreclosure proceedings or prior to such other specified act by the District, unless such person has given written consent to the requested action. In addition to setting forth the matters as to which notice by the District is requested, the request for such notice shall set forth a legal description of the land affected; the name of the current owner of the fee; the name and address where the requested notice is to be sent and a copy of the deed of trust showing the recording information. Any notice from the District shall be effective when deposited in the mail, postage prepaid, directed to the address shown in the notice. **Provided however**, District may disregard

any request for notice which has not been re-filed within fifteen (15) days of a written demand therefor by the District mailed in the same manner and with the same effect as herein above provided for the notice by the District; **Provided further, however**, nothing herein provided shall render District liable to any person under any circumstances.

20. REAPPORTIONMENT OF ASSESSMENTS

The provisions hereof are supplementary to the provisions of Article 8 (commencing with Section 46325) of Chapter 2 or Part 9 of the Water Code.

When any tract of land upon which an assessment has been levied, has been subdivided into smaller parcels of land, the Board may, in the absence of any application being filed therefor, prior to a call on said assessment or prior to closing of the County Assessment Rolls if the alternative procedure for collecting District assessments is utilized, order that such assessments be reapportioned in the same manner as utilized in establishing the assessments on the entire tract being reapportioned without notice and hearing unless a person interested shall have filed with the Board a request for notice of hearing of reapportionment of assessments to be made pursuant to Section 46325.

Applications for reapportionment of assessments on tracts of land in the District shall be in such form as is approved by the Board; landowners' signatures shall be acknowledged in the same form as a conveyance of real property and the application shall be accompanied by certified copies of recorded deeds showing the current ownership of the entire tract to be reapportioned. If the application be signed by less than all the landowners within the subdivided tract, a hearing will be held and notice of hearing shall be by mail directed to landowners affected at the address shown on District records and only to such other persons as are interested who have filed with the Board a request for notice of reapportionment, mailed at least ten (10) days prior to the day of hearing. District may require a report as to status of title of said reapportionment tract and may require a payment of such fees and costs by the applicant as the Board may establish.

21. MUNICIPAL AND INDUSTRIAL WATER

a. These Rules and Regulations are applicable to water served for agricultural, industrial, and municipal and industrial uses. Water will be furnished for industrial use, or municipal and industrial use, only with the written permission of the District and subject to specific terms and conditions to be imposed for the particular service involved or pursuant to contracts for Industrial Water Service. Water is in a raw, untreated condition and is considered to be unfit for human consumption without treatment. Insofar as is practicable the basic rules and regulations governing the delivery of agricultural water shall apply to delivery of water for industrial use and municipal and industrial use.

b. **Conditions Under Which Water May be used for Municipal and Industrial Use:** Paragraph 3(a) of the District's Water Service Contracts with individual landowners provides in part "Water furnished under this Contract shall be used by Water User for Agricultural Use only, Provided, However, that, with the written permission of District, Water User may use said water for Municipal and Industrial Use (M&I) subject to terms and Conditions imposed by District." The terms and conditions that the District will consent to such a conversion, which would be implemented through a Contract Amendment including the affected landowner and water purveyor as parties, ("Implementation Contract"), would incorporate the following principles into such contact amendment:

- (1) Water Treatment Entity. There must be a responsible water purveyor that would be fully responsible for treatment of wholesale supplies provided by the District and distribution of those supplies. The purveyor would have to have demonstrated the technical and financial ability to perform those functions. The purveyor would most likely be another district, a County service area, or a regulated public utility.
- (2) Return Flows to Groundwater. The M&I development must be designed and implemented in such a manner so as to not unduly reduce effective return flows to the groundwater basin, as compared to continued use for irrigation under then current conditions.
- (3) M&I Development / Ag Land Use Conflicts. The M&I development must be designed and implemented in such a manner so as to not adversely impact adjacent agricultural operations, as provided for on a case by case basis.
- (4) Safe Drinking Water Act. It must be confirmed that as a result of the conversion and the activities of the water purveyor, the District will not become subject to additional regulatory constraints, such as the Safe Drinking Water Act, which would adversely affect other landowners and the District's costs.
- (5) Isolation of Delivery Systems. The delivery system from the California Aqueduct to the water purveyor would be isolated from District facilities, unless other arrangements are made.
- (6) Additional Institutional Costs. Any added costs, such as any additional charges from Department of water Resources and/or the Kern County Water Agency (KCWA), or any increase in KCWA zones of benefit assessments, will have to be paid by the converting landowner and/or water purveyor.
- (7) Additional O&M Costs. Arrangements must be made to avoid any facility conflicts, such that the M&I development does not make it more difficult or expensive for the District to access, maintain and repair and replace its facilities.
- (8) Other Cost Impacts. To the extent the Implementation Contract may adversely affect costs or unit water rates to other Water Users, such adverse impact must be mitigated to the extent deemed appropriate by the Board.
- (9) Security for Water Charges. The District's security for payment of contract water charges and any non-contract assessments and charges must be maintained, particularly upon subdivision of lands. Among other things, if the water purveyor defaults in payment of charges or assessment (for instance if the development is a failure), that notwithstanding the land may have been subdivided, that the District's security is not compromised as compared to what would be the case if the land was still in agriculture. This may take the form of an equivalent recorded contract and/or lien by the water purveyor (if it is a public agency) with similar lien rights and providing for the district being a third party beneficiary, or a security enhancement arrangement, such as a letter of credit.

(10) No Increase in Demands. The Implementation Contract will include provisions, as necessary on a case by case basis, to ensure that, as a result of the conversion to M&I use, demands for water in the District and areas immediately adjoining the District, whether from surface water or groundwater, do not increase as a result of the conversion.

(11) No Domestic Priority for Water Allocations. The Implementation Contract will include language that, notwithstanding Water Code Section 106 and any other provisions of law, the Water User and water purveyor, and their successors and customers, waive and will not assert any priority to water provided for M&I use, including domestic use, and that the allocation of water supplies under the Contract Amendment in any given year will not exceed that which would have been allocated if the water was used exclusively for Agricultural Uses.

(12) Notice to Water Purveyor Customers. A mechanism will be included in the Implementation Contract to ensure that future customers of the water purveyor are provided notice of those provisions of the Implementation Contract that the District deems appropriate on a case-by-case basis.

22. SECTION 592 OF THE PENAL CODE OF THE STATE OF CALIFORNIA

Attention is directed to the provisions of Section 592 of California Penal Code as follows:

" (a) Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume or reservoir used for the purpose of holding or conveying water for manufacturing, agricultural, mining, irrigating or generation of power, or domestic uses, or who shall without like authority raise, lower or otherwise disturb any gate or other apparatus thereof, used for the control of measurement of water, or who shall empty or place or cause to be emptied or placed, into any such canal, ditch, flume or reservoir, any rubbish, filth or obstruction to the free flow of the water, is guilty of a misdemeanor.

(b) If the total retail value of all the water taken is more than nine hundred fifty dollars (\$950), or of the defendant has previously been convicted of an offense under this section, or any former section that would be an offense under this section, or of an offense under the laws of another state, or of the United States that would have been an offense under this section if committed in this state, then the violation is punishable by imprisonment in a county jail for not more than one year, or in the state prison."

23. AUTHORITY OF CONTRACTS

This District entered into a contract with the Kern County Water Agency and contracts between the District and Water Users for water service. In case of an inconsistency between these Rules and Regulations and the Water Users Contract, the Agency Contract, the Master Contract, Industrial Water Service Contract and any amendments thereto, the Contracts shall govern.

24. ENFORCEMENT OF RULES AND REGULATIONS

The Engineer-Manager of the District is authorized to do all acts necessary and proper to enforce these Rules and Regulations. Failure of a Water User to comply with any of the Rules and Regulations shall be sufficient cause for the termination of water service, and water service will not again be furnished to such Water User until full compliance has been made with all the requirements as herein set forth; Provided however, that Water User shall in no way be relieved of any responsibility for payment of any

charges or obligations by reason of such termination of water service. When it is practicable to do so, advance notice of any such termination of water service will be furnished to Water User. In no event shall any liability accrue against District or any of its directors, officers, agents or employees, for damage, direct or indirect, arising from such terminations of water service. Non-enforcement of any provision of these Rules and Regulations does not constitute a waiver of the District's right of enforcement at any time.

25. APPEAL OF DECISION OF ENGINEER-MANAGER

In the event a Water User disagrees with a decision made by the Engineer-Manager in carrying out the enforcement of these Rules and Regulations, he shall have the right of appeal to the Board of Directors. Appeals shall be submitted in writing no less than five (5) days prior to a regular meeting of the Board in order to be considered at that meeting, shall specifically set forth the decision being appealed and shall give the reasons for said appeal. Decisions of the Board of Directors shall be final and conclusive.

26. CHANGES IN RULES AND REGULATIONS

The Rules and Regulations shall become effective immediately and may be added to, amended or repealed at any time by resolution of the Board of Directors of the District.

27. SEVERABILITY OF PROVISIONS

If any provision of these Rules, or the application thereof to any person or circumstance, is held invalid, the remainder of these Rules, and the application of its provisions to other persons or circumstances, shall not be affected thereby.