



**IRRIGATION WATER POLICY**

**RULES AND REGULATIONS GOVERNING THE DISTRIBUTION OF WATER**

**ADOPTED: March 4, 2022**

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## DEFINITIONS

**Applicant:** Any Landowner, Lessee, and/or Person applying to receive Water Service as defined herein.

**Beneficial Use:** After receipt of an approved application from District, the use of District Water provided to a Parcel or Premise.

**Board:** The elected Board of Directors of District.

**Charge:** Includes all rates, fees, penalty(ies), and services rendered by District, including, but not limited to, Water Service, monitoring, maintenance, repair, and labor and material costs (determination based on the actual amount of labor, equipment, and materials District personnel used to perform a specified task, including applicable overhead factors).

**District:** The North Yuba Water District, a water district formed under the County Water District Law (Wat. Code, Div. 12, § 30000 et seq.). When used in regard to actions taken, "District" includes the General Manager.

**District Facility:** All items identified as "Works" under Water Code Section 30023, including, without limiting, all infrastructure owned by District, including conduits, canals, laterals, ditches, flumes, pipes, and appurtenances, and any other device or structure used for the conveyance, storage, distribution, treatment, or measurement of water.

**District Water:** Raw water diverted, stored, conveyed, and distributed, solely for irrigation of a legal crop under District's water rights.

**General Manager:** An employee and officer appointed by the Board to direct and oversee the day-to-day operations of District. "General Manager" also includes his/her authorized representative(s).

**Irrigation Season:** The period commencing April 15 and terminating on October 15.

**Landowner:** A legal holder of title to a Parcel located within District's boundaries.

**Lessee:** A tenant of a Landowner.

**Measuring Device:** A mechanical or electronic device installed by District personnel to a Service Outlet for the purpose of calculating applicable Charges by allowing and measuring the continuous unpressurized flow of District Water onto an approved Seasonal Water Contractor Parcel or Premises. Measuring Devices are District Facilities. If a Seasonal Water Contractor installs a secondary private measuring device, and the devices indicate different readings, the reading from District's Measuring Device controls.

**Miner's Inch:** The flow of water equal to one point three three seven (1.337) cubic feet per minute.

Notice: Communication to or from District regarding acts done, required action, and/or legal process affecting rights, obligations, or duties.

Parcel: An individual lot or unit of land denominated by the Yuba County Assessor assigned and holding a separate Assessor Parcel Number (APN). A single Seasonal Water Service Customer may own or lease multiple contiguous Parcels that together serve as a single Point of Use.

Person: Any person(s), firm, association, organization, partnership, business trust, corporation, company, or other entity.

Physical Encroachment: Includes and is not limited to structures such as buildings, bridges, culverts, fences, pipelines, underground or overhead wires, roads, landscaping that either cross or lie within District-owned real property, easements, rights-of-way across or located so close to District real property as to unreasonably interfere or potentially interfere with District's operation, improvement, or reconstruction of District Facilities.

Point of Use: The Parcel(s) or Premises identified in a Seasonal Water Service Application and approved by District for receipt of District Water.

Premises: A land area comprised of a single or multiple contiguous Parcels that are under the same ownership.

Private Facility: Any District Water conveyance, distribution, or storage facility or equipment not owned by District and not located on District Property.

Property: As defined in Water Code section 30023, all real and personal property owned by District.

Seasonal Water Service Application: District-approved application seeking to receive Water Service from District as a Seasonal Water Contractor.

Seasonal Water Contractor: Any Landowner, Lessee, and/or Person for whom District approves a Seasonal Water Service Application for Water Service.

Service Outlet: The point at which District Facilities connect to a Seasonal Water Contractor's Private Facility and where District installs a Measuring Device.

Waste: Generally includes the careless, excessive, extravagant, reckless, or unauthorized use of District Water, and expressly includes, without limitation, using District Water on roads, vacant lots, and on land not requiring irrigation for a legal crop. All District Water provided by District must remain on the approved Point of Use for the approved use. Any District Water leaving the approved Point of Use, or used for an unapproved use, is waste (and potentially "Water Theft") subject to enforcement as provided in this Policy.

Water Service: The delivery of District Water through District Facilities to an approved Seasonal Water Contractor for the sole purpose of irrigating a legal crop.

Water Theft: As defined in Penal Code section 498, Water Theft is any unauthorized action to divert, tamper with, connect, or reconnect to District Facilities in an effort to or actually obtain District Water, or allowing District Water to leave an approved Point of Use, whether through Private Facilities or by natural runoff, and divert to an unapproved Point of Use.

Within The District: Parcel(s) or Premises lying within District's boundaries.

## **AUTHORIZATION**

District, successor to the former Yuba County Water District, is a County Water District formed under Division 12 of the Water Code. The District's Board of Directors (Board), elected by the Landowners, govern District.

The Board adopts this Irrigation Water Policy (Policy) under the authority of Water Code section 31024, which states the following: "A district may establish rules and regulations for the sale, distribution, and use of water and may therein provide that water shall not be furnished to persons against whom there are delinquent water rates." This Policy governs the District and Seasonal Water Contractors.

## **SECTION I: INTRODUCTION**

### A. Purpose and Scope of Policy

This Policy provides for the efficient and useful distribution of District Water to Seasonal Water Contractors. Notwithstanding the provisions of any other pertinent laws and/or ordinances currently in effect, the use of District Water shall be subject to all provisions established herein.

### B. Water Rights and Water Service to Customers

District solely and exclusively holds the water rights under which it diverts, stores, conveys, distributes, and uses District Water. Landowners or Lessees of a Parcel or Premise capable of receiving District Water through District Facilities may become Seasonal Water Contractors of District by applying for and receiving District approval to receive Water Service. No Seasonal Water Contractor or Parcel acquires a proprietary right to any District Water by reason of use. Also, the purchase and/or use of District Water shall not establish any priority for delivery of any amount of District Water in subsequent years.

### C. Consent to Policy

Any Seasonal Water Contractor, who applies, and is accepted, to receive Water Service, agrees to the terms and conditions of this Policy, and all applicable District regulations adopted or amended by the Board

D. Modifications to Policy

District reserves the right under the authority granted by Water Code section 31024 to modify, supplement, amend, eliminate, waive, or otherwise change this Policy. District further reserves the right to deviate from this Policy under unanticipated, unusual, or unique circumstances, including but not limited to a natural disaster, drought, curtailment, emergency, or Act of God. Such subsequent modifications to or interim deviations from this Policy shall be effective for as long as specified by the Board in the resolution adopting such modifications or interim deviations. All subsequent modifications to, or interim deviations from, this Policy shall take effect upon the Board adopting the resolution at a public meeting held in accordance with the Brown Act (Gov. Code, § 54950 et seq.). The Board will publish this Policy and all subsequent modification(s) to or interim deviation(s) on District's website: [www.nywd.org](http://www.nywd.org).

E. Priority of Policy

This Policy supersedes, in its entirety, all of District's previously approved Irrigation Policy(ies). As provided under Water Code Section 31024, the Board may hereafter from time to time establish such other policies, rules, and regulations as it deems essential to carry out its responsibilities and functions as County Water District under the Water Code. Should a conflict between this Policy and a subsequent policy, rule, or regulation adopted by the Board arise, those subsequent actions shall yield to this Policy, unless the Board expressly states otherwise in the subsequent policy, rule, or regulation.

## SECTION II: USE OF DISTRICT WATER

A. Ownership

1. *District Water Rights:* District enjoys certain statutory rights to secure and make available for the Beneficial Use of Seasonal Water Contractor the surface and/or underground water sources that are not privately owned under riparian or prior appropriative rights. Notwithstanding the foregoing, and as stated in Section I(B) above, all waters within and introduced into District are the sole property of District and, as such, are subject to the exclusive diversion and use by District. District expressly asserts the right to recapture, reuse, and resell any and all water passing or draining from Parcels and/or Premises approved to receive Seasonal Water Service or engaging in Water Theft.

2. *No Interest Acquired in District Water Rights:* Use of District Water, whether authorized or not, will not and cannot establish any proprietary right to District Water. In addition, no use of District Water will establish any right to resell such water or use it on a Parcel or Premises for purpose(s) other than the purpose(s) expressly approved by District.

3. *Natural Stream Courses as District Facilities:* District's water rights authorize it to divert District Water into certain natural stream courses and utilize such stream courses as conduits for conveying District Water, rendering such stream courses District Facilities. The water diverted and conveyed through such stream courses by District or from District Facilities is the sole and exclusive property of District. District Water may at times intermingle with natural flow originating within natural stream courses. The natural waters of

such stream courses may be subject to use by Persons other than District when diverted and used under an assertion of valid riparian and/or appropriative water rights. All such validly claimed or licensed diversions are limited exclusively to the quantities of natural flow originating in such stream courses.

B. Beneficial Use

1. *District Water*: District formed under Division 12 of the California Water Code for the express purpose of supplying domestic and irrigation water to Parcels and Premises Within District.

2. *Fire Protection*: District provides Water Service on a seasonal basis only, rendering such Water Service subject to fluctuations, interruptions, shortages, and outages. **Therefore, District Water is not a reliable source of water for fire protection and is not intended for such use.** However, in the event of a fire emergency, any water available in District Facilities may immediately be used for such emergency, and there shall be no Charge for such use.

3. *Suitability of Raw Water for Other Uses*: For purposes of this Policy, “Beneficial Use” does not include domestic, commercial, or industrial uses, stock watering, raising of fish or other aquatic life in any form (i.e., aquaculture), or any other unauthorized uses. District Water is “raw water” and is not suitable nor offered for domestic, commercial, or industrial uses, stock watering, or for raising aquatic life in any form. All District Water shall be put to beneficial use.

C. Terms of Water Service

1. *General*: District provides Water Service to Parcels and/or Premises only after approval of a Seasonal Water Service Application. District has discretion when reviewing and approving Seasonal Water Service Applications and may refuse Water Service where the Applicant has falsified statements, utilizes a wasteful or excessive water delivery system, has delinquent Charges, or engages in Water Theft or Waste.

2. *Transfer of Responsibility and Risk*: The full responsibility and risk for the carriage, handling, use, and disposal of District Water transfers from District to the Seasonal Water Contractor at the outflow side of the Service Outlet.

3. *Season of Use*: District provides Water Service to Seasonal Water Contractor only during the Irrigation Season. To ensure protection of District Facilities from potential damage resulting from unfavorable weather conditions or emergency situations, District retains discretion to shorten the Irrigation Season. District shall assume no liability for damages or losses of any nature resulting from a shortened Irrigation Season. In non-emergency situations, District will endeavor to provide advance notice of any changes to the Irrigation Season.

4. *Scope of Service*: No Seasonal Water Contractor is entitled to a greater quantity of District Water than what (a) is stated in the Season Water Service Application, and (b) may be Beneficially Used without committing Waste.



5. *Water Service to Lands Within District:* District restricts Water Service to Parcels and/or Premises Within the District such that use of District Water to a Place of Use not Within the District is unauthorized. Seasonal Water Contractor may only use District Water on Parcels or Premises for the purpose and on the Place of Use stated in the District-approved Seasonal Water Service Application. If a Seasonal Water Contractor uses District Water on a parcel or premises not Within the District, regardless of the manner in which such use was achieved, District may refuse any further Water Service to that Person.

6. *Possession of District Water and Reversion to the District:* After District approves a submitted Seasonal Water Service Application and receives payment in full of all Charges in accordance with the provisions herein, the possession and control of certain quantities of District Water is temporarily transferred to the Seasonal Water Contractor for the use of such water consistent with the Seasonal Water Service Application and this Policy. The Seasonal Water Contractor retains this temporary possession and control only for District Water remaining on the Place of Use identified in the Seasonal Water Service Application as the Place of Use. Once District Water drains, seeps, or leaves the Place of Use, its possession immediately reverts to District.

7. *No Carryover Water:* District retains the sole proprietary right to all District Water not used upon the close of the irrigation season. No Person, except District, has or may acquire any right to water “carried over” from one irrigation season to the next.

8. *No Continuing Right:* The purchase and/or use of District Water shall not establish any priority for subsequent delivery of District Water.

D. Priority of Allocation of District Water

*General:* Each year District will begin accepting Seasonal Water Service Applications on March 1 and cease accepting Seasonal Water Service Applications at 4:30 p.m. on March 30. After receiving all the timely Seasonal Water Service Applications, and in order to provide Water Service to the greatest number of Seasonal Water Contractors during the subject Irrigation Season, District will give priority to the requests seeking the smallest amount of Water Service (based on the total quantity of District Water requested) and arrange the applications in ascending order to the largest amount of requested Water Service until the total volume of available District Water is exhausted. District will only approve Seasonal Water Service Applications up to the amount of District Water available during the subject Irrigation Season. If there is insufficient amount of District Water to fully satisfy all Seasonal Water Service Applications, District will contact the applicant who is entitled to receive the remaining District Water to determine if he/she/it wants to accept the reduced quantity.

E. Unauthorized Use of District Water

1. *Liability for Use Other Than Irrigation Purposes:* Any Landowner, Lessee, Person, and/or Seasonal Water Contractor, who uses District Water for any purpose other than irrigation of a legal crop does so in violation of this Policy and at their own risk. By so doing, such Landowner, Lessee, Person, and/or Seasonal Water Contractor assumes all liability for and/or from such unauthorized use and agrees to defend and indemnify, and hold District, its

officers, and employees harmless from, any liability for any damages whatsoever that do or may occur as a result. Also, such Landowner, Lessee, Person, and/or Seasonal Water Contractor who uses District Water for any purpose other than irrigation of the legal crops specified in their Application for Seasonal Water will be deemed in violation of their contract and the contract will be terminated and any water delivery under that contract will cease.

2. *Use of District Water Without District Approval:* Using District Facilities and/or diverting, storing, intercepting, impounding, distributing, or otherwise using District Water on any Point of Use without prior approval from District, unless it is for a fire emergency, constitutes unauthorized use and is expressly prohibited. A “fire emergency” for the purposes of this Policy is defined as an active fire immediately threatening a property or premises within District and upon which District Water could be directly used upon said property or premises to contain or eliminate the fire emergency. This prohibition applies regardless of whether District Water is diverted from a main ditch or lateral, taken from or impounded in a natural channel or drain, or is Waste, spill, seepage, runoff, or other water. Engaging in unauthorized use is Water Theft and is punishable as a misdemeanor. (See Pen. Code, §§ 498, 592.) A Person diverting water from a natural channel under his or her validly held water right is not Water Theft.

3. *Water Theft:* A Person who, without District’s express authorization, takes or uses District Water from any District Facility is both engaging in and guilty of Water Theft, which is punishable as a misdemeanor under Penal Code section 592, subdivision (a). Such matters will be referred to the County District Attorney for investigation and prosecution. If a Person commits a Water Theft while in possession of an approved contract for delivery of District Water, their contract will be deemed in default, all water delivery will immediately cease, and they will be held liable for any resulting legal fees and costs incurred by District as a result of the matter. (See Gov. Code, § 53069.45; Wat. Code, §§ 31027, 31029.)

4. *Adjusting and Tampering with District Facilities:* Only District personnel operating within the scope of their duty may adjust or alter District Facilities, Measuring Devices, or other District-owned equipment. No Person shall in any manner adjust, change, disturb, tamper, or otherwise interfere with any District Facility. No Person shall construct any dam or otherwise impede or obstruct the flow of any District Facility. Such action(s), unless performed by District personnel in the scope of the duty, will result in the termination of Water Service to any Parcel or Premises owned or occupied by the Person committing such unauthorized act.

5. *Reporting Unauthorized Diversion of Natural Flow:* It is the policy of District to report any unauthorized diversions and/or uses of water from stream courses to the applicable state agency (e.g., California Department of Water Resources and/or State Water Resources Control Board).

6. *Notice of Violation for Unauthorized Use:* Where District reasonably believes or is informed that a Landowner, Lessee, Person, or Seasonal Water Contractor is or has been engaging in an unauthorized use of District Water, District shall promptly mail a Notice of Violation to such Landowner, Lessee, Person, or Seasonal Water Contractor describing the nature of the violation and penalties associated therewith. The Notice of Violation will be

mailed to the address on the associated approved contract for water delivery; mailing the Notice is sufficient to establish that notice has been given. In its sole discretion, District may also attempt to notify said Landowner, Lessee, Person, or Seasonal Water Contractor by telephone or email in an effort to correct the violation quickly and avoid further violations. If initial telephone or email contact is attempted, the mailed Notice of Violation will reflect this initial effort.

7. *Enforcement Against Unauthorized Use:* Because efficient water use is so critical to the ability of District to facilitate maximum planning under existing delivery constraints, the Board will strictly enforce this Policy prohibiting unauthorized uses of District Water. To enforce this Policy's prohibition of unauthorized use of District Water, District may, at its sole discretion and only after issuing a Notice of Violation, impose any or all of the following conditions:

- a. Impose and collect a penalty at a rate equal to three times the current Charge for each Miner's Inch of District Water subject to the violator's unauthorized use of District Water;
- b. Impose and collect an additional ten percent (10%) Charge on the amount of District Water subject to unauthorized use;
- c. Suspend delivery of District Water to the Parcel(s) or Premises on which the unauthorized use of District Water occurred for up to five (5) years. District will issue to the legal owner of such Parcel(s) or Premises the terms of such suspension, which may include the following: (i) periodic inspections of the Parcel(s) or Premises by District personnel to ensure strict compliance with all District policies, the cost for which the legal owner of the Parcel(s) or Premises is responsible; and (ii) payment in full of all Charges assessed within ten (10) days of the billing date. Failure to timely pay such Charges will result in permanent suspension of delivery of District Water to the violator;
- d. Refer the matter and all investigative material collected and/or developed by District to the County District Attorney, other law enforcement authorities, and/or administrative agency; and
- e. Pursue any form of civil or administrative proceeding to enforce the District's Policy and/or to recover any losses and damages resulting from an unauthorized use of District Water.

8. *Waiver Due to Unanticipated/Unforeseen Circumstances:* District may, in its sole discretion, waive an unauthorized use violation where such violation occurred solely due to unforeseen or unanticipated circumstances and provide a partial or full waiver of penalties.

F. Waste of Water

1. *General:* It is the responsibility of all Persons to ensure that District Water is put to Beneficial Use in a reasonable and efficient manner.

2. *Control of Waste:* District will not allow District Water to be used for flood irrigation. Furthermore, District will not recharge unlined ponds used by a Landowner as part a Private Facility solely for irrigation purposes. All current and prospective Seasonal Water Contractors must make every effort to avoid Waste, including preparing the Parcel(s) or Premises to receive Water Service, as well as installing, maintaining, and repairing Private Facilities so they are in good working condition to avoid Waste, undue loss of water, waste of time, or damage to other lands. Installation, maintenance, repair, and the resulting costs of such activity are the sole responsibility of the Seasonal Water Contractor, not District. District may refuse Water Service to a Seasonal Water Contractor if a Parcel(s) or Premises is not properly prepared to receive Water Service and avoid waste, or if Private Facilities are not in a proper state of repair to convey or use water in an economical and efficient manner.

3. *Inspection of Private Facilities:* District may, from time to time, seek to inspect Seasonal Water Contractors' Private Facilities, and Landowners or Lessees shall provide District staff with reasonable access to conduct the inspection. If after an inspection District staff determines the Private Facilities are in disrepair, are wasteful, or that the Waste of District Water is likely, District shall suspend or refuse (as applicable) Water Service to the Parcel(s) or Premises until the Seasonal Water Contractor repairs the Private Facilities to the District's reasonable satisfaction.

4. *Refuse Water Service:* District shall refuse Water Service to any Seasonal Water Contractor who, in the opinion of District's General Manager, Wastes District Water or causes the Waste of District Water either willfully, carelessly, negligently, or due to defective or inefficient Private Facilities. Such refusal will continue until the conditions causing waste cited by the General Manager are remedied to the General Manager's reasonable satisfaction.

District expressly reserves the right to refuse or discontinue Water Service to any Parcel(s) or Premises when it appears to the reasonable satisfaction of the General Manager that the proposed use or means of conveying District Water for such use requires excessive quantities such that it will constitute unreasonable use. (See Cal. Const., art. X, § 2.) Within five (5) business days of a refusal or discontinuation of Water Service by the General Manager, the affected Seasonal Water Contractor or Applicant may submit a written request by email, or in person to the District Office, asking the Board to review the General Manager's decision. That review will occur at the next Regular Board Meeting where the review can be legally placed on the meeting agenda.

**SECTION III: SEASONAL WATER SERVICE**

A. Seasonal Water Service Application

District shall provide Water Service only upon approval of a received Seasonal Water Service Application, full prepayment of all Charges stated in District's approval of the Application, and timely payment of all subsequent charges for the Water Service. Submitting

the Seasonal Water Service Application constitutes agreement by the applicant to abide by the terms of this Policy, the terms of the Seasonal Water Service Application, and all other District regulations governing the use of District Water.

B. Qualified Place of Use for District Water

District will provide Water Service under a Seasonal Water Service Application to only the Point of Use designated in the application. As stated clearly therein, under no circumstances is a Seasonal Water Contractor authorized to make District Water available for use to any other Parcel(s) or Premises identified in the Seasonal Water Service Application.

C. Application Process

1. *Deadline for Application:* Unless otherwise set by the Board in a resolution, all Seasonal Water Service Applications are due to the District office no later than 4:30 p.m. on March 30 of any given year. This deadline is absolute, and District staff has no authority to deviate from it.

2. *Submittal, Receipt, and Late Applications:* District accepts Seasonal Water Service Applications by mail or in person, which must include full payment of all Charges incurred to be deemed “complete.” Receipt of a Seasonal Water Service Application occurs when District actually receives both the Seasonal Water Service Application and full payment of all related Charges. For Seasonal Water Service Applications sent by mail and received by District after the deadline, the postmark is irrelevant, and District will reject such applications as untimely submitted.

3. *Information Required on Seasonal Water Service Application:* All Seasonal Water Service Applications must contain all the information stated below, together with full payment of any related fees, to be considered “complete.”

- a. The APN of the Point of Use for Water Service, its gross acreage, irrigated acreage, and crop(s) planted thereon;
- b. The Landowner of the Parcel(s) and the names of any Lessees or other authorized agents of the Landowner seeking Water Service;
- c. The Service Outlet for Water Service to the Point of Use;
- d. Identification of the specific type of crop to be irrigated, and attestation that the purpose of use of District Water is irrigation of a legal crop and that the property is prepared to avoid waste of District Water;
- e. The intended manner and method(s) of irrigation (e.g., drip, sprinkler, etc.);
- f. The total requested volume in Miner’s Inches of District Water;

- g. Copies of any necessary permits, authorizations, or other documentation demonstrating that the crop is grown in accordance with the law;
- h. For leased Parcels or Premises, signatures of both the Landowner and the Lessee; and
- i. Payment to the District of any related fees.

4. *Failing to Submit Complete Application:* Failure to timely submit a complete Seasonal Water Service Application in accordance with this Policy may, at the sole discretion of District, result in refusal of Water Service for the subject Irrigation Season.

D. Water Service Connection and Conveyance

District will provide Water Service by authorizing a Seasonal Water Contractor to connect to a specified Service Outlet. District is not obligated to construct any extensions to existing District Facilities. Seasonal Water Contractors must, at their own expense, connect an approved Private Facility to the Service Outlet and convey District Water to the authorized Point of Use. Only District personnel are authorized to install the required Measuring Device.

E. Manner of Delivery of Water Service

District provides Water Service on a continuous flow basis, subject to certain fluctuations, interruptions, shortages, outages, and reductions in deliveries, as more particularly described in this Policy. Water Service on a continuous flow basis means that District delivers District Water at a uniform rate by service size continuously for twenty-four (24) hours each day, seven (7) days per week during the irrigation season. Seasonal Water Contractors must accept delivery on this basis. Failure to accept delivery as required by this section will result in termination of water delivery.

F. Limitations on Water Service

1. *General:* District will endeavor to provide full delivery of Water Service to each Seasonal Water Contractor. District does not, however, guarantee full delivery of Water Service because of circumstances beyond its reasonable control, including availability of supply, physical limitations of District Facilities, and emergency conditions. The Board possesses the legal authority, under Water Code section 31026, to allocate the *available* water supply to Seasonal Water Contractors in the manner most likely to serve the needs of the entire District during drought or water shortages. **Every Seasonal Water Contractor accepts the possibility of reduction or early termination of Water Service as a condition of accepting Water Service.**

2. *Cutbacks:* District has authority to institute cutbacks to respond to anticipated or actual shortages in District Water supply. District will institute any cutbacks in Water Service in stages, as described below:

- a. Voluntary Cutback – District will initially solicit voluntary reductions from Seasonal Water Contractors to mitigate anticipated shortfall in Water Service.
- b. Secondary Cutback – If voluntary cutbacks do not result in sufficient supply of District Water to meet the remaining needs of the Seasonal Water Contractors, all deliveries to Seasonal Water Contractors exceeding three (3) Miner’s Inches will be reduced.
- c. Tertiary Cutback – All Seasonal Water Contractors receiving more than one Miner’s Inch will be allocated one (1) Miner’s Inch for the remainder of the Irrigation Season, or until the remaining District Water allocated for the Irrigation Season is depleted, whichever comes first.
- d. Final Cutback – Upon the depletion of all District Water allocated for an Irrigation Season, no allocation will be made.

G. Sale or Subdivision of Parcel or Premises Receiving Water Service

1. *Effect of Sale:* A Person selling a Parcel, Premises, or portion thereof that receives Water Service shall notify District of the sale within ten (10) days of the sale’s close and provide the new legal owner’s name, phone number, and address.

2. *Effect of Subdivision:* District will not consider Water Service to the newly created Parcel(s) unless that Parcel is contiguous to District’s Facilities and District determines it has adequate supply of District Water to service the new Parcel. A newly created Parcel satisfying the requirements of this section will be eligible to receive Water Service during the next full Irrigation Season after its creation.

H. Water Quality

District Water travels through open canals and ditches, and District does not guarantee that foreign objects and/or substances will not be introduced into the water received by a Seasonal Water Contractor. In addition, all District Water is raw water. Raw water is not intended nor offered for any purpose other than irrigation. Use of District Water for domestic use, stock-watering, or raising aquatic life of any form is not allowed. District applies state and federally approved herbicides within District Facilities and District’s rights-of-way to control terrestrial vegetation. District applies such herbicides in the manner prescribed on the label.

I. No Liability of District

District will exercise reasonable care and diligence to provide reliable Water Service. District is not, however, liable for any loss, injury, damage, or inconvenience to any Person or Seasonal Water Contractor caused by shortage, insufficiency, suspension, or discontinuance of Water Service due to District Water supply shortages, storage, distribution, or District Facility malfunctions, or any other cause whatsoever. All Seasonal Water Contractors

acknowledge that reliance on District Water Service for any purpose, whether commercial or non-commercial, is done so at their sole risk. Each Seasonal Water Contractor agrees to defend and hold District and its directors, officers, employees, and agents free and harmless from liability and damages caused by such loss, damage, or inconvenience.

### **SECTION III: RATES**

District has authority under Water Code section 31025 to “fix and through the general manager collect the water rates.” District shall set rates and fees for Water Service by separate ordinance or resolution.

### **SECTION IV: DISTRICT AND PRIVATE FACILITIES**

#### **A. Ownership & Control of System**

All District Facilities are subject to the exclusive control of District. Subject to this Policy and other policies, rules, and regulations established by the Board, District has exclusive control over maintenance and operation of District’s Facilities, and no other Person except District’s designated employees have any right to interfere in any manner with any District Facility. No infrastructure whatsoever (including and not limited to a gate, takeout siphon, or fence) may be installed or placed in, on, or around any District Facility or easement except with the written consent of District and in the manner directed by District. Only District employees have authority to open and close District Facilities, such as gates, unless there exists a real emergency where prompt action is necessary to avoid severe damage.

Without exception, District personnel must install all Measuring Devices onto the Service Outlet providing Water Service to Seasonal Water Contractors.

#### **B. Installing and Servicing District Facilities**

1. *General:* Only District personnel or authorized contractor(s) may install equipment on, maintain, service, or otherwise repair District Facilities.

2. *Measuring Devices on Service Outlet:* Only District personnel are authorized to install a Measuring Device onto the Service Outlet providing Water Service to Seasonal Water Contractors.

3. *Cleaning:* District personnel shall at the beginning of each Irrigation Season, and periodically thereafter, inspect and sufficiently clean all District Facilities and Measuring Devices to ensure an unobstructed and accurately measured flow of water.

4. *Repairs:* Whenever any Service Outlet or Measuring Device requires repair or becomes worn, damaged, or otherwise taken out of service, District personnel will make the necessary repairs, and the Seasonal Water Contractor is responsible for the related repair Charges. If damage to the Measuring Device results from tampering, vandalism, or any other unauthorized activity, the Seasonal Water Contractor is responsible for the repair Charges.



5. *Replacement:* Whenever any District Service Outlet and/or Measuring Device becomes worn, damaged, or otherwise unserviceable, District shall replace the Service Outlet and/or Measuring Device at the expense of the Seasonal Water Contractor. The determination of serviceability and need for replacement shall be at the sole discretion of District and may be predicated upon, but not limited to, considerations such as the uneconomical and/or unreliable adjustment or control thereof, elimination of a potential hazard to District and/or Private Facilities or adjacent lands, eliminating Waste or potential Waste of water, discouraging and/or eliminating unauthorized adjustments and/or tampering.

6. *Alteration to Water Service:* All District Facilities are subject to certain future alterations that may affect the elevation at which District Water is available therefrom for Seasonal Water Contractors. District shall service, maintain, repair, and supplement all District Facilities as needed to reasonably accommodate Water Service from District Facilities at currently existing water levels. In the event that District subsequently alters District Facilities and such alteration results in a water level rendering a District Facility (or Facilities) useless, District shall take the reasonable necessary steps to readjust the District Facility to provide Water Service to the affected Seasonal Water Contractor(s).

C. Private Facilities

1. *Responsibility:* All facilities located beyond the Service Outlet and/or District Measuring Device on the Seasonal Water Contractor's Parcel(s) or Premises are Private Facilities and are not the responsibility of District.

2. *Operation:* Each Seasonal Water Contractor, at his/her own risk, shall furnish, install, and operate in good and safe operating condition all Private Facilities. District has no responsibility for the operation and maintenance of Private Facilities. Nothing contained in this Policy will be construed as an assumption of liability on the part of the District, its directors, officers, agents, or employees for any damage resulting from the improper construction, operation, maintenance, or use of any Private Facilities.

3. *Maintenance:* All Private Facilities must be kept free from weeds and other obstructions and must be of sufficient capacity and properly constructed and maintained to carry the flow of water applied for without danger of breaks, overflow, or undue seepage. District will issue a Notice of Maintenance where Private Facilities require maintenance and/or repair and suspend Water Service until the stated issue is properly remedied. Where no corrective action is taken within fifteen (15) calendar days after a Notice of Maintenance is submitted to the Seasonal Water Contractor, District may discontinue the Water Service for the subject Irrigation Season.

4. *No District Liability:* District shall not be responsible for any loss, injury, or damage caused by the improper construction, operation, maintenance, or use of any Private Facilities, or the negligence or wrongful conduct of the Seasonal Water Contractor, or of their tenants, agents, employees, contractors, licensees, permittees, or invitees responsible for installing, operating, maintaining, using, or repairing of the Private Facilities.

5. *Liability for District Facilities:* The Landowner or Lessee receiving Water Service through Private Facilities shall be liable for any damage t caused to District Facilities and/or measuring equipment. Upon District’s presentation of a bill for such damage, the legal Landowner or Lessee receiving Water Service through the Private Facility responsible for the damage to District Facilities shall reimburse District for the costs to repair or replace damaged District Facilities. Failure to pay such a bill shall be grounds for permanent termination of Water Service and disconnection from the Service Outlet.

D. Private Development

District shall not approve or otherwise permit the development of any private mutual undertaking, community system, or other such system that will in any manner have the same or similar effect as the construction or extension of District Facilities. **Private Facilities cannot be constructed in a manner to allow the diversion of District Water to Parcels or Premises not contiguous with District Facilities, and District will not authorize Water Service to any Parcels or Premises not contiguous to District Facilities.**

**SECTION V: GENERAL**

A. Notices

All notices, consents, approvals, and other communications required under this Policy shall be in writing and shall be deemed to have been duly given or made on the business day of delivery or one (1) business day after email transmission.

1. *Notice to any Person, Landowner, Lessee, or Water Service Customer:* By regular mail to the address(es) on the Seasonal Water Service Application and/or emailed to the email address(es) provided in the Seasonal Water Service Application.

2. *Notice to the District:* By regular mail, overnight mail, personal delivery, or email to the following:

Mailing address:  
P.O. Box 299  
Brownsville, CA 95919

Physical Address:  
8691 LaPorte Road  
Brownsville, CA 95919  
Email: [email@nywd.org](mailto:email@nywd.org)

3. Any party may change its address by proper written Notice to the other party.

B. Payments

Charges may be paid by check or credit card. Checks may be mailed or tendered in person. Credit cards may be used either online, over the telephone, or at the District office.

District will impose a \$20.00 fee for all checks returned by a bank as “unpaid,” which will be added to the Seasonal Water Contractor’s unpaid Charges.

C. Payment Under Protest

Payment under protest of any disputed Charges assessed under this Policy or elsewhere is permitted; however, the Board may elect not to hear such protests before the end of the Irrigation Season. All protests with payment must be received promptly, in writing as specified in Section V.A. above, by District, no later than thirty (30) days after the date on the subject invoice. All protests must include a detailed written account of the disputed Charges, and an explanation for why the Charges are disputed.

D. Enforcement of This Policy

District shall enforce the provisions of this Policy and other District regulations, and provide explanations and information to the Board, Landowners, Lessees, Persons, and/or Seasonal Water Contractors, as necessary. The Board, General Manager, and District employees shall not be liable for any damages resulting from the proper enforcement of this Policy or other District regulations. Failure or refusal of any Person receiving Water Service to comply with this Policy, or any other District regulation, shall entitle District to terminate Water Service.

This Policy contains certain provisions of enforcement that require the refusal to provide Water Service, as well as the curtailment, reduction, suspension, and/or termination of Water Service. In submitting a Seasonal Water Service Application, the applicant agrees to abide by all terms of this Policy and accepts the risks inherent in refusal to comply accordingly. District assumes no liability for losses and/or damages that might result from the curtailment of deliveries as a result of violations of provisions hereof.

E. Complaints

All complaints relating to District’s Water Service must be in writing, by mail or email, to the District Office. All Persons who desire to address the Board may do so during the public comment opportunity at any regular Board of Directors meeting. Any Person wishing for the Board to discuss a specific issue or take an action must request the addition of that item to the upcoming Board meeting agenda during the public comment portion.

F. Access to Land

District personnel, such as ditch tenders, shall have free access at all times to District Facilities (including Service Outlets and Measuring Devices) for the purposes of inspection, measurement, survey, or other necessary purposes of District. They also have the right to install, maintain, control, and regulate all District Facilities necessary or proper for the measurement and distribution of District Water.

G. Rights-of-Way

No Person may construct a building or structure over or under a District right-of-way (prescriptive or deeded [unless provided otherwise in the deed]). Further, no Person may plant trees, vines, or bushes in or upon District rights-of-way without first receiving written approval from District. Other than necessary cross-fences, no Person may construct fences on or over Districts rights-of way. Necessary cross-fences on District rights-of-way shall be constructed in the manner directed by the General Manager, with gates permitting passage along District Facilities (such as canal banks) by District personnel and equipment to permit maintenance on District Facilities, and in a manner that will not interfere with Water Service.

Any Person who themselves interferes with, or whose Private Facilities, equipment, livestock, poultry, or waterfowl acts as a Physical Encroachment, obstruction, or interference with, District's rights-of-way or District's operation and maintenance of District Facilities, may be removed by District without notice and charged for the cost of removal. If the aforementioned Charges for interfering are not paid within thirty (30) days of the invoice date, the lien provisions of Water Code section 31701.5 shall apply.

H. Damage to Works

Any Person who damages District Facilities or Measuring Devices through tampering, vandalism, or any other unauthorized action, will be responsible for reimbursing District for the cost of repair. Moreover, any Person who dumps any foreign substances or erects fences on District rights-of-way shall be liable to District for all expenses District incurs in the replacement or repair of District Property or in the removal of unauthorized substances or fences. In addition, any Person causing damage to District's Property may be subject to criminal prosecution.

I. Penalty For Violation

For violations not involving damage from vandalism to or tampering with District Facilities or Measuring Devices as stated in Section V.H., a written Notice of Violation of this Policy will be provided to the violator stating the requisite actions and time frame to correct such violation. If a Person takes no corrective action as directed in a Notice of Violation, refuses to comply with this Policy, or interferes with District's proper discharge of District duties, it shall be considered good cause for District to permanently terminate Water Service to that Person.

J. Other Unauthorized Uses of District Facilities

The use of District Facilities for recreation, swimming, fishing, play, or any other unauthorized purpose is prohibited. District urges all Persons to assist in preventing the use of District Facilities and their banks for recreation, swimming, fishing, play, or other unauthorized purposes.

K. Delinquent Charges

Charges levied by District that remain unpaid thirty-one (31) days from the date of the invoice are considered delinquent. Once delinquent, District may, at its discretion, do any or all of the following:

1. *Suspend or Terminate Water Service:* District may suspend Water Service, regardless of the crop irrigated, until the Seasonal Water Contractor pays in full all delinquent Charges. District may exercise its right to refuse Water Service in circumstances where the Seasonal Water Contractor incurring the delinquent Charges is not the Landowner receiving Water Service when the Charges accrued.

2. *Collection By Tax Lien:* Where Charges are delinquent for Water Service provided to a Parcel or Premises, under Water Code sections 31701 and 31701.5, District will add all such delinquent and unpaid Charges to the annual taxes next levied upon the Parcel or Premises which shall constitute a lien on that Parcel or Premises as of the same time and in the same manner as does the tax lien securing such annual taxes.

L. Refund

District shall pay no interest on refunds. District may issue partial refunds for paid Charges if full delivery of District Water was not made due to water shortages or curtailments resulting in cutbacks. District will not issue refunds for paid Charges where the District terminated or suspended Water Service due to any of the following: (i) Seasonal Water Customer's failure to take and/or use the full amount of water approved in the Seasonal Water Service Application; (ii) Water Service interruptions of less than fifteen (15) days for emergencies or maintenance; (iii) Seasonal Water Customer's failure to pay assessed Charges; or (iv) Seasonal Water Customer's violation of District Policy.

1. *Calculation of Refunds:* If a Charge is refundable, the amount of any refund shall be calculated within thirty (30) days from the date on which District received the request for a refund, and District will issue a notice of refund.

2. *Deduction of Other Charges:* District will first apply refundable Charges to any other Charges then due, payable, or delinquent, and deduct any subsequent Charges from the refund balance, if any.

3. *Payment of Refund:* District will pay the balance of the refund, if any, by check. District will issue such check within thirty (30) days of notice of refund.