

WESTLANDS WATER DISTRICT

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TERMS AND CONDITIONS FOR AGRICULTURAL WATER SERVICE

1. The allocation and furnishing of water shall be subject to all regulations of the Board of Directors of the District as the same may exist now or hereafter be amended or adopted. In the event of a conflict between these terms and conditions and the regulations, the latter shall be controlling.

2. All water shall be delivered pursuant to a request by the water user for the delivery of a specific flow rate to a specific parcel of land. The request shall be made within the time and in the manner prescribed by the General Manager.

3. Water will be furnished by the District subject to the terms and conditions under which it is made available to the District including, but not limited to, the requirements of federal Reclamation law. The District will use its best efforts, to the extent that it has water and capacity available and taking into account the requirements of other water users to receive water from District facilities, to provide such water in the manner and at the times requested. The District may temporarily discontinue water service or reduce the amount of water to be furnished for investigation, inspection, maintenance, repair, or replacement of any of the District's facilities. The District will give the water user notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which event no notice need be given. In the event the District issues a notice to discontinue or curtail water use, and District facilities are required to be re-filled because the water user fails to discontinue or curtail such use within the prescribed time, the water user shall pay an administrative charge established by the Board of Directors for each point of delivery in violation. No liability shall accrue against the District or any of its officers, directors, or employees for damage, direct or indirect, because of the failure to provide water as a result of system malfunctions, interruptions in service necessary to properly operate and maintain the water distribution system, or other similar causes which are beyond the District's reasonable control.

4. By taking delivery of water from the District, the water user assumes responsibility for, and agrees to hold the District harmless from, all damage or claims for damage which may arise from his use of the water after it leaves the District's facilities. The water user further agrees that there are no intended third party beneficiaries established and nothing contained herein, expressed or implied, is intended to give to any person, partnership, corporation, joint venture, limited liability company or other form of organization or association any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the water user or the District shall be for the sole and exclusive benefit of the water user or the District.

5. The water furnished by the District is not in a potable state and the District does not warrant the quality or potability of water so furnished. By taking delivery of water from the District, the water user assumes responsibility for, and agrees to hold the District harmless from, damage or claims for damage arising out of the non-potability of water furnished by the District.

6. All water will be measured by the District with meters installed, maintained, and calibrated by it and such measurements shall be final and conclusive.

7. Charges for agricultural water, hereinafter referred to as "water charges," shall be established by the Board of Directors. The water charges shall include District operation and maintenance costs and any other costs determined by the Board to be payable as part of the water charges. The water

charges shall also include the applicable water rates required pursuant to the Reclamation Reform Act of 1982, the Central Valley Project Improvement Act of 1992, and the Judgment in Barcellos and Wolfsen, Inc., et al. v. Westlands Water District, et al., and Westlands Water District, et al. v. United States, et al., U.S. District Court, Eastern District of California, Nos. CV-79-106-EDP and CV-F-81-245-EDP, respectively. Water charges shall be adjusted retroactively to the extent required and authorized by federal or state law or regulations or District regulations. The General Manager may adjust the water charges as necessary and legally authorized to account for increases or decreases in the estimates used to establish the water charges.

8. Payments for water service shall be due on the 25th of each month or 15 calendar days after the date on which the monthly bill for such service is mailed, whichever is later. Payment for the "Water Allocation" component of the District's annual repayment obligation to the United States shall be due on July 25. Notwithstanding the foregoing, water users who farm on lands that are not subject to assessment by the District shall be subject to advance payment, and payment for water service for the entire water year shall be due on February 25, preceding the water year; provided, that in lieu of advance payment, the District, at its option, may accept in a form satisfactory to the General Manager a written guarantee from a recognized financial lending institution or an assignment of any and all charges to land in the District owned by the water user. When any deadline established herein falls on a Saturday, Sunday, or holiday, it shall be extended to the next working day. Payments postmarked on or before the due date shall be deemed to have been received by the due date. Charges not paid by the applicable due date shall be delinquent.

9. All payments shall be made at the District's Fresno Office.

10. Advance payment shall be required for the acquisition costs of water transferred into the District from other agencies, pump-in water, or any allocation resulting from the District being able to obtain other water, prior to the allocation of such water to water users. The advance payment will be due by a date to be established by the General Manager. Excluding those water users subject to advance payment, conveyance-related costs for such water will be billed to water users upon water use.

11. All claims for overcharges or errors must be made in writing and filed with the District at its Fresno Office within 10 working days after the date the bill is received by the water user or landowner. The General Manager, or his designee, may provide for a waiver of the 10-working day requirement in circumstances where a water user has requested a meter repair and the District's meter was found not to be accurate with the District's standards. In the event the water user or landowner files a timely written protest, the District's Finance & Administration Committee shall consider the protest at its next regular meeting and notify the water user or landowner in writing of its decision. The Committee's decision shall be final, unless a written appeal to the Board of Directors is filed with the Secretary of the District within 15 working days after notice of the decision. In the event of an appeal, the decision of the Board shall be final. The filing of a protest or an appeal does not nullify the payment requirement or the District's right to discontinue water service as provided in these terms and conditions. However, in the event the protest or appeal is sustained, the District will refund the amount of the overcharge and penalty, if any.

12. During any 12-month period, the penalty for a water user's first delinquent payment shall be 2 percent of the delinquent charges, except as described hereinafter. The second delinquency shall be 5 percent and the penalty for a water user's third and any subsequent delinquency shall be 10 percent, on current charges due, excluding any penalties or interest imposed on delinquent charges from a prior month. The 2 percent penalty shall not be levied with respect to a water user's first delinquency in any 12-month period if the delinquent payment is received by the District on or before the last working day of the month, but the delinquency shall continue to be the water user's first delinquency for purposes of this paragraph. Delinquent charges shall bear interest at a monthly rate of 1½ percent. Interest shall not, however, accrue after the delinquent charges together with applicable penalties and interest have been added to, and become a part of, the annual assessment levied on the land by the District. All payments and credits shall be applied to the earliest delinquent charges.

13. At the time of filing the District's assessment book with the District Tax Collector, delinquent charges, together with applicable penalties and interest, may be added to and become part of the assessment levied by the District on the land which received the water or for which other charges were incurred. If the water was not furnished, the applicable delinquent charges may be added to the land to which the water was allocated. The District shall notify the landowner of the anticipated amount(s) prior to adding the assessment. The added amount shall be a lien on the land and impart notice thereof to all persons. If the assessment becomes delinquent, penalties and interest will be added as provided by law.

14. To supplement the procedure described in Paragraph 13, the District may elect to file and record a Certificate of Unpaid Water Charges as provided in California Water Code Section 36729. This Certificate creates a lien in the amount of delinquent charges on any land owned by the delinquent water user, or acquired by the water user before the lien's expiration, within the recording County.

15. Agricultural water service shall not be provided to, nor shall a transfer of water be permitted to or from, any water user or parcel of land for which there are delinquent charges or assessments, regardless of the source of the water user's or parcel of land's obligation to the District or the nature of the District's service for which the charges were imposed, and notwithstanding the fact that the delinquent charges, including applicable penalties and interest, have been added to the assessment(s) on the parcel(s) for which they were incurred. Water service shall be discontinued on the 1st of the month following that in which charges or assessments become delinquent, or as soon thereafter as reasonably possible; provided, that when the 1st of the month falls on a Saturday, Sunday, or holiday, such service shall be discontinued on the next working day.

16. The General Manager may require that all current charges be paid before the transfer of remaining water will be allowed.

17. If a water user's delinquent charges are delinquent for 30 days or more, or if a water user's delinquent charges are added to the annual assessments on any lands within the District, or the procedure in paragraph 14 is implemented, the General Manager shall require, as a condition of resumption of water service, that advance payment of all water charges be made for the 12-month period immediately following resumption of service, according to a schedule to be determined by the General Manager. In lieu of advance payment, the District, at its option, may accept in a form satisfactory to the General Manager a written guarantee from a recognized financial lending institution.

18. The General Manager, after consultation with and approval by the Finance & Administration Committee, may also require advance payment and/or payment by cashier's check or such other actions as he may deem necessary when a water user's account is determined, based on the payment history or other actions of the water user, to create a financial risk or hardship for the District. Circumstances which constitute the basis for such a determination include but are not limited to the following: (1) instances of a water user's checks being returned unpaid or (2) instances where a water user whose account is delinquent has, in violation of District regulations, taken water from a District delivery. In lieu of advance payment, the District, at its option, may accept in a form satisfactory to the General Manager a written guarantee from a recognized financial lending institution.

19. As used in these terms and conditions, the term "charges" includes water charges, land-based charges and payments due the District under any lease or other agreement between the District and the water user.

20. Agricultural water service shall not be provided to any water user who has failed to file, or to any lands for which there has not been filed, the certification or reporting forms required pursuant to Reclamation law, and particularly the Reclamation Reform Act of 1982. Any water delivered in violation of this provision may be subject to charges and administrative fees pursuant to federal law or regulation.

21. Agricultural water service shall not be provided to any water user who fails to provide the District with crop information at the time(s) and in the form required by the General Manager.

22. By applying for or taking delivery of agricultural water from the District, the water user agrees to these terms and conditions of service.

23. The District may modify or terminate these terms and conditions; provided, that such modifications or terminations are prospective only and notice thereof is given prior to the effective date.