

Santa Clara Valley Water District

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RULES AND REGULATIONS FOR THE SERVICE OF SURFACE WATER July 1, 1974

SECTION 1

DEFINITIONS

- BOARD:** Means the Board of Directors of Santa Clara Valley Water District.
- CONDUITS:** Includes canals, laterals, ditches, flumes, pipes, and their appurtenances, and natural stream channels where used as conduits by the District.
- DISTRICT:** Means the Santa Clara Valley Water District.
- DISTRICT WATER:** Refers to waters which are owned or controlled by the District and includes waters which have been stored and waters which have been imported.
- DIVERSION:** Means the act of transferring water from a District conduit to a private conduit or property.
- HOLDER OF TITLE:** Includes a holder of evidence of title and, also, a holder of land under a possessory right acquired by entry or purchase from the United States or the State of California.
- GENERAL MANAGER:** Means the General Manager of Santa Clara Valley Water District.
- OPERATE:** Includes use, maintain and repair.
- QUALIFIED USER:** Means any holder of title to a parcel of land who has complied with all the requirements of these Rules and Regulations and obtained a permit to divert District water.
- WATER YEAR:** Means the period from July 1st of one year to June 30 of the following year, both inclusive.

NOTE: The words "he", "him" and "his" as used herein include "she", "her" and "hers" and "it" and "its".

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SECTION 2

PURPOSE OF DISTRICT

2.1 It is one of the primary purposes of the District to make available an adequate supply of water for all users within the boundaries of the District. It is considered that any appropriate means by which the pumping draft is reduced operates to this end. Therefore, in order to conserve the underground supply for the benefit of all, the District will permit the diversion and use of imported water and/or water released from storage for use within the District, pursuant to these Rules and Regulations.

SECTION 3

CONTROL OF SYSTEM

3.1 The operation of the works of the District shall be under the management and control of the General Manager, appointed by the Board, and no other person except his employees and assistants shall have any right to interfere with said works in any manner except by order of the Board.

SECTION 4

DIVERSION OF DISTRICT WATER

4.1 Qualified users will be allowed to pump or otherwise divert District water from any District conduit in which the District can release District water; provided, however, that no diversion will be allowed if the same unreasonably interferes with the operation of a District conduit or results in the waste of water.

SECTION 5

DISTRICT PERSONNEL

5.1 The District staff will distribute the water available in a fair and impartial manner to all persons qualified to receive such water, and will apply these Rules and Regulations without fear or favor, and will promptly report any infraction thereof.

5.2 Any complaint regarding releases or apportionment should be referred to the Water Resources Technician and, if it is not satisfactorily settled by him, it may then be taken up with the Water Operations Supervisor. If not satisfactorily settled by him, it may then be appealed to the Board.

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SECTION 6

DISTRIBUTION OF WATER

6.1 Whenever, through lack of capacity in a District conduit, or for any other reason, it is impossible to distribute the amount of water desired by qualified users in any or all portions of the District, such supply as can be delivered will be equitably prorated among qualified users until such time as delivery of a full supply is possible.

SECTION 7

CONTINUITY OF USE

7.1 Qualified users shall be required to use water on a continuous basis, that is, 24 hours per day during all days including Sundays and holidays. Where a qualified user is located on a distribution facility subject to schedule of use and fails to take water when available at the time scheduled for him, he shall be placed at the end of the schedule and shall forfeit his right to water until all other qualified users on the distribution facility have been served.

7.2 Where a qualified user is located on a stream or canal and has ordered District water for a specified period, and has caused waste of water (a) by failing to take it when agreed, (b) by failing to take it continuously, or (c) by failing to notify the District at least 24 hours in advance of termination of his irrigation if terminated sooner than originally agreed, he shall be charged for the period or periods during which water went to waste as if he had taken water continuously during the agreed period.

7.3 Qualified users expecting to divert water on a basis other than 24 hours a day shall make arrangements for adequate storage to hold the requested flow without causing waste. If waste of water occurs as a result of a user's failure to comply, the user will be billed for the total requested and delivered flow regardless of amount diverted. If it can be demonstrated that no waste of water will occur, special written permission may be given to use water non-continuously.

SECTION 8

PERMITTED DIVERSIONS INCLUDE STORAGE

8.1 Diversion of District water may include both direct use and the temporary storage of such water for subsequent use.

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SECTION 9

INTERRUPTIONS OR IRREGULARITIES IN SCHEDULES

9.1 A diligent effort will be made by the District to maintain a reasonably uniform flow in accordance with the schedules set up on the District conduit under its control. Whenever an interruption of service occurs, the District will, with reasonable diligence, notify qualified users affected thereby of any change in schedule. Unless otherwise determined by the General Manager, the distribution of water under rotation schedules will commence from the upper end of each conduit and progress downstream.

SECTION 10

APPLICATION FOR PERMIT

10.1 Applicants for permits to divert District water from a natural water course who claim riparian rights to the use of water from such natural water course, shall sign and return to the District an agreement on forms to be supplied by the District. If irrigation is intended the applicant shall indicate thereon among other things the number of acres of each type of crop to be irrigated, the number of such acres for which he claims riparian rights, and the intended rate of diversion.

10.2 Applications must be signed by the holder of title to the land on which water is to be used. Applications shall be filed with the District. Applications will be received at any time, but any period used for allowance of a riparian entitlement credit as specified in Section 11 herein shall begin on the first day of the month next following the date of the application.

10.3 With the exception of a minimum user as hereinafter defined, an applicant to divert water may sign an application and agreement to divert District water for a period of indefinite term extending beyond the ensuing diversion season and terminable (a) by proper and lawful action of the District or (b) by a notice of termination given the District by the landowner or (c) automatically upon a transfer of title to the subject property; provided, that upon such termination all charges due to the District shall be immediately payable and shall be and remain the obligation of said applicant unless, with the consent of the District, such charges are assumed by the new owner.

10.4 An applicant to divert water who is a minimum user as hereinafter defined shall file his application annually.

10.5 Where two or more persons divert water from a common pump or diversion works, each must file a separate application for his own land.

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10.6 Applications requiring application fees must be accompanied by such fees as specified in Section 11.

10.7 Applicants shall agree to abide by the decision of the District whenever allocation of water is necessary.

10.8 On April 1st or as soon thereafter as reasonably possible, the District will apportion among the qualified applicants the available supply on each District conduit. Delivery schedules will be prepared, based on requested delivery dates and quantities insofar as possible. Where it is impracticable to correlate all requests, rotation schedules will be set up as outlined in Section 9.

SECTION 11

FEEES AND CHARGES

11.1 An applicant who is a minimum user as hereinafter defined shall pay a minimum charge to the District at the time of filing his annual application as aforesaid. The charge shall be established by the District in each year for the ensuing water year.

11.2 Other applicants will pay a charge based on the applicant's diversion of District water at a rate per acre-foot which shall be established by the Board in each year for the ensuing water year. The charge so made shall be computed and paid as follows:

- (a) On or after January 1st in each water year, the District will determine the amount of water applicant has diverted hereunder between July 1st and December 31st and on or after July 1st in each water year, the District will determine the amount of water applicant has diverted hereunder between January 1st and June 30. If on December 31st it is determined that the amount of water applicant has used during the first period falls within the definition of "minimum use" as hereinafter defined, an invoice will not be issued until the end of the second period (June 30th). When economically practical, the District will meter diverted surface water. The determination of unmetered surface water will be consistent wherever practicable with methods used to determine unmetered groundwater. In the case of a surface water diversion facility to which no meter is attached, the production will be determined by a method reasonably available to the District and most likely to be accurate. The acceptable methods of determining such production graded as to preference from highest to lowest are as follows:

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1. By use of an efficiency or flow test determining the rate of diversion of the facility together with a device which accurately records the duration of operation of the facility within the reporting period.
2. By use of an efficiency or flow test determining the kilowatt hours of electrical power necessary to produce an acre-foot or other quantity of water together with a device that accurately records the consumption of kilowatt hours within the reporting period.
3. By use of standard methods of measuring irrigation water together with total hours of diversion to determine total consumption for the reporting period.
4. By reference to a crop factor, being the average or normal irrigation requirements per acre of the crop or crops irrigated by the facility in question, as shown in the current "Table of Water Factors" as adopted by Resolution of the Board.
5. By special agreement between the applicant and the District.

The number of acre-feet so found will be multiplied by the established rate. The applicant will be billed for the amount due less any credit due applicant on account of his diversion of water from a natural water course to which he has an entitlement, as hereinafter described. The user will pay that charge for water which is either calculated upon his diversion or is the minimum charge, whichever is greater. If the amount due is not paid within thirty (30) days of billing, no further water delivery shall be made until the same is paid. Withholding of water will be in addition to any other lawful right of collection by the District of the sum due, or assessment of interest and penalties thereon.

- (b) If any user shall fail to pay the amount found due within thirty (30) days of billing, the District shall make a late charge at the rate of one percent (1%) each month on the delinquent amount.
- (c) Should any person divert District water contrary to this Resolution, the District shall, in addition to making the late charge provided herein, assess a penalty charge against such person in an amount of Fifty

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Dollars (\$50.00) or ten percent (10%) of the amount found by the District to be due, whichever shall be greater.

(d) Applicants for permits to divert District water from a natural water course who claim prior rights to the use of water from such natural water course shall be permitted an entitlement as found by the District. Such an entitlement is the amount of water an applicant may divert without charge from the natural flow of a stream, defined as the flow which would have occurred therein as to both time and quantity in the absence of storage or importation. The amount is the portion of the natural flow the applicant could divert to beneficial use without waste and subject to the prior or correlative rights of all others.

(e) In the case of claimed riparian rights for other than an irrigation use, the District will determine and compute applicant's riparian entitlement upon the basis of availability of natural flow therefor. In the case of claimed riparian rights for irrigation, the District will determine and compute applicant's riparian entitlement in terms of a percentage of the natural flow by dividing the total riparian irrigated acreage on the stream into applicant's riparian irrigated acreage. This is expressed in the following:

$$E_r = \frac{A_a}{A_t} \times 100$$

E_r = riparian entitlement, or percentage of natural flow to which applicant is entitled,

A_a = applicant's irrigated riparian acreage,

A_t = total irrigated riparian acreage on stream for application period.

(f) Anything herein to the contrary notwithstanding, the District can give no credit for an entitlement if in fact and without the fault of the District natural flow of the stream did not reach the applicant's point of diversion.

(g) To obtain a riparian entitlement credit, a qualified user shall maintain an accurate log of diversion periods which shall be available to the District upon request.

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11.3 Where a pumping plant or plants have been constructed by either the District or a group of users and are operated by said District, each applicant shall assume his share of the pumping costs, as determined by the District, when the plant is used for pumping water for applicant's use.

11.4 Annually the Board shall set a minimum fee, payable in advance for the water year, or any part thereof, for any active facility diverting District water by a minimum user. A minimum user is defined as a user who diverts District water for use,

- (a) which does not exceed one-half(1/2) acre of irrigated land, or
- (b) whose diversion in each water year does not exceed three-quarters of one acre-foot.

The District shall have the option to require such user to pay at the regular established rate, if, upon investigation, it is determined that the water user would produce a greater amount of revenue than the minimum fee.

11.5 Maintaining adequate flows to qualified users may cause some waste of water attributable to the surface water program as a whole. When such waste can be determined, the cost thereof will be apportioned among qualified users, excluding minimum users, in proportion to their diversion. This apportionment will be charged at the appropriate unit cost for water and will be included in the billing for the six-month period.

11.6 Any protest regarding quantities of water diverted and charges made shall be made within fifteen (15) days following mailing of the invoice in question. Such protest, unless resolved by the Operations Branch, shall be made to the Board of Directors who shall, upon notice to the protester, hear and determine the same.

SECTION 12

REFUNDS

12.1 No refund or any other monetary adjustment will be made in the event of shortage in delivery.

SECTION 13

DISTRICT CONTROL OF DIVERSION AND ACCESS TO LAND AND DITCHES

13.1 An applicant proposing to divert water by pumping shall provide a means of locking pump, which means is acceptable to the District. The lock to be used shall be a District lock.

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13.2 An applicant proposing to divert without pumping shall install a suitable headgate or other device acceptable to the District which can be locked by a District lock.

13.3 Employees and agents of the District shall have access at all times to all lands irrigated with District water, and to all diversion devices or structures, and to all streams, creeks, or conduits for the purpose of inspection, examination, measurement, survey or other necessary purposes of the District. The District shall have the right to install, maintain and examine a measuring device upon an applicant's line used for diversion of District water.

SECTION 14

MAINTENANCE AND OPERATION OF DISTRICT CONDUITS

14.1 The maintenance and operation of all conduits belonging to the District shall be exclusively the responsibility of the District. No person shall be allowed to make any changes whatever in the flow of water in these conduits except when specifically authorized to do so by an employee or an authorized agent of the District.

14.2 No person shall be allowed to make any opening in, cut, plow down or otherwise interfere with or weaken any canal or ditch bank, or cut, tap or in any way interfere with any pipeline or any other conduit of the District, unless specific authority has been granted in writing by the District.

14.3 The maintenance and operation of all conduits, pumping plants or other diversion facilities belonging to private parties shall be the exclusive responsibility of the owner. The District will not maintain or operate any such diversion facility where such facility is used for private purposes.

14.4 Private diversion facilities shall be so maintained that they do not unnecessarily waste water. The District shall be permitted to inspect and examine such facilities and if, upon examination, it is found that they will unnecessarily waste water, the District may refuse to permit the diversion of District water until the required repairs are made.

14.5 No structures of any kind shall be placed in, on, across or over any conduit of the District by any landowner or water user except those facilities approved in writing both as to location and character of construction, by the District.

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SECTION 15

RIGHTS OF WAY

15.1 No buildings, corrals or other structures will be permitted on any District right of way without written permission of the District. Use of such rights of way for pasturing, grazing, or other agricultural purposes by adjoining property owners shall be subject to District's superior right to use this land for the purpose or purposes for which such right of way was acquired.

SECTION 16

WATER RIGHTS

16.1 The District, in the administration of these Rules and Regulations, shall not interfere with any established water rights. The District does, however, exercise complete control over waters delivered into District conduits or which have been stored in District reservoirs and subsequently released and the District expressly asserts the right to recapture and release and/or reuse all waters which pass from the premises in which it was alleged they were to be used.

16.2 No user who diverts water from the District acquires any proprietary right therein by reason of such diversion or use, nor does such user acquire any right to sell such water, nor to divert it for use on premises other than those indicated on his application.

SECTION 17

ABATEMENT OF NUISANCE

17.1 No material or substance that will become offensive to the senses or injurious to health or injuriously affect the quality of the water, or obstruct the flow of water, or result in the scattering of seeds of noxious weeds, plants, or grasses, shall be placed or dumped in or along any conduit or reservoir, or be placed or left so it could by any means be deposited in any conduit or reservoir. Any violation of this Section will subject the offender to prosecution. All employees of the District will promptly report any violation of this Section. The property owners within the District are especially urged to cooperate in its enforcement.

SECTION 18

NON-LIABILITY OF DISTRICT

18.1 The District will not be liable for any damage of any kind or nature resulting directly or indirectly from the use of

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any privately-owned conduit or diversion facility, or the water flowing therein, or by reason of lack of capacity therein or for negligent, wasteful or other use or handling of water by the users thereof.

18.2 All water furnished by the District flows through many miles of open creek channels, canals, ditches or pipelines and is therefore subject to pollution, shortage, fluctuation in flow, and interruption in service. District employees are forbidden to make any agreements binding the District to serve an uninterrupted, constant flow of water. All water furnished by the District will be for a use or uses specified in the application and every user putting the water to other uses does so at his own risk and by doing so assumes all liability for, and agrees to hold the District and its officers and employees free and harmless from liability and damages that may occur as a result of defective water quality, shortages, fluctuation in flow, and interruptions in service.

18.3 The District will not be liable for the quality of water, shortage of water either temporary or permanent, or for failure to deliver such water.

18.4 Diverting by users of District water is done at the user's risk and the District assumes no liability for damages to pumping equipment or other damages as a result of turbulent water or shortage or excess of water, or other causes.

18.5 The District assumes no liability for damages to persons or property occasioned through defective conduits or other works.

SECTION 19

UNAUTHORIZED TAKING OF WATER OR INTERFERENCE WITH REGULATION OF WATER

19.1 It is contrary to these Rules and Regulations for any qualified user to divert more water than he has applied for by making an opening in any District conduit, or by tampering with any control gate, box valve, measuring device or structure diverting water from any District stream, creek, or conduit, or by inserting any pipe, hose, pump or other diverting device into any District conduit or any stream or creek in which District water is flowing, or causing the same to be done without consent of the District.

19.2 It is also contrary to these Rules and Regulations for anyone who has not fulfilled the prescribed requirements for a qualified user to divert District water by any means from a stream, creek or conduit.

19.3 It is also contrary to these Rules for anyone to divert water which he has received for lands within the District to any lands outside the District's boundaries.

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19.4 Anyone found violating the terms of this Section or of Sections 14.1 or 14.2 hereof shall be liable to criminal prosecution and, upon order of the General Manager, shall forfeit his right to take District water for the balance of that water year, or to take District water for the next succeeding water year, or both such forfeitures. Upon any such order imposing forfeiture of right to divert District water, the recipient may appeal the same to the Board which shall hear the appeal at its next regular meeting. At such hearing or at any time to which such hearing shall be regularly continued, the Board shall grant or deny the appeal and shall impose such forfeiture, if any, as it shall decide upon; provided, however, that any forfeiture so imposed shall not exceed suspension of the right to divert District water for a period beyond the next succeeding water year.

19.5 Anyone not a qualified user who has violated the terms of this Section and who thereafter seeks to become a qualified user shall not be deemed an eligible applicant therefor unless he shall first have paid to the District all such fees, together with such interest and penalties, as he would have paid had he been a qualified user hereunder at the time of such violation.

SECTION 20

WASTE OF WATER

20.1 A qualified user who wastes water, either wilfully, carelessly, or due to defective or inadequate, privately owned conduits, pumps, or other facilities and/or structures, or due to inadequate preparation of the land for irrigation, may be refused permission to divert District water until the conditions are remedied. The provisions of Section 7.1 will then apply to determine when water can be delivered.

SECTION 21

REPEAL OF CONFLICTING RESOLUTIONS

21.1 All resolutions or parts of resolutions inconsistent with the provisions thereof are hereby repealed.

SECTION 22

VALIDITY

22.1 If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, the remainder of the Resolution and the application of such provision to other persons or circumstances shall not be affected thereby.

SOURCE: Resolution No. 74-28 heretofore adopted by the Board of Directors of Santa Clara Valley Water District on April 2, 1974. (Effective July 1, 1974)