

**MOJAVE WATER AGENCY
ORDINANCE NO. 9**

**AN ORDINANCE OF THE MOJAVE WATER AGENCY ESTABLISHING
RULES AND REGULATIONS FOR THE SALE AND DELIVERY
OF STATE PROJECT WATER**

WHEREAS, the Board of Directors of the Mojave Water Agency (MWA) hereby finds:

1. The Mojave Water Agency is organized and operated pursuant to the Mojave Water Agency Law, California Water Code Appendix 9;
2. Section 15(a) of the Mojave Water Agency Law authorizes the MWA to "do any and every act necessary to be done so that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants of the Agency, including without limiting the generality of the foregoing, irrigation, domestic, fire protection, municipal, commercial, industrial and recreational uses and without limiting the generality of the authority given under subdivision (a) or under any other section of this Act, the Agency has the following additional powers: To enter into any contract with any person, corporation, utility, district, public corporation, the United States or the State of California, as the Board deems proper or advisable or in the interest of the lands and inhabitants of the Agency, to carry out or to execute any of the purposes of this Act."
3. In order to carry out the purposes of the Mojave Water Agency Law, the Mojave Water Agency does hereby adopt Rules and Regulations for the Sale and delivery of State of California Project Water by the MWA.

NOW, THEREFORE, be it ordained by the Board of Directors of the MWA as follows:

**RULES AND REGULATIONS FOR SALE AND DELIVERY
OF STATE OF CALIFORNIA PROJECT WATER BY THE MWA
AS SET FORTH BE ADOPTED**

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ARTICLE II

DEFINITIONS

Section 2.01 Definitions. As used herein the terms set forth below shall be defined as follows and shall have such meaning unless the context indicates otherwise.

- (a) APPLICANT: Any person or entity applying to the Agency for water service.
- (b) BOARD: The Board of Directors of the Agency.
- (c) CUSTOMER: An applicant for service, an approved applicant, or any person or entity receiving water service from the Agency.
- (d) AGENCY: The Mojave Water Agency.
- (e) GENERAL MANAGER: The General Manager of the Agency.
- (f) PROJECT WATER: Water obtained from the State Water Project. Any customer requesting the sale and delivery of State Project Water shall be subject to the Agency's State Water Contract. The water available to the Agency is subject to the limitation that the supply of water is interruptible. The

Agency makes no representation to the customer as to the quantity or quality of water delivered to the customer. No vested rights are obtained or inferred to the Customer upon the sale and delivery of any water.

ARTICLE III

QUALIFICATION FOR SERVICE

Section 3.01. Application for Service. Any applicant seeking to purchase water from the Agency shall make application therefor in such form as may be prescribed by the General Manager. The General Manager shall investigate each such application and may require the submission of additional information. The application and additional information as may be required, together with the General Manager's recommendations thereon, shall be submitted to the Board for action thereon.

Section 3.02 Term of Service. Service granted pursuant to an Application for Service shall be for a period of one year and shall be subject to annual renewal. For the purpose of annual renewals, existing customers shall be required to submit a renewal application to the Agency. Renewal of the sale of any water is for the period of one year and is temporary and interruptible in nature. No vested rights may be obtained or are inferred by the yearly renewal of water sales.

Section 3.03 Identification of Applicant and Intended Use. Each application shall state the legal capacity of the Applicant, e.g., public agency (indicating the type of agency and the law under which it was formed), corporation (indicating the state of incorporation and other pertinent information), partnership, or individual, and whether the Applicant is a public utility or mutual water company. The application shall state the nature of the ultimate intended use or uses to which the water will be put; e.g., municipal, industrial, agricultural, recreational, groundwater recharge, etc. The application shall contain such information as may be required by the General Manager to insure that the Applicants' ultimate intended use is consistent with Agency Policies and Constitutionally permitted uses. All applications shall be evaluated and deliveries authorized based upon the following priority uses: 1) municipal, 2) industrial, 3) agricultural, 4) recreational, 5) other. Service may be refused if the Board determines that the applicants ultimate intended use is not in accordance with Agency policies or permitted under the Constitution of the State of California.

Section 3.04. Services to be Wholesale in Nature. Each application shall contain such information as is necessary to assure the Board that the application is for service of a wholesale nature and that the Agency will not thereby become subject to the obligations of a water purveyor providing direct

retail service to consumers. In the event the Applicant seeks a waiver of such requirement, the application shall so state and there shall be attached thereto a statement of the reasons for seeking a waiver any documentary evidence in support thereof.

Section 3.05. Back-up Capacity of Applicant. Each application shall contain information indicating that the Applicant is capable of sustaining its service requirements from independent sources during the period of any interruption or curtailment of service from Agency facilities. In no instance shall the Agency be the sole source of water supply to any water purveyor for any development within the purveyor's service area.

Section 3.06 Treatment Facilities. Each application shall contain information indicating the Applicant has or will install such treatment facilities as may be required for the use or uses to which the Applicant intends to put the water.

Section 3.07. Power Generation Rights. Said rights shall extend to the generation of power as the water flows through Agency facilities only. It shall be the responsibility of the Agency to pay its expenses for any exercise of its right to generation of power pursuant hereto, and no Applicant shall be subjected to extra expense in connection therewith. In appropriate cases, the Agency and the Applicant may install joint facilities for power recovery purposes. In the event the Agency determines not to exercise its rights, the Applicant may undertake to install power recovery facilities for its own account.

Section 3.08. Indemnity for Groundwater Recharge. Each application shall contain the agreement of the Applicant to provide the Agency with indemnity for damages to lessees of the Applicant arising out of groundwater spreading operations of the Agency, or performed by others for it, in all circumstances in which the lease between the Applicant and the Applicant's lessee protects the Applicant against such damages.

Section 3.09. Application for Groundwater Replenishment. Except in cases in which the Agency undertakes to conduct groundwater replenishment operations on its own motion, an application shall be required whenever request is made that the Agency engage in groundwater replenishment operations, whether delivery is to be made to a customer, or such groundwater replenishment is to be conducted by or at the direction of the Agency without delivery to a customer.

Section 3.10 Metering by End User. All customers of the Agency shall be required to meter the use of water by all accounts (end users) served.

ARTICLE IV

INSTALLATION AND CONNECTION OF FACILITIES

Section 4.01 General Authorization. All service connections, including valves, pipe, meters and other equipment required, shall be installed at the expense of the Customer after authorization by the Board.

Section 4.02 Procedure. The Agency shall cause a service connection to be constructed pursuant to a written request by a customer in accordance with plans and specifications approved by the General Manager and by an authorized representative of the Customer. Except as otherwise specifically authorized by the Agency, all equipment and materials required for constructing the service connection shall be acquired by the Agency in its customary manner, or the Agency may utilize therefor suitable equipment and materials on hand.

Section 4.03 Facilities Included; Ownership by the Agency. The service connection shall include the facilities for diversion of water from the Agency's system and for delivery of such water into the pipeline distribution system of the Customer or the Customer's distributor. The service connection up to and including the fitting connecting with the pipeline through which the Customer will receive water delivered through the service connection, including any metering instruments and cabinets therefor, shall be and remain the property of the Agency and shall be operated, maintained and controlled by the Agency.

Section 4.04. Back-Flow. The Customer may be required to install adequate back-flow or back-siphonage equipment approved by the Agency or demonstrate adequate facilities exist to prevent back-flow into Agency facilities. The Agency solely shall determine when back-flow facilities are required and the type of device required. The device(s), when required, shall be installed at the service connection point and shall be maintained by means satisfactory to the Agency.

Section 4.05. Pressure Surges (Water Hammer). All service connection applications shall include data showing that any operation (gravity or pumping from pipeline, if required) will not damage any Agency facility. Such data shall include, but is not limited to surge analysis, structural calculation and hydraulic analysis for any pumping or delivery condition requested.

Section 4.06. Deposit of Estimated Costs. The costs of constructing the service connection shall be estimated by the General Manager, who shall cause a written estimate to be prepared and who shall inform the Customer's representative regarding the amount of such estimate. The total amount of such estimate shall be deposited by the Customer in advance of any action toward

construction of the service connection, including all items peculiar only to a given service connection, or it may be deposited in stages, upon approval of the Board. Costs shall include reasonable allowance for costs of design, supervision and overhead, in addition to direct costs of labor, equipment and materials.

Section 4.07. Use of Deposit. Such deposit or deposits shall be held and used to defray the costs of constructing the service connection, and the Agency shall not be required to proceed with the construction of the service connection in the absence of sufficient funds deposited therefor.

Section 4.08. Settlement Upon Completion. Upon completion of construction of the service connection, the Agency shall render to the Customer a statement of all costs, in accordance with the customary practice of the Agency, incurred by the Agency in constructing the service connection; if such costs shall exceed the sum of money deposited by the Customer with the Agency, the Customer promptly shall pay to the Agency the amount by which such costs shall exceed such deposit; and if such costs be less than the said sum of money so deposited, any unexpended balance of such deposit shall be returned by the Agency to the Customer.

Section 4.09. Easement for Service Connection. The Customer shall cause to be granted to the Agency or the Agency shall acquire at the Customer's expense, *directly from the fee owner of the affected land*, such easement as may be necessary in the opinion of the General Manager for the construction, operation, maintenance and repair of the service connection. Said easement and the grant thereof shall be approved by the Agency; provided, however, that fee title to the property required for such service connection may be acquired in the same manner as an easement and in lieu of an easement if the General Manager and Customer agree that it would be advantageous to do so. Customer shall provide, or the Agency may obtain at Customer's sole cost and expense, a policy of title insurance insuring that clear title to the easement, or fee, is vested in the Agency, subject to any encumbrances that have been approved in writing by the General Manager. The amount of title insurance shall be determined by the acquisition costs, unless the acquisition is made without costs or for less than the amount of the coverage which will be provided for the price paid for the title report, in which case the title policy shall be in the amount of such coverage or such amount as may be reasonably determined by the General Manager.

Section 4.10. Maintenance of Service Connection. Upon completion of the service connection, the Agency shall be responsible for any subsequent maintenance, alteration, reconstruction or relocation of such service connection except changes which are requested by the Customer, which changes shall be handled as a new service connection. However, prior to the release of water by the Agency into the pipeline distribution system of the Customer or of the Customer's affected distributor, the Agency and the Customer or Customer's

Distributor shall each install its own flow control device or devices as a means of maintaining uniform flow.

Section 4.11. Environmental Requirements. Public agency customers are responsible for ensuring that the obligations of lead agencies as described in the California Environmental Quality Act (CEQA) and its implementing guidelines are fulfilled. The Agency shall fulfill all other obligations that may arise from its involvement in construction of the service connection and shall provide such information as it has available which is necessary to ensure compliance with the Act and its implementing guidelines.

Section 4.12. Fair Value of Outlet. The fair value of an outlet installed during pipeline construction will be established by the General Manager at the time the service connection is constructed at the outlet, and the charge to a Customer for such an outlet will be based on this fair value; provided that any outlet larger than 24 inches or any outlet installed after a pipeline is placed in operation shall be charged for its actual cost.

ARTICLE V

WATER SERVICE AND OPERATIONS

Section 5.01. Limitations of State Contract Service. All water service made pursuant to the Agency's State Contract shall be subject to all of the terms and conditions of the said State Contract and to any conditions affecting the State's source of supply or the availability of supply.

Section 5.02. Interruptible Service. All water supplied by the Agency shall be served upon an interruptible basis. Interruption may be occasioned due to the terms of the Agency's State Contract by reason of the Agency's requirements for maintenance and operation of its facilities, including the design and operating criteria established pursuant to Section 5.05 or a demand by Agency's Customers in excess of State Water Project Water Entitlement pursuant to Section 6. The Agency shall notify its customers in advance of any nonstandard interruption to the extent reasonably feasible. Due to the nature of the Agency's facilities and the potential modes of service required, the Agency cannot guarantee any specific level of pressure. **CUSTOMERS SHOULD USE CAUTION IN THE ISSUANCE OF CAN OR WILL SERVE LETTERS FOR OTHER LAND USE ENTITLEMENT BASED UPON STATE PROJECT WATER.**

Section 5.03. Quality. Except as otherwise specifically agreed, all water served by the Agency is raw untreated water and shall not be supplied for domestic purposes by any customer without such treatment as may be required to comply with all applicable laws and regulations. The Agency makes no

representation as to the quality of the water it supplies as to its suitability for any particular purpose. Reference is hereby made to Article 19 of the Agency's State Contract, but the Agency does not undertake to monitor the extent of the State's compliance or noncompliance with such standards, but only to transport said supply to its customers. With respect to any exchange water or other supply available to the Agency, the Agency shall be responsible only to exercise ordinary care in transporting and safeguarding said supply and shall not be responsible for the quality of such water as it is received by the Agency. The Agency may, however, reject any supply which is unsuitable by reason of contamination or pollution which render it impractical for the Agency Customers to treat and use the same.

Section 5.04. Special Classes of Services. The Agency may from time to time establish special classes of service reflecting the special conditions applicable to such service. Such classes may include, but shall not be limited to the following:

- (a) Service outside the Agency.
- (b) Service to property not subject to Agency taxes.
- (c) Service with a special rate in accordance with the terms of *annexation to the Agency*.
- (d) Service pursuant to special contractual arrangement with the Agency.

Water supplied for delivery to property not subject to Agency taxes may be subject to a special outside rate as authorized by Water Code Section 71613. The outside rate may be applicable to any Agency delivery, wherever made, which makes water available for use on property not subject to Agency taxes, including (1) direct delivery to such property, (2) delivery to such property by exchange (e.g., delivery of Agency water within the Agency to make other water supplies otherwise used within the Agency available for use on property outside the Agency), and (3) any delivery ordered to make water available for use outside the Agency.

Section 5.05. Water Rates. All water rates for water service made by the Agency shall be established from time to time by resolution of the Board of Directors of the Agency.

Section 5.06. Pressure and Flow Conditions. All Applicants and Customers are required to accept such conditions of pressure and service as are provided by the distributing system at the location of the proposed connection, and shall agree to hold the Agency harmless from any damages arising out of low

pressure or high pressure conditions or interruptions of service. The Agency will not make deliveries at flows less than one cubic foot per second or for a period less than 24 hours. Orders for water must be placed one week in advance of actual delivery.

Section 5.07. Payment of Water Charges. Water charges are due and payable at the office of the Agency on date of mailing bill to the Customer or his agent as designated in the application and shall be delinquent 30 days thereafter. Service may be discontinued without further notice if payment of the water charge is not made prior to the date such charge becomes delinquent.

Section 5.08. Meter Testing. When the Accuracy of a water meter is questioned, the Agency upon request will cause an official test to be made at its own expense. The Customer shall be duly notified of the time and place of such test and may be present when any such test is made by the Agency. The meter will be tested on variable rates of delivery and if the average registration is more than two percent in excess of the actual quantity of water passing through the meter, the Agency shall refund to the Customer the overcharge based upon the test, for the prior twelve months, unless it can be shown that the error was due to some cause for which the date can be fixed. In the latter case, the overcharge shall be computed back to and not beyond such time. Any undercharge determined upon the basis of the test may be billed to the Customer on a similar basis. Requests for a test within 12 months of a prior test will be at the Customer's expense unless the meter is determined to be over registering deliveries as determined in this section.

Section 5.09. Estimates of Water Requirements and Schedules of Deliveries. Before August 1 of each year, each customer shall furnish the Agency in form provided by the Agency, with an estimate of the amounts of water to be furnished to such customer by the Agency. These estimates will be used by the Agency in planning the construction needed to complete the Agency's ultimate distribution system; in planning the future operation of such system; and in preparing notices for submission to the State Department of Water Resources which will be used by the State to order power for pumping on the State Water Project.

Section 5.10. Contents of Estimates. Each estimate furnished by a Customer pursuant to Section 4.09 shall contain, as a minimum, for each service connection for each month of the year beginning with succeeding July 1, and for the entire Customer for each month of the succeeding four year, the following information:

1. The quantity of water to be delivered by the Agency to the Customer.
2. The quantity of water to be used for:

- (a) Domestic, industrial, and municipal purposes, exclusive of groundwater replenishment by spreading or injecting.
- (b) Groundwater replenishment by spreading or injecting;
- (c) Agricultural purposes.
- (d) Recreational.
- (e) Other uses.

The estimate shall constitute the member public agency's request for deliveries for the first of the five years covered therein.

Section 5.11. Revision of Estimates. The Customer may make revisions to any of its estimates upon reasonable notice to the Agency.

Section 5.12. Order for Water. Any Customer requesting delivery of water from the Agency shall place such order in writing. The General Manager may prescribe a suitable form for use in placement of water orders and may revise the same from time to time. Any customer water order shall be accompanied by a copy of the ordinance, resolution, minute order, or other action of the Board or other governing body of the Customer which authorizes the placement of the order.

Section 5.13. Shortage in Water Supply. In any year in which there may occur a shortage in available supply of Project Water, the Agency shall reduce the delivery of Project Water proportionately to all parties to which the Agency supplies water, including Improvement District M of Division 2. It is provided that the Agency may apportion available Project Water on some other basis if such is required to meet minimum demands for domestic supply, fire protection, fire suppression or sanitation to a specific area of the Agency during the year. No vested rights are obtained by the Customer upon the sale and delivery of water apportioned by this Section nor are any such rights inferred by virtue of an Agency decision to provide water to a Customer in a specific year.

Section 5.14. Outside Sales. Water may be sold for use outside the Agency only when the Board finds there is a surplus above that required by consumers within the Agency, as authorized by Water Code Section 71612. All such sales shall be limited to the period of surplus and shall terminate when the water available is required for use within the Agency. Any sales for delivery within or without the Agency which makes water available for use on property outside the Agency shall be treated as an outside sale for such purposes, including (1) direct delivery to property outside the Agency, (2) delivery to property outside the Agency by exchange (e.g., delivery of Agency water within the Agency available to use on property outside the Agency), and (3) any delivery ordered to make water available for use outside the Agency.

ARTICLE VI

GENERAL

Section 6.01. Liability and Indemnification. Neither the Agency nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution water supplied by the Agency to a customer after such water has been delivered to such Customer; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond the point of such delivery; and the Customer shall indemnify and hold harmless the Agency and its officers, agents, and employees from any such damages or claims of damages. Neither the Customer nor any of its officers, agents, or employees shall be liable for the control, carriage, handling, use, disposal, or distribution of water prior to such water being delivered to the Customer; nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water prior to its delivery to such Customer and the Agency shall indemnify and hold harmless the Customer and its officers, agents, and employees from any such damages or claims of damages.

Section 6.02. Water Resources Management Requirements. In order to promote good water resources management and prevent waste of water resources, undesirable groundwater conditions, and unnecessary expense to the inhabitants and taxpayers of the Agency, the Agency may encourage or require the use of alternate supplies where such is required to prevent waste or undesirable groundwater conditions and/or to prevent unnecessary expense to the Agency's inhabitants and taxpayers. The Agency may also encourage the use of special conservation facilities or devices where appropriate.

Section 6.03. Design and Operating Criteria. The Agency's facilities have been designed and planned within the limits of available funding to meet water service and other needs within the Agency to the maximum extent feasible and to allow for maximum flexibility for use of facilities for different purposes and in different modes of operation. Such a system necessarily makes it impossible to always respond automatically to service demands when facilities are needed for conflicting demands or modes of service. It is the applicant's responsibility to consult with Agency staff to obtain information as to the Agency's requirements for connection and the capabilities of the Agency system before designing facilities for connection to the Agency system.

Section 6.04. Indemnification for Water Spreading. The Agency shall require execution of an agreement indemnifying the Agency and its officers, agents, and employees against liability for damages of any nature whatsoever, including but not limited to property damage, personal injury, or death, arising out of or resulting from, or connected with, groundwater replenishment by spreading or injecting which is conducted by or at the direction of the Agency pursuant to the application or request of a customer or water purveyor or in which water is to be delivered by the Agency to a Customer or water purveyor for such use.

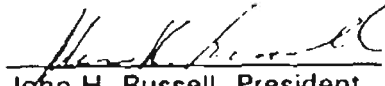
Section 6.05. Appeal. A decision denying an Application for Service may be appealed to the Board by Applicant by notifying the General Manager in writing of Applicant's decision to appeal no later than fourteen (14) days from the date of denial of the Application for Service by the Board.

The decision of the Board on any appeal shall be final.

This Ordinance shall be in full force and effect upon the date of adoption, and shall be published in full in a newspaper of general circulation within ten (10) days from the date of adoption.

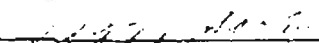
Passed and adopted this 25th day of April, 1995, by the following vote:

AYES: 7
NOES:
ABSTAIN:
ABSENT:



John H. Russell, President
Board of Directors
Mojave Water Agency

ATTEST:



Peggy Sartor, Secretary
Board of Directors
Mojave Water Agency