

TO: North San Joaquin Board of Directors

FR: Spaletta Law P.C.

DT: April 24, 2019

RE: Information for Board Discussion of Surface Water Delivery Policy

We are recommending that the Board adopt updated Surface Water Delivery Rules. Exhibit A is a first draft of the proposed rules for discussion purposes. The following policy issues require further discussion and direction from you. We will take the feedback from this discussion to prepare an updated draft for consideration at the next board meeting.

1. Turn-outs: The existing system has turn-outs, but they are unlikely to be used by the current landowners and are not metered. The new rules should require that all turnouts (old or new) be approved by the District before they are used, and if a new turn-out needs to be constructed, that the District approve the design before it is constructed. Under the proposed rules, landowners are required to get an encroachment permit from the District in order to construct their turnouts that hook into the District facilities. After the facilities are constructed, the District engineer will inspect the facilities. Once those steps have occurred, then a landowner can receive deliveries of water from the system. The reason for this process is to ensure there is not damage to district facilities or unauthorized diversions from district facilities. Is there a different process that should be considered?

2. Different Classes of Service. The Water Code allows Water Conservation Districts to have different classes of service. ID #3 was formed on the concept that landowners in ID#3 would have Class 1 service, and others who do not pay the acreage assessment will have Class 2 service. We have written the proposed rules to reflect this policy. All Class 1 lands will share an equal priority of right to service. If there is additional water available, should Class 2 supplies be allocated on a “first come, first served” basis? There are many situations where that rule does not have straightforward application – what if the district receives more applications for Class 2 supplies than are available, but all applications are postmarked the same day? Also, how will the District announce the availability of Class 2 supplies so that all growers will have an equal opportunity to apply? If the policy for allocating class 2 supplies remains “first come, first, served,” some consideration should be given to how the district announces those supplies and receives applications for supplies (e.g. don’t want to encourage a rush to the post office after the supplies are announced during a meeting).

3. Invoice Timing for 30% Deposit and Remaining Balance: Right now, the policy is set up so that 30% of the cost of water that is approved for delivery to a particular landowner must be paid within 30 days of the date that the District mails an invoice. The idea is that the District would mail an invoice to landowners on the same day it approves the applications for water. Dave pointed out during edits that the District is usually aware of whether or not it will have

water by April of each year. Is this early enough for the District to get necessary operating revenues?

Similarly, landowners will be required to pay the remaining cost of water within 30 days of receiving an invoice, but we didn't set a date in the policy for when the District would send bills out for the remaining 70%. Will the District have enough money to operate the system if it waits until the end of the season to send out bills? If not, when should bills be sent out to landowners?

4. Water Ordering: The process for water ordering in the rules is that the District will set forth a schedule showing the particular week when deliveries would be made to a particular landowner before the season starts. Currently, the rules state the schedule is due on June 1, but it may be tough to stick to that date every year, so an alternative is that the schedule can be due 15 days after signed contracts for water are due back from landowners. The landowner must request changes to the monthly schedule two weeks prior to a month they're scheduled to receive water.

Prior to the beginning of each month during the irrigation season, the District will publish a detailed hourly schedule for when deliveries will be available to particular landowners. They'll be required to open and close their valves at the times set forth on the schedule in order to take delivery. That schedule can only be changed on 72 hours prior notice.

Keep in mind that this process is hopefully just a temporary place-holder that will be replaced by an automated ordering and delivery system in the near future.

5. Cost of Water Not Delivered: The rules currently state that Landowners will be responsible for the cost of any water ordered and put in the system for them, regardless of whether they actually opened their turnouts to receive those deliveries. The District will should consider exceptions to that rule in the following situations: (1) What if a landowner on the pipeline takes delivery of water that another landowner abandons (with District permission/coordination), should the substitute user pay full cost, only a portion of the cost (e.g. the remaining 70%), or nothing at all (all cost paid by landowner that failed to take delivery)? (2) Same situation, but the landowner who takes delivery of the abandoned water is a landowner in Bear Creek or Pixley Slough who needs to pump the water again to get it on their land? Should there be explicit policies to address this?

6. Penalties for Illegal Diversions / Destruction or Illegal Discharges into District Facilities: There are numerous existing facilities on the pipeline that could be used to take water without District approval. Additionally, landowners with property that is crossed by district facilities could destroy or illegally discharge into those facilities. As a result, the current penalty, "no future deliveries of water until the violation is remedied," is not a sufficient disincentive for someone who already does not receive deliveries from the District.

The Water Code allows the district to enact "ordinances" that are effective after a hearing, roll call vote, and publication for 10 days. Water Code section 74650-52. Any violation of an ordinance is a misdemeanor and punishable by a fine not to exceed \$500, or by imprisonment in county jail, or both. A violation or threatened violation of an ordinance may be enjoined by a civil action in court. The District may want to consider adopting a formal ordinance to make it unlawful to tamper with or divert water from District facilities without express permission from the District.

Exhibit A

Surface Water Rules

I. Definitions:

1. **Board:** The Board of Directors of the North San Joaquin Water Conservation District as duly constituted pursuant to Division 21 of the California Water Code.
2. **District:** The North San Joaquin Water Conservation District.
3. **District Office:** The office designated from time to time by the Board of Directors. The current District office is located at 498 East Kettleman Lane, Lodi, CA 95240. The mailing address of the District Office is P.O. Box E, Victor, CA 95253. The telephone number is 209-368-2101.
4. **District Facilities:** All infrastructure, equipment, or other property which are owned and/or operated by the District for the purpose of diverting, conveying, controlling, measuring, pumping, storing, or delivering water to land within the District, including but not limited to any pipelines, pumping stations, ditches, pumping stations, and valves.
5. **Improvement District No. 1:** The Tracy Lake Improvement District formed by District Resolution No. 2012-1 (“ID#1”).
6. **Improvement District No. 3:** The South System Surface Water Users Improvement District formed by District Resolution No. 2018-15 (“ID#3”).
7. **Irrigation Schedule:** A document prepared by the District that designates when water will be available for delivery to a particular Landowner.
8. **Landowner:** Any individual or legal entity owning real property within the District.
9. **Landowner Facilities:** Facilities that are designed, constructed, and installed by the landowner, at the landowner’s expense, that are required in order to receive deliveries of water from District Facilities. “Landowner Facilities” includes facilities that are shared by multiple landowners, such as lateral pipelines from District Facilities that are privately owned and deliver water to more than one Landowner.
10. **Watermaster:** An employee or contractor of the District authorized to operate District Facilities.

II. Access to Surface Water from District Facilities

1. **Under District Control:** The operation and maintenance of District Facilities shall be under the exclusive management and control of the Board, and the Watermaster, and their duly appointed representatives.

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- a. No unauthorized person(s) shall interfere with District Facilities in any manner, including, but not limited to, the opening, closing, or regulating of any of the District's valves, gates, or turnouts unless authorized by the Board.
 - b. Any damage to District Facilities resulting from a Landowner's actions, or the actions of a Landowner's agents, tenants, or employees, shall be the responsibility of the Landowner. If satisfactory repairs are not made promptly by the responsible Landowner, the District will make the necessary repairs and charge the responsible Landowner for the cost. All costs owed to the District for repairs pursuant to this paragraph shall be paid in full before a Landowner is eligible to receive surface water from the District.
2. **Use of District Facilities:** A Landowner is eligible to receive water from District Facilities at the times indicated on the Irrigation Schedule when: (1) the Landowner has installed a turnout and measurement device in compliance terms set forth in an Encroachment Permit issued by the District; (2) the District has inspected and approved that the Landowner Facilities comply with the Encroachment Permit; and (3) the Landowner has a contract to receive water from District facilities and is current on all required payments.
3. **Responsibility for Landowner Facilities:** Landowners are responsible for all costs related to construction, design, and approval of Landowner Facilities. The District shall not assume or incur any liability for the construction, maintenance or repair of privately-owned turnouts, gates, pumps, weirs, measurement devices, or other appurtenances. Before water is delivered from District Facilities to Landowner Facilities, the Landowner shall be responsible for ensuring that Landowner Facilities are in a proper condition to receive water and are free from obstructions to flow.
- a. **Turnouts and Measurement Devices:** Landowners are responsible for the costs of design, construction, installation and maintenance of Turnouts and Measurement Devices. Landowners shall not construct a Turnout to take water from District Facilities until they have submitted an Encroachment Permit Application to the District, and the permit has been approved. Encroachment Permit Applications will be made using forms that are provided by the District upon request.
4. **Priority to Available Surface Water**
- a. **Class 1 Supplies:** Landowners with lands located within Improvement District No. 1 and Improvement District No. 3, who are not delinquent on payment of any annual acreage assessments, water charges, or penalties may submit an application for Class 1 Supplies. Class 1 Supplies will be distributed as follows:

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- i. The first 3,000 af of surface water available to the District will be allocated pro-rata based on acreage to all eligible Landowners in ID #3 that have timely Submitted an Application for Class 1 Supplies and paid the applicable Water Charge Deposit.
 - ii. The next 4,000 af of surface water available to the District will be allocated pro-rata based on acreage to all eligible Landowners in ID #1 that have timely Submitted an Application for Class 1 Supplies and paid the applicable Water Charge Deposit.
 - iii. All pro-rata allocations will be capped at the amounts requested in the Landowner applications for the given year.
 - iv. Any remaining water supplies available will be treated as Class 2 supplies as allocated as set forth below.
- b. **Class 2 Supplies:** If the District determines that Class 2 Supplies are available, then Applications for Class 2 Supplies will be granted on a first-come, first-served basis.
 - c. **Other Supplies:** The District is pursuing water banking programs with third parties. Any water available from non-District sources will be allocated separately to Landowners participating in the banking programs by contract.
5. **No Guarantee on Quantity:** The District's irrigation season shall begin on a date and time set by the Board and shall end when the available supplies of water run out or on dates to be established by the Board. The District does not guarantee the availability of water either in the amount or the timing of the delivery requested by the Landowner.
 6. **No Guarantee on Quality:** Water furnished by the District to Landowners is to be used for irrigation purposes only and is not considered fit for human consumption without treatment. The character and quality of the water furnished may vary from time to time, and the District does not represent, guarantee or warrant in any manner or respect the character of quality thereof. The District may, however, suspend service during any period of time it has determined that the water is unfit for agricultural purposes which determination shall be final and conclusive.
 7. **Access to Premises:** The Watermaster and other authorized agents of the District shall have free access at all times to all lands irrigated from District Facilities, and to inspect all Landowner Facilities eligible to receive water from District Facilities.

III. Water Charges

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1. **Setting Water Charges:** The District will set water charges on an annual basis for each acre-foot of water scheduled for delivery, consistent with applicable laws and District contracts. Different water charges will apply per acre-foot to Class 1 Supplies and Class 2 Supplies and to Landowners within ID#1 and ID#3. Currently lands within ID#1 pay an operation and maintenance acreage assessment, while lands within ID#3 do not pay an operation and maintenance assessment. Thus, the cost per acre-foot of water sold to Landowners along the South System will be higher to account for operation and maintenance costs.
2. **Payment of Water Charges:** Water Charges shall be due as follows:
 - a. If a Landowner's Application is approved, the District will send an invoice to the Landowner requiring payment of 30% of the cost of the water requested in the Application. Payment of the invoice will be due within 30 days.
 - b. Landowners shall pay all remaining water changes 30-days after invoice by District.

IV. Application and Contracts for Surface Water Delivery for Irrigation

1. **Application:** Any Landowner desiring to purchase surface water from the District shall submit an Application by mail to the District Office, postmarked no later than February 1st of each year, using forms provided by the District. Landowners who have submitted an Application will be kept informed on a regular basis of water availability. Schedules will be coordinated weekly by the Watermaster. Submission of a schedule does not guarantee delivery of water. Applicants can request Class 1 or Class 2 supplies on February 1st. Any applications submitted after February 1st will be for Class 2 water only.
2. **Contracts to Receive Water from District Facilities:** If the District approves the Application, the District will mail a contract to the Landowner setting forth the terms under which the Landowner may receive water from District Facilities and the specific lands to which water from District Facilities may be applied. The Landowner must return the signed contract and the required deposit within 15 days.

V. Application and Contracts for Surface Water Delivery for Field Flooding

1. **Generally:** The District may consider delivering water to Landowners for field flooding to effectuate groundwater recharge on terms and conditions to be established by the District on an annual basis based on water rights, water availability, budget and other parameters.
2. **Application:** Any Landowner desiring to receive surface water from the District for field flooding shall submit an Application by mail to the District Office, postmarked no later than July 1st of each year, using forms provided by the District. If the District approves

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the Application, the District will mail a contract to the Landowner setting forth the terms under which the Landowner may receive water from District Facilities for field flooding and the specific lands to which water from District Facilities may be applied. The Landowner must return the signed contract and the required deposit within 15 days.

VI. Water Ordering

1. **Water Delivery Policy:** District Facilities shall be operated to the maximum extent possible to distribute water on a demand basis.
2. **Monthly Water Delivery Schedule:** By June 1 of each year that supplies area available, the District will prepare a monthly water delivery schedule which will designate the particular week during the irrigation season when a Landowner will be eligible to receive water from District Facilities. Landowners must request any modifications to the monthly water delivery schedule at least two-weeks before any month they are scheduled to receive deliveries.
 - a. **Daily Water Delivery Schedule:** Prior to the 1st day of each month during the irrigation season, the District will notify each Landowner on the Monthly Water Delivery Schedule for that month of the particular date(s) and time(s) that the Landowner will be eligible to receive water from District Facilities. Landowner is only eligible to receive water at the date(s) and time(s) identified on the Daily Water Delivery Schedule.
 - b. **Modifications to Daily Water Delivery Schedule:** A Landowner may request modification to the Daily Water Delivery Schedule if the request for modification is received at no later than seventy-two (72) hours prior to the date and time when the Landowner is eligible to receive water.
 - c. **Landowner Responsibility:** The Landowner is solely responsible for operation of any valves, gates, or other Landowner Facilities required to receive deliveries of water from District Facilities when the Landowner is eligible to receive water. The Landowner shall be responsible for the cost of all water that they are eligible to receive from District Facilities regardless of whether the Landowner is actually able to take delivery of those supplies.

VII. Unauthorized Activity

1. **Unlawful Diversions:** It is unlawful to take any water from a District Facility except in express compliance with these rules and regulations. Unlawful diversions shall be subject to a fine of \$1,000 per day and \$2,500 per acre-foot of water taken, in addition to any other damages and penalties allowed by law, including but not limited to Penal Code Section 592.

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2. **Water Waste:** The District will furnish water for reasonable and beneficial use, but will not furnish water for waste. The Board reserves the right to refuse delivery of water to a Landowner when it appears to their dissatisfaction that the Landowner's proposed use or method of use will require such extensive quantities of water as will constitute waste.
3. **Use of Water on Ineligible Lands:** Landowner may not use water furnished by the District to irrigate lands not eligible to receive water from District Facilities. If a Landowner is found to be using water to irrigate lands not eligible to receive water from District Facilities, future deliveries to that Landowner will be refused until such conditions are remedied to the satisfaction of the Board.
 - a. **Eligible Lands:** Lands are eligible to receive water from District Facilities only if those lands are identified in a contract to receive water from the District.
4. **Discharges into District Facilities:** It is the responsibility of each Landowner to prudently manage the water supply received from District Facilities. Landowner shall not discharge or cause to be discharged any water, which includes tailwater, wastewater, drainage, groundwater, and/or filter backwash water, into District Facilities. District Facilities shall not be used for the application of fertilizers, pesticides, or chemicals. Failure to comply with this rule shall be sufficient cause for immediate termination of water deliveries until the District is satisfied that adequate measures have been made to remedy the violation.
5. **Placement of Debris or Garbage in District Facilities:** No tree or vine pruning, rubbish, refuse or other materials or substances that will affect the quality of water or obstruct the flow of water, shall be placed in or allowed to be emptied into, or placed as to roll, slide or flow into any District Facilities or on the right of way used for the distribution of water by the District. Failure to comply with this rule shall be sufficient cause for immediate termination of water deliveries until the District is satisfied that adequate measures have been made to remedy the violation.
6. **Enforcement of Rules:** The District may enforce these rules to the full extent permitted by law. The District's enforcement of these rules and the interruption of water deliveries pursuant hereto shall not result in any liability to the District, its officers, agents, or employees.

North San Joaquin Water Conservation District

Application for Surface Water Deliveries

1. Landowner Name(s) and Address (application must be signed by all landowners):

2. Turnout ID No.:

3. Name, Address, and Contact Information of Party Responsible for Operating Turnout:

4. Request for Class I ___ or Class II ___ Supplies (check all that apply).

5. APNs to be Served:

6. Crop Types / Planted Acreage on APNs to be Served:

7. Amounts requested for delivery by month (in AF):

April	May	June	July	August	September	October

By signing below, the landowner(s) represent that they are the current record owners of the lands associated with the APNs for which water service has been requested. The landowner(s) further acknowledge that they have read and understand the Rules and Regulations for water service and warrants that District Facilities and water made available from District Facilities will be used in the manner authorized by the Rules and Regulations.

Print Landowner Name Date

Signature

Print Landowner Name Date

Signature

Print Landowner Name Date

Signature

Print Landowner Name Date

Signature