



STOCKTON EAST WATER DISTRICT Policy Manual

No. 3085

Establishing Program and Incentives for Encouraging the Use of Surface Water

ADOPTED:

July 23, 2019

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A. Purpose

The purpose of this Surface Water Incentive Policy (“Policy”) is to continue to encourage the use of surface water versus pumping groundwater for agricultural water users and establish the procedures and guidelines for customer use of the District’s surface water supply.

The California Legislature established Stockton East Water District (“**District**”) in 1948 to ensure proper management of the underground water basin and provide supplemental water supplies. The District provides surface water for both agricultural and urban uses, and encourages the continued expansion of surface water deliveries instead of pumping groundwater for the benefit of the Groundwater Basin. By providing surface water for agricultural irrigation, the District supports a sustainable and reliable water supply for San Joaquin County’s agricultural industry that is the area’s leading economic activity.

In September 2014, California Legislature enacted the Sustainable Groundwater Management Act (SGMA) to require local agencies to manage groundwater sustainably and bring the Groundwater Basin into balanced levels of pumping and recharge. SGMA empowers local agencies to form Groundwater Sustainability Agencies (“**GSA**”) to enable management of their portions of the Groundwater Basin. The District is a GSA and is responsible for groundwater usage of the Basin within the District’s boundary. This Policy is also intended to meet compliance with the State of California’s Water Conservation Act of 2009 & water rights diversion regulations for measurement and reporting requirements.

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This Policy outlines the procedures for installation of surface water diversion infrastructure needed to divert water from natural watercourses for on-farm irrigation (“**Diversion Facilities**”), and sets forth the circumstances under which the District will provide financial incentives to landowners to install Facilities for surface water use (“**Incentive Program**”).

B. Surface Water Application Process

1. District Application. A landowner within the District that desires to begin using surface water must submit a written surface water application to the District on an approved form prior to installation of any Diversion Facilities. Upon receipt and review of the submitted Application, staff will contact the customer (**Application - Attachment 1**). The Application submitted to the District must include detailed information and drawings including, but not limited to, pump(s) capacity and type, electrical hookup, piping size/diagram, fish screen type, and tank(s)/filter(s) pump connections, with a scaled drawing of the Diversion Facilities on a District template.

The District requires meters for all new surface water diversions, and all new meter infrastructure will be billed in accordance with applicable District Rule(s) and Ordinance(s). Except as otherwise provided in this Policy, all surface water diverted will be billed at the rates established in the District’s current Water Rate Ordinance.

District Ordinance No. 21/District Rule No. 21

District Rule No. 120

District Rule No. 131

2. Permits and District Provided Services. The District will assist landowners to obtain any required permits prior to installing Diversion Facilities. Such permits may include permits required for surface water diversion improvements from regulatory agencies, i.e., San Joaquin County (SJC), Central Valley Flood Protection Board (CVFPB), Regional Water Quality Control Board (RWQCB), California Department of Fish & Wildlife Service (CDFW) and United States Army Corp of Engineers (USACE). Landowner will be required to pay all permitting fees and additional application fees imposed by regulatory agencies. As part of the permitting process, there may be associated record searches and studies required by regulatory agencies, and the landowner is also required to pay for any additional studies required for permitted at the cost charged by District consultants.

While the landowner will pay for any and all direct costs, the District will provide assistance (i.e., indirect costs), at no cost to the landowner. The following is an example of direct and indirect costs provided by the District:

Direct Costs:

- Record searches and permitting agencies required studies charged by a consultant to the District for assistance as required during the permitting process.
- Surveys related to Record of Survey, Survey Map, or Legal Descriptions

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charged by a land surveyor.

- Encroachment permits from third parties (i.e., state or county).

Indirect Costs:

- Permitting assistance, if applicable, with the following entities: SJC, CVFPB, RWQCB, FWS & USACE.
- Encroachment permits from the District if an existing legal easement or legal right-of-way exists.
- Preparation of minor California Environmental Quality Act (CEQA) documentation, if required.
- Provide limited assistance to complete, notarize and record applicable legal documents once all negotiations are complete.
- Review and approve the design, plans and specifications prepared by the landowner for the proposed improvements.

C. Program Incentive – Cost Recovery

Landowners within the District may recover all or part of the cost of installing Diversion Facilities, as well as additional improvements reasonably required to connect the Diversion Facilities into their existing irrigation system (collectively “**Facilities**”) by receiving low-cost water from the District until the approved costs of the Facilities are recovered in accordance with this Policy. The landowner is responsible for installing Facilities at its own initial cost. In order to receive incentives for diverting surface water, the landowner must enter into a written Surface Water Sale & Amortization Agreement with the District in the form of **Attachment 3 (“Agreement”)**, by which landowner agrees to use exclusively surface water when available for all future irrigation on the property to be served by the Facilities (“**Property**”). Under the Agreement, the landowner will pay for each acre foot of surface water diverted to the Property at the lower per acre foot agricultural groundwater assessment imposed by the District for a period of seven (7) years, or until the documented costs of the Facilities has been recovered, whichever is earlier. Although the Agreement itself will terminate, a Memorandum will be recorded against the Property requiring the continued use of surface water, on the property subject to the Agreement.

The following list describes program incentive guidelines and penalties:

- Only newly constructed Facilities approved by the District in writing will be eligible for the Cost Recovery program.
- The District encourages landowners to seek additional funding assistance from other agency or entities, such as United States Department of Agriculture Natural Resources Conservation Service (NRCS), to be used in conjunction with District financing. Should other financing be obtained, this Policy will apply only to that portion of the cost of the Facilities not covered by funding received from other agency or entities, as determined during the pre-approval process.

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- The landowner will receive surface water, or “stream delivered water” at the applicable lower agricultural groundwater assessment rate only during the Term of the Agreement, which is the earlier of seven (7) years, or until the cost of installation of the Facilities has been amortized. After expiration of the Term, the landowner will be charged the then going rate for stream delivered water for continued use of surface water on the Property.
 - The District will apply penalties for use of groundwater when surface water is available and can be used by the landowner as specified in the Agreement. The penalty for use of agricultural groundwater when surface water is available is ten (10) times the amount of the current agricultural groundwater assessment.
 - In accordance with the Agreement, if at any time the Landowner cannot use the available surface water supply, the Landowner must give notice to the District and receive written authorization before changing water supply operations from surface water to groundwater sources, for reasons set forth in the Agreement.
 - Upon execution of the Agreement (and any additional required documents by both parties) a Memorandum of the Agreement will be recorded with the County in which the Property is located.
- **NOTE: The Board of Directors may review this Policy at any time and reserves the right to amend or terminate this Program without notice.**



SURFACE WATER DIVERSION APPLICATION

New Meter Installation

Meter Replacement

New Diversion
**permits required*

APPLICANT INFORMATION

Name			
Address			
Landowner Name			
Landowner Address			
Phone No.		Fax	
Cell phone			
Email			

PARCEL/STRUCTURE INFORMATION

Parcel Address			
APN		Acres	
Crop			
Irrigation Method			
Pump ID	Currently Metered: YES/NO		

DIVERSION INFORMATION

Waterway (check one)	Mormon Slough	_____	Mosher Slough	_____	LFC	_____
	Calaveras River	_____	Potter Creek	_____	Peters	_____
Diversion Rate (gpm)						
On-site Reservoir	Yes/No (circle one)	Capacity	_____	Gallons/Acre-Foot	_____	

By signing below, I certify that the above information is true and correct and I authorize Stockton East Water District to apply for permits from state and federal agencies related to streambed alteration and construction associated with a new instream diversion. Stockton East Water District personnel are allowed to access the parcel(s) associated with the diversion for surveying and gathering information. Stockton East Water District personnel are allowed access to the parcel(s) associated with the applicable meter for installation or replacement & maintenance of meter(s) once installed.

Applicant Signature

Date

Landowner Signature Required if not Applicant

Date

**STOCKTON EAST WATER DISTRICT
SURFACE WATER SALE AND AMORTIZATION AGREEMENT**

This SURFACE WATER SALE AND AMORTIZATION AGREEMENT ("**Agreement**") is made this ____ day of _____ 2020 ("**Effective Date**"), by and between Stockton East Water District, a political subdivision of the State of California ("**District**"), and _____, ("**User**"). District and User and each individually referred to in this Agreement as a "**Party**" and collectively as the "**Parties**."

1. RECITALS

A. District adopted Policy No. 3085 on (Date of 2019 Policy) ("**Policy**") to encourage the construction of physical facilities to use surface water for irrigation within the service area of the District.

B. This Agreement implements the Policy by permitting, under the circumstances set forth in this Agreement, the purchase of surface water at the Groundwater Assessment Rate per acre-foot instead of the District's surface water rate.

C. User has installed physical facilities more particularly described in **EXHIBIT A** attached hereto ("**Facilities**") to make surface water available to that real property more particularly described in **EXHIBIT B** to this Agreement ("**Property**").

D. District has verified installation of the Facilities as well as the cost for construction of physical facilities as submitted by User, which are also included in EXHIBIT A.

E. In accordance with this Agreement and the Policy, User is entitled to receive water at a reduced rate subject to the terms and conditions of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

2. EVIDENCE OF USER'S COSTS. User has submitted to District copies of all invoices, receipts and other evidence of payment by User documenting the cost of construction of the Facilities. District and User agree that the total cost to be amortized pursuant to this Agreement for the Facilities shall be _____ Dollars (\$_____) ("**Cost**"), which includes only the total actual cost of the Facilities, and does not include other costs of User, such as acquisition of land or easements, or removal of other water conveyance facilities, including wells and pumps.

3. TERM OF AGREEMENT. This Agreement shall become effective on the Effective Date and, except as provided in Section 4.B, will continue in effect until the cost savings to User from the discounted water received under this Agreement (determined by calculating the difference between the groundwater assessment rate paid by User and the applicable surface water rate times the total acre feet used by User during the Term) equals the Cost, or a period of seven (7) years from the Effective Date, whichever comes first ("**Term**").

4. **PURCHASE PRICE.**

A. During the Term, District agrees to sell User surface water for irrigation on the Property at the agricultural groundwater assessment rate established by the District in the year the water is received (by way of example only, that rate is \$5.46 per acre-foot for the 2020 irrigation season, and changeable on an annual basis), as opposed to the applicable per acre rate for stream delivered water. Upon termination of this Agreement, any and all surface water provided by District to User for use on the Property shall be at the applicable rate for stream delivered water.

B. During the Term and the Extended Term, should User utilize groundwater to irrigate the Property during any time that surface water is made available to the Property by District, then User shall be responsible to pay District for any and all groundwater pumped at the then applicable agricultural groundwater assessment rate times ten (10), and District shall have the option to immediately terminate this Agreement.

5. **WATER MEASUREMENT.** The District has installed a water meter to measure the rate of surface water applied by User to the Property in accordance with District rules and policy. User agrees to abide by District Ordinance No. 21/District Rule 148, adopted January 13, 1998 regarding meters, and to pay, in accordance with Ordinance 21/Rule 148, a charge for the installation of a water meter.

6. **SURFACE WATER USE.** In further consideration of participation in this surface water cost recovery program, during the Term, and for a period of fifteen (15) years from the Effective Date ("**Extended Term**"), User agrees to exclusively use surface water for irrigation on the Property; Provided that User may use groundwater when surface water is unavailable, or if surface water quality is incompatible with the operations on the Property with written concurrence of the District. Such written concurrence shall not be unreasonably withheld or delayed.

7. **SURFACE WATER AVAILABILITY AND QUALITY.** District does not warrant that there will be sufficient surface water available to User or the Property under this Agreement during the Term or any time thereafter. District agrees to make surface water available to User pursuant to its rules and regulations, and on the same basis as all other agricultural surface water users within the District. District does not warrant the quality or quantity of water available.

8. **BINDING ON SUCCESSORS/RECORDING.** This Agreement is intended to bind the Parties as a covenant running with the land pursuant to California Civil Code Section 1468 and shall bind successive owners of the Property for a period of fifteen (15) years from the Effective Date. A memorandum of this Agreement shall be recorded with the San Joaquin County Recorder's Office.

9. **NOTICES.** Any notice or communication required or permitted hereunder shall be in writing and shall be delivered personally, delivered by nationally recognized overnight courier service or sent by certified or registered mail, postage prepaid, or (if an email address is provided) sent by electronic transmission (subject to confirmation of such transmission). Any such notice or communication shall be deemed to have been given (i) when delivered, if personally delivered, (ii) one (1) Business Days after it is deposited with a nationally recognized overnight courier service, if sent by nationally recognized overnight courier service, (iii) the day of sending, if sent by email prior to 5:00 p.m. (PT) on any Business Day or the next succeeding Business Day if sent by email after 5:00 p.m. (PT) on any Business Day or on any day other than a Business Day or (iv) five (5) Business Days after the date of mailing, if mailed by certified or registered mail, postage prepaid,

in each case, to the following address or email address, or to such other address or addresses as such Party may subsequently designate to the other Party by notice given hereunder:

District: Stockton East Water District
Post Office Box 5157
Stockton, California 95205-0157
Phone: (209) 948-0333
Email:

User: _____

Phone:
Email:

“**Business Day**” means any day other than a Saturday, Sunday or any other day on which banking institutions in the State of California are authorized by law or executive action to close.

10. MISCELLANEOUS.

A. Entire Agreement. This Agreement supersedes any prior agreement and contains the entire agreement of the Parties regarding the sale and amortization of surface water at a groundwater rate. No other agreement, statement, or promise made by any Party to any employee, officer, or agent of a party to this Agreement, or any other person, that is not in writing and signed by all of the parties to this Agreement shall be binding upon them. Any amendment, including oral modifications, must be reduced to writing and signed by both Parties, to be effective.

B. Waiver. Failure by either Party to enforce any covenant, restriction or other provision of this Agreement or to seek redress for the breach of or default in performance under any such covenant, restriction or other provision of this Agreement shall in no way constitute a waiver of the right to enforce such covenant, restriction or provision of this Agreement or seek redress for the breach thereof. The waiver by either Party of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Agreement.

C. No Agency or Partnership. Nothing in this Agreement shall be deemed or construed by any person to create the relationship of principal and agent, or of limited or general partnership, or of joint venture, or of any other association between or among any of the parties. No part of this Agreement shall be construed as creating any rights in the general public, nor shall any part be deemed to be a gift or dedication for public use of any portion of the properties described in this Agreement.

D. Further Documents. Each Party shall, as often as reasonably requested, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further documents and instruments as may be necessary to carry out the intent and purpose of this Agreement.

E. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

F. Severability. In the event a court of competent jurisdiction determines any provision of this Agreement is void or unenforceable, such provision shall be deemed reformed so as to be valid or enforceable to the maximum extent possible, and the remaining provisions of this Agreement shall remain in full force and effect.

G. Authority. Each Party represents that its representatives executing this Agreement on their behalf have the binding authority to do so.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

USER

DISTRICT

STOCKTON EAST WATER DISTRICT

By: _____
Melvin Panizza, President

Attest: _____
Scot A. Moody, Secretary

**EXHIBIT A
FACILITIES**

DRAFT

**EXHIBIT B
LEGAL DESCRIPTION OF PROPERTY**

DRAFT

**RECORDING REQUESTED BY, AND
WHEN RECORDED, RETURN TO:**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF
SURFACE WATER SALE AND AMORTIZATION AGREEMENT**

This MEMORANDUM OF SURFACE WATER SALE AND AMORTIZATION AGREEMENT ("Memorandum") is made this ____ day of _____ 2020 by and between Stockton East Water District, a political subdivision of the State of California ("District"), and _____, ("User"). District and User and each individually referred to in this Agreement as a "Party" and collectively as the "Parties."

1. RECITALS

A. On the date hereof, the Parties entered into a Surface Water Sale and Amortization Agreement ("Agreement") pursuant to which District agreed to sell User surface water at a reduced rate for use on that real property in San Joaquin County more particularly described in attached **EXHIBIT A** ("Property").

B. The Parties desire to execute this Memorandum to provide constructive notice of the rights and obligations of the Parties under the Agreement to all third parties.

2. **TERM.** The Agreement grants User with the right to take surface water for irrigation on the Property for a period of up to seven (7) years, as set forth in the Agreement, commencing on the date of this Memorandum. The Agreement also imposes upon User an obligation to use surface water on the Property for irrigation for a period of fifteen (15) years from the date of this Memorandum, subject to certain exceptions, and subject to penalties for noncompliance, all as more particularly set forth in the Agreement.

3. **AGREEMENT.** The rights of the Parties are set forth in the Agreement, which is incorporated in this Memorandum by reference.

USER

DISTRICT

STOCKTON EAST WATER DISTRICT

By: _____
Melvin Panizza, President

Attest: _____
Scot A. Moody, Secretary

**EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY**

DRAFT