

## ARTICLE 1.0 GENERAL PROVISIONS

- 1.1 Reference
- 1.2 Purpose and Intent of Ordinance
- 1.3 Interpretations
- 1.4 Definitions
- 1.5 Severability
- 1.6 Notice
- 1.7 Permits Issued Before Effective Date
  - 1.7.1 Permits Involving ~~District~~Valley Water Facilities or Easements
  - 1.7.2 Other Permits

## ARTICLE 2.0 PROTECTION OF WATER RESOURCES

- 2.1 Purpose of Article
- 2.2 Encroachment Permit Requirements
  - 2.2.1 Encroachment Permit Required
  - 2.2.2 Exceptions
- 2.3 Encroachment Permit Procedures
  - 2.3.1 Application and Fees
  - 2.3.2 Environmental Assessment
  - 2.3.3 Action on Applications
- 2.4 Time Limit for Commencing Use of Encroachment Permit
- 2.5 Permit Revocation, Modification, and Suspension
  - 2.5.1 Cause for Permit Revocation, Modification, and Suspension
  - 2.5.2 Notice of Decision to Revoke, Modify, and Suspend a Permit
- 2.6 Appeals
  - 2.6.1 Right to Appeal; Timing
  - 2.6.2 Hearing and Decision

## ARTICLE 3.0 ENFORCEMENT

- 3.1 Purpose
- 3.2 Violation of Ordinance
- 3.3 Criminal and Civil Penalties
- 3.4 Administrative Remedies
  - 3.4.1 Compliance Order

3.4.2 Method of Service

3.4.3 Hearing

3.4.4 Notice of Hearing

3.4.5 Hearing - Findings and Order

3.4.6 Administrative Penalties

3.4.7 Administrative Costs

3.4.8 Lien

3.5 Abatement

3.5.1 Notice of Intent to Abate

3.5.2 Findings; Abatement Order

3.5.3 Time for Abatement; Lien

### 3.6 License Program

3.6.1 Purpose

3.6.2 Eligibility

3.6.3 Application and Fees

3.6.4 Environmental Assessment

3.6.5 License Duration; Cost

3.6.6 Considerations for License Approval

3.6.7 Notice of Action

3.6.8 Appeals of License Decisions

3.6.8.1 Decisions subject to appeal

3.6.8.2 Right to Appeal; Timing

3.6.8.3 Hearing and Decision

## ARTICLE 4.0 ~~DISTRICT~~ WATER RESOURCES PROTECTION MANUAL

4.1 Purpose

4.2 Adoption of ~~District~~ Water Resources Protection Manual

4.3 Procedure to Adopt and Amend ~~District~~ Water Resources Protection Manual

4.3.1 Notice of Public Hearing

4.3.2 Adoption or Amendment to ~~District~~ Water Resources Protection Manual

## ARTICLE 5.0 EFFECTIVE DATE, REPEAL OF PRIOR ORDINANCE ~~83-2~~

5.1 Effective Date

5.2 Repeal of Ordinance 06-1, as amended by Ordinance 08-1 ~~83-2~~

## ARTICLE 1.0 GENERAL PROVISIONS

### SECTION 1.1 REFERENCE

This Ordinance should be known and cited as the Water Resources Protection Ordinance of the Santa Clara Valley Water District.

### SECTION 1.2 PURPOSE AND INTENT OF ORDINANCE

The intent of this Ordinance is to secure the health, safety, and welfare of the people of the Santa Clara Valley Water District (Valley Water) and to accomplish ~~District~~Valley Water purposes described in the District Act, including providing a reliable supply of healthy and clean ~~Waterwater~~; reducing the potential for flood damages; protecting and when appropriate enhancing and restoring natural resources of streams and watersheds; prohibiting trespass and injury to ~~District property and projects~~Valley Water lands, structures, improvements, and appurtenances; and providing for additional open spaces, trails, and parks along creeks and in the watersheds when reasonable and appropriate.

### SECTION 1.3 INTERPRETATIONS

The Chief Executive Officer (CEO) or designee is entitled to decide any question involving the interpretation or application of any provision of this Ordinance and/or the ~~District~~ Water Resources Protection Manual, except as may otherwise be provided herein. Any interpretation and application of the provisions of the Ordinance and/or the ~~District~~ Water Resources Protection Manual must be consistent with the purpose set forth in Section 1.2 and will be in writing. Any external party requesting an interpretation under this Section must make the request in writing to the CEO.

### SECTION 1.4 DEFINITIONS

This section defines terms that have meanings specific to the interpretation of this Ordinance.

**Applicant:** The party proposing the Modification and/or use for which the Encroachment Permit is required and to whom an Encroachment Permit may be issued.

**Board:** The Board of Directors of the Santa Clara Valley Water District.

**CEO:** Chief Executive Officer of the Santa Clara Valley Water District or his/her designee.

**Clerk of the Board:** The Clerk of the Board of Directors of the Santa Clara Valley Water District or his/her designee.

**Development:** The placement or erection of any solid material or structure; grading, removing, dredging, mining, or extraction of any materials; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or installation of vegetation.

**~~District:~~** ~~Santa Clara Valley Water District.~~

**District Act:** State law creating ~~the District~~Valley Water and enabling its powers and operation (Calif. Water Code Appendix, Ch. 60)).

**District Easements:** ~~Lands not owned by the District in fee title, over which the District has been granted an easement for purposes specified in the easement document.~~

**District Facility:** ~~Lands, structures, or improvements and appurtenances owned, controlled, operated or maintained by the District for water conservation, water supply, flood protection, storm water management and treatment, environmental protection, environmental enhancement, environmental mitigation or other lawful District purpose. Examples of District facilities are groundwater recharge (percolation) ponds, reservoirs, sediment control basins, pipelines, treatment plants, pumping stations, and injection wells. Lands owned by the District in fee are considered District Facilities.~~

**Encroachment:** Unauthorized Modification or use of a Valley Water Facility without an Encroachment Permit or License.

**Encroachment Permit:** Written permission granted by ~~the District~~Valley Water pursuant to this Ordinance allowing a Permittee to enter, use, temporarily access, or undertake any modification on ~~District Facilities~~Valley Water Facilities. This may also be a construction permit (together or separately) issued where rights of possession or to enter have been established by other means.

**License:** Personal, revocable, non-possessory, and non-assignable written permission from Valley Water to use Valley Water Facilities.

**License Applicant:** Any Person applying for a License.

**License Area:** Any portion of a Valley Water Facility subject to a License issued by Valley Water. Valley Water Easements are not eligible for Licenses.

**Licensee:** Any Person who has been issued a License by Valley Water in accordance with this Ordinance.

**Modification:** Any alteration to ~~District~~Valley Water Facilities, including but not limited to the activities defined under ~~development~~Development.

**Municipal Organization:** The County of Santa Clara or a city or town within the County of Santa Clara County.

**Permit Authority:** ~~District~~Valley Water employee designated by the CEO to make decisions regarding the issuance of ~~encroachment permits~~Encroachment Permits and Licenses.

**Permittee:** A Person or entity to whom an Encroachment Permit under this Ordinance has been issued.

**Person:** Any individual, firm, corporation, club, or governmental agency, and all associations or combinations of persons whenever acting for themselves or by any agent or employee.

**Predecessor Ordinance:** Valley Water Ordinances 59-1, 74-1, 83-2, 06-1, and 08-1.

**Stream:** A body of water that flows at least periodically or intermittently through a bed or channel having banks. The body of water may include a surface or subsurface flow that supports or has supported riparian vegetation, fish and/or aquatic life.

**Structure:** Anything made or constructed and having its foundation or support upon or within the ground.

**Trespass:** Unauthorized access onto or use of Valley Water Facilities by Persons, including by the placement or maintenance of personal property or fixtures. Trespass does not include access or entry allowed under Section 2.2.2A or entry onto a nonexclusive easement.

**Valley Water:** The Santa Clara Valley Water District.

**Valley Water Easements:** Lands not owned by Valley Water in fee title, over which Valley Water has been granted an easement for purposes specified in the easement document.

**Valley Water Facility/Facilities:** Lands, structures, waters, or improvements and appurtenances owned, controlled, operated or maintained by Valley Water for water conservation, water supply, flood protection, storm water management and treatment, stream stewardship, environmental protection, environmental enhancement, environmental mitigation or other lawful Valley Water purpose. Examples of Valley Water Facilities include groundwater recharge (percolation) ponds, reservoirs, sediment control basins, pipelines, treatment plants, pumping stations, and injection wells. Valley Water Easements and lands owned by Valley Water in fee or maintained by Valley Water pursuant to agreement are considered Valley Water Facilities.

**Water Resources Protection Manual:** A set of requirements and supporting design guidelines including minimum standards to protect water, watershed resources, and ~~District~~Valley Water Facilities, ~~modified and~~ adopted or amended according to Article 4 of this Ordinance.

~~**Structure:** Anything made or constructed and having its foundation or support upon or within the ground.~~

## **SECTION 1.5 SEVERABILITY**

If any section or provision of this Ordinance is found to be unconstitutional or invalid, that finding will not affect the validity of the Ordinance as a whole nor any part thereof, other than the part found to be unconstitutional or invalid.

## **SECTION 1.6 NOTICE**

Whenever a notice is required to be given under this Ordinance, unless different provisions herein are otherwise specifically made, such notice may be ~~given~~served either by personal delivery thereof to the Person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such Person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail will be deemed to have been completed at the time of deposit in the post office. Notice of Actions issued in accordance with Section 2.3.3(C) may also be served by e-mail to an e-mail address provided by an Applicant or a duly authorized agent of the Applicant on their Encroachment Permit application submitted in accordance with Section 2.3.1.

## **SECTION 1.7 PERMITS ISSUED BEFORE EFFECTIVE DATE**

### **1.7.1 Permits Involving ~~District~~Valley Water Facilities or Easements**

Any permit for work on and/or use of ~~District~~Valley Water Facilities or Valley Water Easements issued by ~~the District~~Valley Water prior to the effective date of this Ordinance, under ~~District~~Valley Water Ordinance 06-01, Valley Water Ordinance 83-2, or a predecessor ordinance Predecessor Ordinance, is subject to the provisions of Sections 2.5 and 2.6 and Article 3 of this Ordinance.

### **1.7.2 Other Permits**

As to any permit issued by ~~the District~~Valley Water prior to the effective date of this Ordinance under ~~District~~Valley Water Ordinance 83-208-01 or a ~~predecessor ordinance~~Predecessor Ordinance, other than those described in Section 1.7.1, ~~the District~~Valley Water will inspect work not yet complete on the effective date to ensure compliance with permit conditions.

## ARTICLE 2.0 PROTECTION OF WATER RESOURCES

### SECTION 2.1 PURPOSE OF ARTICLE

This Article establishes the requirement to obtain an Encroachment Permit ~~for Modifications on District Facilities and/or District Easements.~~ It also establishes a procedure for the administration and issuance of such Encroachment Permits.

### SECTION 2.2 ENCROACHMENT PERMIT REQUIREMENTS

#### 2.2.1 Encroachment Permit Required

~~No~~Subject to section 2.2.2 herein, no Person will ~~deperform~~ or maintain, cause to be ~~done~~performed or maintained, any Modification on or within a ~~District~~Valley Water Facility or ~~District~~Valley Water Easement, or access or use any such Valley Water Facility or ~~District~~Valley Water Easement, unless an Encroachment Permit ~~for the Modification and/or use~~ has been issued under this Ordinance or a predecessor ordinancePredecessor Ordinance and is in effect. Maintenance of a Modification may be established through continued assertion of control. An Encroachment Permit is not transferable unless its conditions provide otherwise. Subject to the exceptions set forth below, in the absence of an Encroachment Permit, performing any Modification on or within a Valley Water Facility or Valley Water Easement or accessing or using any Valley Water Facility may also constitute a Trespass.

#### 2.2.2 Exceptions

- A. An Encroachment Permit is not required for access onto ~~District~~or use of Valley Water Facilities ~~or District Easements~~ that have been opened to and developed for public recreational purposes, as long as the access or use is consistent with the rules or regulations governing such public recreational access or use, or when the Permit Authority determines that the access or use, and requirements applicable thereto, have already been established by contract or by operation of law.
- B. ~~Where the District holds a nonexclusive easement, the owner of the underlying fee is not required to obtain a~~ An Encroachment Permit is not required for activities that do not in impair or conflict with the District a Valley Water nonexclusive easement unless. The party engaging in such activities shall bear the burden of proof and demonstrate to Valley Water that their activities will not impair or conflict with the nonexclusive easement requires District approval for the activity or work.
- C. ~~Except as otherwise required by License terms, n~~No Encroachment Permit shall be required where a License has been issued and is in effect for use of the activity or work same Valley Water Facility and where access to and use of the Valley Water Facility complies with the License.
- D. No Encroachment Permit shall be required when the Permit Authority determines that the access or use, and requirements applicable thereto, have already been established by contract or by operation of law.

## SECTION 2.3 ENCROACHMENT PERMIT PROCEDURES

This Section establishes the process for obtaining an Encroachment Permit from ~~the District~~Valley Water.

### 2.3.1 Application and Fees

- A. Requests for an Encroachment Permit must be timely filed with the Permit Authority on the application form established and maintained by that Permit Authority. All applications must be accompanied by a filing fee ~~in an amount, and any other required fees, in amounts~~ established by the Board.
- B. An application for an Encroachment Permit must be signed by the Applicant or a duly authorized agent of the ~~party proposing the Modification and/or use~~Applicant.
- C. Submission of an application for which the an Encroachment Permit is required after Valley Water's issuance of a notice of violation or compliance order (as set forth below) shall be deemed untimely and shall constitute grounds upon which to deny the application unless and until the applicant has fully complied with such notice of violation or compliance order. Where good cause has been shown by the Applicant, the Permit Authority has discretion to excuse any failure to comply with the time requirements of this section.
- D. Submission of an application for an Encroachment Permit following Valley Water's filing of a judicial action relating to Trespass or some similar cause of action shall be deemed untimely and shall constitute grounds upon which to deny the application.

### 2.3.2 Environmental Assessment

Issuance of an Encroachment Permit is subject to the requirements of the California Environmental Quality Act (CEQA).

- A. For any Encroachment Permit associated with a project that will be approved or carried out by a Municipal Organization or other public entity as lead agency, the lead agency's environmental assessment for the project must include those activities covered by the Encroachment Permit. It is the responsibility of the applicant to assure that this environmental assessment is completed and provided to ~~the District~~Valley Water.
- B. For any Encroachment Permit which is not associated with a project for which a Municipal Organization or other public entity is the lead agency, ~~the District~~Valley Water will be the lead agency.
- C. All applications for an environmental assessment must be accompanied by a filing fee as established by the Board.
- D. The environmental assessment may be undertaken by or under contract to ~~the District~~Valley Water and be at the applicant's expense. Once a project has been found to require an environmental assessment, no decision on an Encroachment Permit request will be made until the assessment has been certified as complete as required by state law. The Permit Authority will take all actions required by CEQA on behalf of ~~the District~~Valley Water, unless otherwise provided by law.

### 2.3.3 Action on Applications

The Permit Authority will take all actions on the application except as provided in Section 2.6.

**A. Findings for Encroachment Permits** ~~An~~The Permit Authority, in his/her sole discretion, may issue ~~an~~ Encroachment Permit ~~may be issued if the District~~the/she finds, based on substantial evidence, that the application is timely (or good cause has been shown for the delay) and that the proposed Modification, access or use:

1. Will not impede, restrict, retard, pollute, change the direction of the flow of water, catch or collect debris carried by such water;
2. Is located where natural flow of the ~~storm~~Stream and ~~/or~~ flood waters will not damage or carry any Structure or any part thereof downstream;
3. Will not damage, weaken, erode, cause siltation or reduce the effectiveness of the Stream banks to ~~withhold~~convey storm and flood waters;
4. Will be constructed to resist erosion and siltation and entry of pollutants and contaminants to a Stream;
5. Will not interfere with the maintenance responsibilities or ~~Structures placed or erected for flood protection, water conservation or distribution~~the operation of Valley Water Facilities;
6. Conforms to the ~~requirements of the District~~ Water Resources Protection Manual; Valley Water's Governance Policies, Resolutions and
- ~~7. Meets the purpose and intent~~ Ordinances of the ~~District Act~~ Board of Directors, and all applicable state and federal laws;
- ~~7. Will either support or not be in conflict with Valley Water actions authorized by the District Act.~~
- ~~8. Issuance of the Encroachment Permit is~~ Will not result in detriment to the operations, maintenance, delivery, quantity, or quality of Valley Water water supplies;
- ~~9. Is~~ in the public interest; ~~and~~
- ~~9. Issuance of the Encroachment Permit will~~ 10. Is not the subject of a compliance order previously issued under Article 3.0 herein;
- ~~11. Will~~ not result in conflict with or detriment to existing or ~~planned District~~ potential future Valley Water Facilities; ~~and~~
12. Will not result in the significant removal or damage to native vegetation or riparian habitat.

—While the Permit Authority has discretion to issue an Encroachment Permit where there is substantial evidence that the above conditions have been met, this shall not create any right to an Encroachment Permit, and the Permit Authority may exercise discretion not to issue an Encroachment Permit when there are reasonable grounds to do so.

**B. Conditions of Approval** An Encroachment Permit ~~will~~may be issued subject to conditions when the conditions are required in order for ~~the District~~Valley Water to make the required findings in Section 2.3.3A for issuance. These conditions will be commensurate with the nature and magnitude of the

request and may include a time limit on the life of the Encroachment Permit. Encroachments that will remain longer than two (2) years will require a license or permanent land rights to remain on Valley Water property at Valley Water's sole discretion.

- C. Notice of Action** Upon the approval, conditional approval or denial of an application, ~~the District~~Valley Water will prepare and deliver to the ~~applicant~~Applicant a written ~~notice~~Notice of the ~~action~~Action, which will be served as provided in Section 1.6 of this Ordinance.

If the application is approved, the ~~notice~~Notice of Action will accompany the proposed Encroachment Permit which will include any ~~conditions~~applicable to the Encroachment Permit conditions and a requirement that the ~~applicant~~Applicant must provide a written acceptance of the Encroachment Permit and its conditions. The ~~notice~~Notice of Action will ~~also~~ include a description of the appeal process described in Section 2.6 for denials of an application.

- D. Preemption Provision** If an Encroachment Permit would conflict with or be preempted by state law, state law will govern but only with respect to the specific issues of conflict.
- E. Applicant Acceptance of Conditions** Within 30 days from the date the Notice of ~~representative as described in Section 2.3.1~~Action is served, the Applicant must provide the ~~District~~Valley Water Permit Authority, in writing, an acceptance of the conditions of the Encroachment Permit. ~~The date the District receives by signing the written acceptance is the effective date of the proposed~~The Encroachment Permit shall be effective upon its execution by Valley Water's Permit Authority. Where good cause has been shown by the Applicant, the Permit Authority may excuse any failure to comply with the time requirements in this section.

## **SECTION 2.4 TIME LIMIT FOR COMMENCING USE OF ENCROACHMENT PERMIT**

Unless specific language in an Encroachment Permit otherwise provides, the Encroachment Permit expires ~~730~~365 calendar days after its effective date if the permitted Modification or use has not commenced by that time. The Permit Authority may extend this time period once upon written request of the Permittee demonstrating good cause therefor.

## **SECTION 2.5 PERMIT REVOCATION, MODIFICATION, AND SUSPENSION**

### **2.5.1 Cause for Permit Revocation, Modification, and Suspension**

A Permit may be revoked, modified, or suspended by ~~the District~~Valley Water if one or more of the following is found to have occurred:

- A.** The Permit was issued in conflict with the provisions of any ~~District~~Valley Water regulation or federal and/or state law or as a result of incorrect information or the fraud or willful misrepresentation by the ~~applicant~~Applicant or ~~applicant's~~Applicant's agent.
- B.** The actions undertaken pursuant to the Permit- have created a discharge or threatened discharge which presents a hazard or threat of hazard to the public health or safety or the natural environment which was not anticipated or known at the time the Permit was issued.
- C.** The structures or improvements covered by the Permit create a dangerous condition to life or property.
- D.** The Modification is not being carried out in accordance with the approved plans and/or in accordance with the specific terms of the permit.

- E. It is necessary to remove or relocate the permitted use or improvements in order to accommodate DistrictValley Water uses or futureplanned Valley Water Facilities or improvements.
- F. New circumstances arise which reasonably warrant revocation, modification, or suspension of a Permit.
- G. Valley Water becomes aware of previously existing facts or circumstances reasonably warranting the revocation, modification, or suspension of a Permit.
- H. Due to changes in circumstances, including but not limited to Valley Water policies, local, state or federal law or changes in the physical environment, the Encroachment Permit no longer meets the findings set forth in Section 2.3.3(A).

## **2.5.2 Notice of Decision to Revoke, Modify, and Suspend a Permit**

- A. The Permit Authority will notify the Permittee in writing of the Permit Authority's decision to revoke, modify or suspend a permit. The notice will be served as provided in Section 1.6.
- B. The notice of decision will state the grounds for revocation, modification or suspension of the permit and will notify the Permittee of the appeal process described in Section 2.6.

## **SECTION 2.6 APPEALS**

### **2.6.1 Right to Appeal; Timing**

An applicant or Permittee may appeal a decision made by the Permit Authority under Sections 2.3.3 and 2.5.2 of this Article: to the CEO. Appeals relating to Licenses are addressed in section 3.4.2.8 below. An appeal must be in writing and filed with the Clerk of the Board, with the applicable appeal fee, no later than ten (10) days following issuanceservice, as defined in Section 1.6, of the decision from or Notice of Action on which the appeal is takenbased.

### **2.6.2 Hearing and Decision**

- A. Upon filingreceipt of a timely notice of appeal, the Clerk of the Board will, within ten (10) calendar days from the receipt of the request, set a time and place for the hearing. The hearing will be conducted by the Board of DirectorsCEO, or theirhis or her designee and will be scheduled. shall schedule a hearing within 45thirty days of receipt of the hearing request. Upon conclusion of the hearing, the Board of DirectorsCEO or theirhis/her designee will issue a written decision on the appeal. The Board'swritten decision isby the CEO or his/her designee may be appealed to the Board.
- B. Appeal to the Board: Written decisions of the CEO or his/her designee may be appealed to the Board by filing a written notice of appeal with the Clerk of the Board no later than fifteen (15) days from the date of the written decision. The Board may delegate hearing and decision of such appeal to a Board committee (regular or ad hoc). Valley Water will provide the appellant with notice of the date of such hearing. Any decision upon this appeal shall be final, and not subject to further appeal.

## ARTICLE 3.0 ENFORCEMENT

### SECTION 3.1 PURPOSE

This Article defines the situations considered to be violations of this Ordinance and describes ~~the District's~~Valley Water's process for addressing such violations.

### SECTION 3.2 VIOLATION OF ORDINANCE

The following are unlawful and constitute violations of this Ordinance:

- A. Failure to comply with ~~Sections~~Section 2.2.1 hereof.
- B. Failure of a Permittee to comply with any condition of an Encroachment Permit.

### SECTION 3.3 CRIMINAL AND CIVIL PENALTIES

Any violation of this Ordinance as described in Section 3.2 is punishable as a misdemeanor. The prosecutor may in his or her discretion specify that the offense is an infraction. Each day of a continuing violation constitutes a separate and distinct violation. Any such violation or threatened violation may also be enjoined by civil action.

### SECTION 3.4 ADMINISTRATIVE REMEDIES

In addition to any other remedy, ~~the District~~Valley Water may pursue administrative remedies in accordance with this Section. Use of this Section is at the sole discretion of ~~the District~~Valley Water. At any point during the administrative process, Valley Water may elect to pursue a judicial remedy instead, following written notice. Beginning the administrative process shall not obligate Valley Water to complete it.

#### 3.4.1 Compliance Order

Whenever the Permit Authority determines that a violation of any provision of this Ordinance is occurring or exists, the Permit Authority may ~~issue a written compliance order to any Person responsible for the violation. The order must contain the following information: the date and, but is not required to, issue a notice of potential violation to the alleged Person responsible for the ongoing violation to allow for the alleged Person responsible to voluntarily remediate a violation in a manner and time period acceptable to the Permit Authority, generally within 30 days or less depending on the severity and impact of the violation on District Facilities or to allow the alleged Person responsible for the violation to deny responsibility for the violation. If Valley Water determines the Person responsible for the ongoing violation does not voluntarily remediate the violation in a timely manner specified by the Permit Authority in the notice of potential violation, the Permit Authority may issue a written compliance order to any Person responsible for the ongoing violation. The order must contain the following information: the date of the compliance order; the date the violation was discovered; the~~ location of the violation; the Section of this Ordinance violated and a description of the violation; the actions required to correct the violation; the time period after which administrative penalties will begin to accrue if compliance with the order has not been achieved; and either a copy of this Section or an explanation of the consequences of noncompliance with this Section and a description of the hearing procedure and appeal process.

### 3.4.2 Method of Service

The compliance order in Section 3.4.1

~~will be served as provided in Section 1.6. Where real property is involved, written notice will be mailed to the property owner at the address shown on the last equalized county assessment roll.~~

### 3.4.3 Hearing

If the Permit Authority determines that all violations have been corrected within the time specified in the compliance order, no further action will be taken under this Section 3.4. If full compliance is not achieved within the time specified, a hearing will be scheduled before the CEO.

### 3.4.4 Notice of Hearing

~~Notice of hearing on the compliance order will be given as provided in Section 1.6. The hearing will be set for a date not less than 15 days nor more than 60 days from the date of the notice hearing unless the Permit Authority determines the matter is urgent or that good cause exists for an extension of time. or his/her designee.~~ The hearing is intended to provide the full opportunity for any Person subject to a compliance order to object to the determination that a violation has occurred and/or that the violation has continued to exist. The failure of any Person subject to a compliance order to appear at the hearing will constitute a failure to exhaust administrative remedies.

### 3.4.4 Notice of Hearing

Notice of hearing on the compliance order will be served as provided in Section 1.6. The hearing will be set for a date not less than 15 days nor more than 60 days from the date the notice hearing was served unless the Permit Authority determines the matter is urgent or that good cause exists for an extension of time.

### 3.4.5 Hearing - Findings and Order

#### A. Hearing Procedure

1. Persons subject to the compliance order shall have the right to appear in person and shall have the right to representation by legal counsel. The Permit Authority shall have the right to appear through a designee and shall have the right to representation by legal counsel. Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. Hearsay evidence is admissible but shall not be sufficient alone to support a finding unless it would be admissible over objection in civil actions. Immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply.
2. The Permit Authority shall have the burden of proving the violation of the Ordinance by a preponderance of the evidence. Persons subject to the compliance order shall have the burden of proving any defenses to the violation being alleged. The Permit Authority shall present its case first followed by the Person subject to the compliance order. Thereafter, the Permit authority shall be entitled to present rebuttal, and the Persons subject to the compliance order shall be entitled to present surrebuttal.
3. Each party to the hearing shall have the right to call, examine, and cross-examine witnesses and introduce documentary and other evidence on the issues. No less than five calendar days before the hearing, the parties shall exchange (or have exchanged) copies of any exhibits or other

documents they intend to present at the hearing. Such exchange may take place by Email. There shall be no obligation, prior to the hearing, for parties to exchange exhibits or documents intended solely for impeachment or rebuttal. Failure to comply with the time requirements for exchange shall not preclude a party from introducing exhibits or documents at the hearing where good cause exists for the delay and the other party will not be prejudiced.

4. At the hearing, the CEO or his/her designee will consider any written or oral evidence ~~consistent with rule that may be established from time to time for the conduct of such hearings.~~ Within a reasonable time following the conclusion of the hearing, the CEO or his/her designee will make findings and issue a determination regarding the existence of the violation and the failure of the violator or owner to take corrective action within the required time period. The determination will include written findings and be supported by evidence received at the hearing.

**B.** —If the CEO or his/her designee determines that a violation occurred which was not corrected within the time period specified in the compliance order, ~~the CEO~~he/she will issue an administrative order that imposes any or all of the following:

1. An order to correct, including a schedule for correction.
2. Administrative penalties as provided in Section 3.4.6.
3. Administrative costs as provided in Section 3.4.7.

### **3.4.6 Administrative Penalties**

The CEO may impose administrative penalties for the violation of any provision of this Ordinance in an amount not to exceed a maximum of ~~\$1,000~~\$500 per day for each ongoing violation, except that the total administrative penalty will not exceed \$100,000 for any related series of violations. In determining the amount of the administrative penalty, the CEO may consider any or all of the following factors: duration and seriousness of the violation; number of violations by the same violator; good faith efforts to come into compliance; economic impact of the penalty on the violator, and impact of the violation on the community and environment. ~~The CEO may suspend the imposition of applicable penalties for any period of time during which the violator has applied for necessary permits and the Encroachment Permit applications are actively pending.~~ If the violation is not corrected as specified in the administrative order, the administrative penalties will continue to accrue as specified in the order subject to the maximum amount described in this Section.

### **3.4.7 Administrative Costs**

The CEO may assess administrative costs against the violator upon a finding that a violation has ~~occured~~occurred and compliance has not been achieved within the time specified in the compliance order. The administrative costs may include any and all costs incurred by ~~the District~~Valley Water in connection with the matter which is the subject of proceedings under Section 3.4, including but not limited to costs of investigation, preparation for the hearing, and conduct of the hearing.

### **3.4.8 Lien**

Failure to pay the assessed administrative penalties and administrative costs specified in the administrative order of the CEO may be enforced as a personal obligation of the violator and/or if the violation is in connection with real property, a lien upon the property. The lien will have no force and effect until recorded with the County Recorder. Recordation will not occur until 90 days after the

administrative order, to provide an opportunity for payment and/or judicial review of the decision. Once recorded, the lien will remain in effect until all of the administrative penalties are paid in full.

### **3.5 ABATEMENT**

In addition to any other remedy, ~~the District~~Valley Water may pursue abatement under this Section 3.5 when any violation of this Ordinance constitutes a serious threat to the public health, safety, or welfare.

#### **3.5.1 Notice of Intent to Abate**

~~The District~~Valley Water may include in any compliance order and notice issued under Section 3.4 notice of ~~the District's~~Valley Water's intent to abate the violation if not corrected within the time specified in the compliance order.

#### **3.5.2 Findings; Abatement Order**

If following the hearing held under Section 3.4 the CEO finds, in addition to the findings described in Section 3.4.5B5, that the continuing violation constitutes a serious threat to the public health, safety, or welfare, then the CEO may include in the administrative order notification that unless the violation is corrected within the time specified in that order, ~~the District~~Valley Water will abate the violation and that the abatement costs will be charged against the property owner. In addition to the notice as provided in Section 1.6, this order will be posted in a conspicuous place on the subject property.

#### **3.5.3 Time for Abatement; Lien**

Abatement will not occur until at least 90 days after issuance of the abatement order to provide time for compliance and/or judicial review of the abatement order. Costs incurred by ~~the District~~Valley Water for the abatement action may be enforced as a personal obligation of the property owner and as a lien against the property, as provided in Section 3.4.8.

### **3.6 License Program**

#### **3.6.1 Purpose**

Where a Person is in violation of this Ordinance or has received a notice of potential violation or Compliance Order issued in accordance with Section 3.4.1 and meets all of the requirements below, a License may be applied for to temporarily address the violation. Where there has been an Encroachment of Valley Water Facilities by a License Applicant or his/her/its predecessor in interest pre-dating October 22, 2019, temporary use of Valley Water Facilities may be authorized pursuant to a License issued pursuant to this section for a limited time. Encroachments beginning after October 22, 2019, are not eligible for a License. This section shall not apply to any use of Valley Water Facilities on which there is no existing Encroachment and shall not apply to new prospective use of Valley Water Facilities. Any such new use of Valley Water Facilities shall be addressed through the Encroachment Permit provisions of Sections 2 above. Nothing in this section shall create any legal right to receipt of a License.

#### **3.6.2 Eligibility**

To be eligible to apply for a License, the License Applicant must meet all of the conditions set forth below:

- A. The Licensed Area must have been Encroached upon by the License Applicant or his/her/its predecessor in interest prior to October 22, 2019 (the License Applicant shall have the burden of proof on this fact);
- B. The License Applicant shall be responsible for the cost of any property line survey when required by Valley Water for issuance of the License;
- C. The proposed License Area must be on real property owned by Valley Water in fee title and may not conflict with any pre-existing easement;
- D. The application for a License must precede any administrative hearing on a compliance order as set forth in section 3.4.5 et seq. Applications submitted following the start of an administrative hearing will be deemed untimely; and
- E. Licensing will only be considered based upon the parameters set forth herein and must be cost neutral to Valley Water.

### **3.6.3 Application and Fees**

- A. Requests for a License must be filed with the Permit Authority on the application form established and maintained by that Permit Authority. All applications must be accompanied by a filing fee as specified by Valley Water.
- B. An application for a License must be signed by the Applicant or a duly authorized agent of the Applicant.
- C. In addition to a filing fee, the Applicant shall pay all administrative fees associated with License issuance and maintenance including, but not limited to, the costs of Valley Water staff review, any environmental review, and License Area inspections (pre-issuance and post-issuance).

### **3.6.4 Environmental Assessment**

Where Valley Water, in its sole discretion, determines that issuance of a License is subject to environmental review, the License Applicant shall be responsible for any and all fees associated with such environmental review. All applications for an environmental assessment must be accompanied by a filing fee as established by the Board. The environmental assessment may be undertaken by or under contract to Valley Water and be at the License Applicant's expense. Where Valley Water requires an environmental assessment, no decision on the License application will be made until the assessment has been completed as required by state law. The Permit Authority will take all actions required by CEQA on behalf of Valley Water, unless otherwise provided by law.

### **3.6.5 License Duration; Cost**

The License is intended to be temporary in nature. The Permit Authority shall designate the initial term of any License to be issued pursuant to this section, so long as such initial term does not exceed two years. Where a License is issued, the Permit Authority may, in his or her sole discretion, approve renewals of the License not to exceed two years apiece, and not to exceed eight years in total. The License shall include an annual fee representing the value of the area to be licensed as determined by Valley Water.

### **3.6.6 Considerations for License Approval**

The Permit Authority, in his or her sole discretion, may issue or renew a License if he or she finds, based upon substantial evidence, that:

- A. The License Area is *not* within a planned project area for Valley Water Facilities, capital improvements, city trails, county trails, mitigation projects, or stream stewardship projects scheduled to begin in three years or less from the date of the application;
- B. The License Area is *not* required to be used by Valley Water within three years of the application date to operate or maintain any Valley Water Facility;
- C. The initial term of the License is not anticipated to interfere with the operation and maintenance of any Valley Water Facilities;
- D. Any License renewals are not anticipated to interfere with the operation and maintenance of any Valley Water Facilities;
- E. Issuance and/or renewal of the License is not anticipated to result in any direct or indirect increased expenses for Valley Water;
- F. Issuance and/or renewal of the License will not pose a foreseeable threat to the safety of the public or Valley Water staff or contractors; and
- G. Issuance of the License is not contrary to Valley Water interests when considering: the public cost of any work arounds, the potential use of alternative methods to perform work, or Valley Water's need to acquire suitable riparian lands elsewhere.
- H. The License and/or renewal of the License includes provisions that Valley Water may terminate the License for no cause and said termination shall be at Valley Water's sole discretion with at least ninety-days' prior written notice. Upon such termination, Valley Water shall be entitled to exclusive possession of the License Area on the date set forth in the termination notice.

### **3.6.7 Notice of Action**

Upon the approval, conditional approval, or denial of an application, Valley Water will prepare and deliver to the License Applicant a written Notice of Action, which will be served as provided in Section 1.6 of this Ordinance and which will include a description of the appeal process described in section 3.6.8 below. If the application is approved, the Notice of Action will include the proposed License for execution by the License Applicant. If a notice of denial is issued, any encroachment must be remediated unless there is a timely appeal of the denial.

### **3.6.8 Appeals of License Decisions**

#### **3.6.8.1 Decisions subject to appeal:**

- A. Denial of License;
- B. Denial of renewal of License (subject to the limits of section 3.6.5 above); and
- C. Termination of License.

Except as set forth above, no decisions relating to the License shall be subject to appeal, including but not limited to License terms.

#### **3.6.8.2 Right to Appeal; Timing**

The License Applicant or Licensee may appeal a decision subject to appeal in section 3.6.8.1 above.

### **3.6.8.3 Hearing and Decision**

Appeal to CEO: Decisions subject to appeal made by the Licensing Authority may be appealed to District's Chief Executive Officer (CEO). An appeal to the CEO must be in writing, accompanied by the Notice of Action, and submitted to the CEO, along with any associated appeal fee designated in District's schedule of fees, no later than ten (10) days following service, as defined in Section 1.6, of the Notice of Action, notice of any denial of renewal of License, notice of any termination of License, as appropriate.

- A. Upon receipt of a timely notice of appeal, the CEO, or his or her designee, shall schedule a hearing within thirty days. Upon conclusion of the hearing, the CEO or his/her designee will issue a written decision on the appeal. The written decision by the CEO or his/her designee may be appealed to the Board.
- B. Appeal to the Board: Written decisions of the CEO or his/her designee may be appealed to the Board by filing a written notice of appeal with the Clerk of the Board no later than fifteen (15) days from the date of the written decision. The Board may delegate hearing and decision of such appeal to a Board committee (regular or ad hoc). Valley Water will provide the appellant with notice of the date of such hearing. Any decision upon this appeal shall be final and not subject to further appeal.
- C. If there is a final decision denying the appeal, any encroachment must be remediated within ninety (90) days of the decision or any alternate deadline established by the CEO or the Board, if further appeal was made to the Board as set forth above.

## **ARTICLE 4.0 ~~DISTRICT~~ WATER RESOURCES PROTECTION MANUAL**

### **SECTION 4.1 PURPOSE**

The purpose of this Article is to set forth the process used by ~~the District~~Valley Water to adopt or amend the ~~District~~ Water Resources Protection Manual and to describe its uses.

### **SECTION 4.2 ADOPTION OF ~~DISTRICT~~ WATER RESOURCES PROTECTION MANUAL**

The Board will adopt, and may from time to time amend, a ~~District~~ Water Resources Protection Manual to be used as a basis for evaluation of applications for Encroachment Permits, for establishment of Encroachment Permit conditions in order to make the required findings for issuance of such Encroachment Permits. ~~The District, and to establish conditions for Licenses issued pursuant to this Ordinance. The~~ Water Resources Protection Manual may incorporate by reference documents promulgated by the CEO.

### **SECTION 4.3 PROCEDURE TO ADOPT AND AMEND ~~DISTRICT~~ WATER RESOURCES PROTECTION MANUAL**

The Board will schedule and hold a public hearing to consider adoption of ~~District~~ Water Resources Protection Manual and any subsequent amendments.

#### **4.3.1 Notice of Public Hearing**

A notice of the hearing will be provided at least ten (10) days prior to the scheduled hearing. The notice will include the date, time and place of the hearing, and a general explanation of proposed content of the ~~District~~ Water Resources Protection Manual or any amendments thereto. Notice will be given by first class mail to Municipal Organizations within the county and to any parties who have requested such notice, by posting the notice at ~~the District~~Valley Water headquarters, and by publication once in a newspaper of general circulation. ~~The District~~Valley Water may, in its discretion, provide additional notice beyond that specified in this Section. Failure to comply with the notice requirements in this Section, in whole or in part, will not invalidate any action taken on the matter.

#### **4.3.2 Adoption or Amendment to ~~District~~ Water Resources Protection Manual**

Upon the conclusion of the public hearing, the Board may adopt or amend the ~~District~~ Water Resources Protection Manual. Any such action will be taken by resolution.

### **ARTICLE 5.0 EFFECTIVE DATE, REPEAL OF PRIOR ORDINANCE ~~83-2~~**

#### **SECTION 5.1 EFFECTIVE DATE**

This Ordinance is effective on ~~February 28, 2007~~\_\_\_\_\_, 2025<sup>4</sup> and is intended to supersede Ordinance 06-1 as amended by Ordinance 08-1.

#### **SECTION 5.2 PRIOR REPEAL OF ORDINANCE ~~83-2~~06-1, as amended by Ordinance 08-1**

~~On the effective date~~As a result ~~On the effective date~~ of ~~this~~ this Ordinance, Ordinance 06-01, Ordinance 83-2 ~~is~~was ~~as amended by Ordinance 08-1~~ is repealed ~~effective February 28, 2007~~. Permits given and rights acquired under Ordinance 83-2 or its predecessors ~~a Predecessor Ordinance~~ will remain effective, subject to the terms of this Ordinance.