



IMPERIAL IRRIGATION DISTRICT RESOLUTION NO. 31-2022

WHEREAS, the Imperial Irrigation District ("IID") is a California irrigation district formed and governed under Irrigation District Law and holds water rights to, and diverts water from, the Colorado River for distribution and use within its water service area; and

WHEREAS, IID is authorized specifically under Water Code sections 22252 and 22257 to adopt rules and regulations for the equitable distribution of water within its service area; and

WHEREAS, IID's annual consumptive use entitlement was capped at 3.1 million acre-feet of Colorado River as a result of the Quantification Settlement Agreement and related agreements ("QSA"); and

WHEREAS, it is essential that IID's water rights and annual entitlement be protected and utilized to produce the maximum benefit for the Imperial Valley community and its water users; and

WHEREAS, on November 28, 2006 the IID Board of Directors ("IID Board") adopted Resolution No. 22-2006 approving the development and implementation of an Equitable Distribution Plan ("2006 EDP"). Resolution No. 22-2006 directed the General Manager to prepare rules and regulations necessary or appropriate to implement the 2006 EDP; and

WHEREAS, on December 18, 2007, the IID Board adopted Resolution No. 31-2007 approving revisions to the *Imperial Irrigation District Regulations for Equitable Distribution Plan* ("2007 EDP"); and

WHEREAS, on November 18, 2008, the IID Board adopted Resolution No. 22-2008 approving revisions to the 2007 EDP ("2008 EDP"); and

WHEREAS, on April 7, 2009, the IID Board adopted Resolution No. 8-2009 approving revisions to the 2008 EDP ("2009 EDP"); and

WHEREAS, on April 23, 2013, the IID Board adopted Resolution No. 13-2013 approving revisions to the 2009 EDP ("April 2013 EDP"); and

WHEREAS, on May 14, 2013, the IID Board adopted Resolution No. 15-2013 approving revisions to the April 2013 EDP (“May 2013 EDP”); and

WHEREAS, on October 28, 2013, the IID Board adopted Resolution No. 26-2013 approving revisions to the May 2013 EDP (“October 2013 EDP”); and

WHEREAS, on November 27, 2013, a lawsuit was filed against IID challenging the October 2013 EDP, which resulted in a writ of mandate being issued by the superior court mandating the repeal the October 2013 EDP. In compliance with the writ of mandate, IID repealed the 2013 EDP via Resolution No. 4-2018. IID subsequently appealed the superior court writ and judgment. In 2020, the California Court of Appeal reversed the superior court’s writ and judgment, except solely with regard to how the October 2013 EDP prioritized apportionment among categories of water users; and

WHEREAS, in 2020, the California Supreme Court denied review of the case and, in 2021, the U.S. Supreme Court denied the petition for writ of certiorari; and

WHEREAS, it is the policy of IID to deliver its Colorado River water supplies to support Imperial Valley’s agricultural economy and local water uses within its 3.1 million acre-feet entitlement consistent with the “Law of the River” and applicable California laws; and

WHEREAS, the water supply forecasts for the Colorado River system reflect extreme, ongoing drought conditions as a historic 23-year drought continues and the Colorado River is officially operating in shortage conditions amid the first-ever “shortage” declaration for the Colorado River by the U.S. Department of Interior for the calendar year 2022, with no foreseeable end to these conditions in the near term; and

WHEREAS, to manage IID’s water supplies, revisions to the October 2013 EDP were identified to respond to the Appellate Court opinion and to implement the apportionment of water accordingly (“2022 EDP”); and

WHEREAS, IID encouraged public input and held four public workshops to present the proposed 2022 EDP as follows: May 31, 2022 in Imperial, June 1, 2022 in Holtville, June 2, 2022 in Brawley, and June 2, 2022 in El Centro; and

WHEREAS, the *Imperial Irrigation District Equitable Distribution Plan Addendum No. 2 to the Negative Declaration 2006* (SCH No. 2006101155), dated June 21, 2022 (“Addendum No. 2”) was prepared for the 2022 EDP pursuant to CEQA, the CEQA Guidelines and the Imperial District Rules and Regulations to Implement the California Environmental Quality Act, which was adopted by the IID Board of Directors.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED AS FOLLOWS:

1. The Board of Directors hereby finds and determines the foregoing recitals, which are incorporated herein by reference, are true and correct.
2. The Board of Directors hereby approves and adopts the revised Equitable Distribution Plan, dated June 21, 2022, attached as Exhibit 1 and incorporated herein by reference.
3. The Board of Directors hereby authorizes the General Manager to implement the 2022 EDP.

PASSED AND ADOPTED this 21st day of June, 2022.

IMPERIAL IRRIGATION DISTRICT



James C. Hanko

President

Roguel Najera

Secretary

Exhibit 1
Revised Equitable Distribution Plan

Equitable Distribution Plan

Adopted December 11, 2007

Revised November 18, 2008

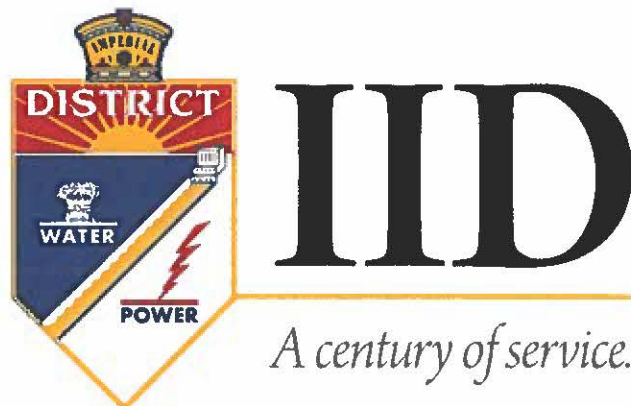
Revised April 07, 2009

Revised April 23, 2013

Revised May 14, 2013

Revised October 28, 2013

Revised June 21, 2022



1.0 Purpose.

1.1 Purpose. The Imperial Irrigation District ("District" or "IID") is authorized by the Irrigation District Law, specifically California Water Code Section 22252, to adopt rules and regulations for the equitable distribution of water within the District. The IID Board of Directors has approved this plan for the equitable distribution of the available water supply (the "Equitable Distribution Plan"). This Equitable Distribution Plan is for the management of the District's available water supply and does not transfer water and/or water rights outside the IID service area, but does allow for an intra-district clearinghouse for the movement of water within the IID water service area. Pursuant to Resolution No. 31-2022, the IID Board of Directors has adopted this revised Equitable Distribution Plan.

2.0 Terms and Definitions.

2.1 Agricultural Water. Water used for irrigation, related to agricultural purposes, duck ponds, and algae farming. Pipe and small parcel water service as identified by the District's *Rules and Regulations Governing the Distribution and Use of Water* is not included in this definition pursuant to Section 2.22.

2.2 Agricultural Water User(s). A District Water User that uses Agricultural Water.

2.3 Agricultural Water Users Category. A category of District Water Users comprised of Agricultural Water Users.

2.4 Apportionment. The amount of water equitably apportioned among District Water Users within each Water User Category pursuant to Sections 3.2, 3.3, and 3.4.

2.5 Available Water Supply. Water available each Calendar Year for Apportionment, which shall not include Operational and System Water and may be subject to a Water Management Reduction.

2.6 Calendar Year. Each 12-month period that begins on January 1 and ends on December 31.

2.7 Category Apportionment. The amount of water equitably apportioned to each Water User Category as a category, which is calculated by the Calendar Year average of the historical water use for that Water User Category as a whole during the years 2003 to 2012, eliminating the highest Calendar Year and lowest Calendar Year of water use history.

2.8 Clearinghouse. A mechanism administered by the District or other entity authorized by the IID Board of Directors to provide a means by which qualified

District Water Users can transfer water within the IID water service area during a Calendar Year pursuant to Section 6.0.

2.9 Cropland. Irrigable acreage within the District service area divided into fields based on the [proprietary] District Geospatial Data Base compiled from IID records, inspections and U.S. Consolidated Farm Service Agency (CFSA) Common Land Unit (CLU) standards, or other defined acreage database such as the assessor's parcel records.

2.10 District or IID. The Imperial Irrigation District.

2.11 District Conservation Assignment. Apportionment contractually or automatically assigned to IID for water conservation purposes from lands participating in or designated for participation in any District On-Farm Efficiency Conservation Program, District Fallowing Program or other District conservation programs, or subject to the Temporary Land Conversion Fallowing Policy or Interim Water Supply Policy per the terms and conditions set forth in those program agreements and/or IID policies.

2.12 District Fallowing Program. Any program administered by the District to create conserved water by fallowing agricultural lands per the terms and conditions set forth in those program agreements and/or IID policies, including the Temporary Land Conversion Fallowing Policy.

2.13 District On-Farm Efficiency Conservation Program. Any program administered by the District to create conserved water by on-farm efficiency conservation measures and/or projects per the terms and conditions set forth in those program agreements and/or IID policies.

2.14 District System Conservation Program/Projects. An integrated package of system improvements to existing infrastructure and construction of new facilities designed to conserve water.

2.15 District Water User. Any user of water supplied by the District receiving an Apportionment.

2.16 Eligible Agricultural Acre(s). Acreage that is subject to the Temporary Land Conversion Fallowing Policy or meets all the following:

- a. Cropland greater than 5 acres;
- b. Used for crop production, duck ponds or algae farming;
- c. Current with water availability charges and water bills; and
- d. Connected to District water distribution system.

2.17 Farm Unit. A grouping of two or more Agricultural Water accounts of one or more fields leased or owned by the same Agricultural Water User; a single Agricultural Water account is automatically a Farm Unit.

2.18 Hybrid Apportionment. A Method of Apportionment used to calculate the Apportionment per Eligible Agricultural Acre within the Agricultural Water Users Category as set forth in Section 3.2.

2.19 Industrial/Commercial Water User(s). District Water Users receiving water directly from the District, and not from a Potable Water User, for industrial and commercial uses.

2.20 Industrial/Commercial Water Users Category. A category of District Water Users comprised of Industrial/Commercial Water Users.

2.21 Method of Apportionment. The method of apportionment used to calculate the Apportionment for District Water Users within each Water User Category during a Calendar Year.

2.22 Operational and System Water. Water not available for Apportionment because it is: (i) required by law, contract, and/or regulatory order or permit to be delivered or used for another use or user and failure to do so would impact the District's operations, maintenance and/or Available Water Supply; (ii) required for the District's operations and maintenance, including operational carriage and discharge water, system losses, seepage (excluding water from seepage interception conservation projects), evaporation or other losses in the District's distribution system, such as unmetered uses which cannot otherwise be calculated, including small parcel and pipe water service, recreation/lakes, and feedlots, adjusted for calculated losses from the District's point of diversion; or (iii) created by District System Conservation Program/Projects and absent the District System Conservation Program/Projects the water would not have been available for Apportionment because it would have been otherwise lost, such as through seepage or discharge.

2.23 Overrun Payback Program. A program consistent with the federal Inadvertent Overrun and Payback Policy or other federal policies or programs to which the District may be subject, by which the cost of and/or responsibility for any District payback obligation will be borne by those District Water Users responsible for exceeding the Apportionment in a Calendar Year (adjusted for any Clearinghouse water transferred) should a District overrun occur in that Calendar Year; provided that this Overrun Payback Program shall not be available to District Water Users in any Calendar Year the federal Inadvertent Overrun and Payback Policy is suspended and/or the District is not allowed to overrun pursuant to a federal law, rule, or regulation.

2.24 Potable Water User(s). District Water Users receiving water from the District and treating that water through a water treatment system to deliver potable water to its water users, including but not limited to municipalities and special districts.

2.25 Potable Water Users Category. A category of District Water Users comprised of Potable Water Users.

2.26 Take-or-Pay Basis. An obligation that District Water Users pay, pursuant to the District's Water Rate Schedules and *Rules and Regulations Governing the Distribution and Use of Water*, for all of the Apportionment accepted by the District Water User and not used during the Calendar Year.

2.27 Three-Year Average Apportionment. A Method of Apportionment used to calculate the Apportionment for each District Water User within the Potable Water Users Category and the Industrial/Commercial Water Users Category as set forth in Sections 3.3 and 3.4.

2.28 Water Card. The common term for the "Certificate of Ownership and Authorization of Owner Designee or Tenant" described in Regulation No. 3 of the District's *Rules and Regulations Governing the Distribution and Use of Water*. The Water Card provides information i.e., Cropland, name and address of owner and any lessees, APN, gate and canal providing water service, identity of person authorized to order water/receive notices from the District, who is obligated to pay, and similar information.

2.29 Water Management Reduction. A reduction in Available Water Supply for Apportionment, or a percentage reduction in each Category Apportionment, because of a District-wide overrun payback requirement mandatory program, or regulatory limitation of or reduction in the District's Colorado River water supply.

2.30 Water Users Category(ies). The Agricultural Water Users Category, the Potable Water Users Category, and the Industrial/Commercial Water Users Category.

3.0 Equitable Distribution.

3.1 Category Apportionment. Each Water User Category shall receive a Category Apportionment from the Available Water Supply to be distributed to the District Water Users within that Water User Category.

3.2 Agricultural Water User Apportionment. Apportionment models understood and discussed to date are historical, straight line, soil type and hybrids of a combination of these methods. The default Method of Apportionment for Agricultural Water Users is the Hybrid Apportionment, which may be changed for any Calendar Year prior to the notification period set forth in Section 4.1 at the discretion of the IID Board of Directors. The Hybrid Apportionment is comprised of a historical use component and a

straight line component and is calculated for each Eligible Agricultural Acre as the sum of:

a. One-half of the average amount of water used each Calendar Year between 2003 to 2012, excluding the highest and lowest Calendar Years, up to a maximum of 10 acre-feet (i.e., 5 acre-feet will be maximum 1/2 of 10 acre-feet limit); and

b. After the historical use component is calculated for every Eligible Agricultural Acre within the Agricultural Water User Category and that amount is subtracted from the Category Apportionment, the remaining amount of Category Apportionment for the Agricultural Water User Category is divided by the Eligible Agricultural Acres resulting in a flat amount for each Eligible Agricultural Acre.

3.3 Potable Water User Apportionment. The default Method of Apportionment for Potable Water Users is the Three-Year Average Apportionment, which may be changed for any Calendar Year prior to the notification period set forth in Section 4.1 at the discretion of the IID Board of Directors. The Three-Year Average Apportionment is calculated as the average amount of water used each of the most recent three Calendar Years that such data is available for each District Water User within the Potable Water User Category.

3.4 Industrial/Commercial Water User Apportionment. The default Method of Apportionment for Industrial/Commercial Water Users is the Three-Year Average Apportionment, which may be changed for any Calendar Year prior to the notification period set forth in Section 4.1 at the discretion of the IID Board of Directors. The Three-Year Average Apportionment is calculated as the average amount of water used each of the most recent three Calendar Years that such data is available for each District Water User within the Industrial/Commercial Water User Category.

4.0 Apportionment Acceptance on Take-Or-Pay Basis.

4.1 A written notice of the Apportionment for each District Water User shall be sent no later than October 31 prior to the beginning of the next Calendar Year. For Agricultural Water Users, the written notice of the Apportionment will be identified per Eligible Agricultural Acre and the number of Eligible Agricultural Acres per landowner, which shall be sent to the landowner, lessee and the authorized representative.

4.2 Prior to the start of the Calendar Year, the District Water User and/or, as applicable, the landowner or authorized representative (of Eligible Agricultural Acres for the Agricultural Water Users Category), with written consent of the lessee (if any), must, using a District form:

a. Accept some, all or none of the Apportionment on a Take-or-Pay Basis.

b. Reserve some or all of the Apportionment on a Take-or-Pay Basis for the use of a future lessee, if applicable. The landowner remains responsible for payment on a Take-or-Pay Basis for the amount reserved for the future lessee, if applicable, unless and until payment is made by the future lessee.

c. Designate the person or entity responsible for payment of accepted and unused Apportionment on the Take-or-Pay Basis.

d. For Agricultural Water Users only, approve or disapprove the use of the Apportionment on other fields within the Farm Unit.

e. Allow or disallow a lessee to offer accepted and unused Apportionment to the Clearinghouse.

4.3 The District Water User and/or landowner will only be responsible for payment on a Take-or-Pay Basis for Apportionment that is accepted and remains unused in the water account at the end of the Calendar Year. On December 31 of the Calendar Year, payment for any remaining amount of the unused Apportionment will be included in the year end invoice.

4.4 Apportionment not affirmatively rejected is considered accepted. In the event a District form accepting Apportionment is not received for a field, IID will provide water delivery service to an owner or lessee with a valid Water Card in an amount not to exceed the Apportionment.

5.0 Farm Units.

5.1 The Farm Unit allows for the creation of a master Agricultural Water account under which individual Agricultural Water accounts are aggregated. The District will continue to bill for delivered water by individual Agricultural Water account and not by the Farm Unit or "master water account."

5.2 The primary purpose of a Farm Unit is to allow an Agricultural Water User to order water on any field within the Farm Unit as long as there is a remaining water balance for the Farm Unit greater than the water order. If water is not available within the Farm Unit, the water order will not be accepted, unless and until procedures are developed and implemented under this Equitable Distribution Plan, including procedures for the Overrun Payback Program, that allow for the acceptance of the water order.

5.3 The District will account for water and track a water balance for each field. Fields can move between Agricultural Water accounts when there is a change to the Water Card and the water balance for the field will move with the field.

5.4 Agricultural Water Users must complete and keep current the Water Card and any Farm Unit designations to receive an Apportionment and delivery of water. It is the Agricultural Water User's responsibility to keep Farm Unit designations current.

5.5 An Agricultural Water account may only be associated with a single Farm Unit at any one time. Any Agricultural Water account not designated as part of a Farm Unit will be tracked and identified as an individual Farm Unit comprised solely of that Agricultural Water account.

5.6 The amount of Apportionment available to an Agricultural Water User on leased fields included in a Farm Unit must be approved by the landowner and lessee of those fields.

5.7 Water can be added to a Farm Unit by transferring water through the Clearinghouse, but the transfer must be made to individual fields within the Farm Unit. If no particular fields are specified, the District will select a field within the Farm Unit to initially receive the water or (as closely as possible) equally divide the water among all Eligible Agricultural Acres within the Farm Unit.

5.8 An Agricultural Water User may designate multiple Farm Units. Apportionment may only be transferred between Farm Units via the Clearinghouse.

5.9 The priority of water use within a Farm Unit is (a) accepted Apportionment authorized for use on the field, (b) water from other fields authorized for transfer within the Farm Unit, and (c) water from the Clearinghouse; or as otherwise provided in procedures developed and implemented under and pursuant to this Equitable Distribution Plan. Water from a higher-priority category must be fully-used before water from a lower-priority category may be used within a Farm Unit.

6.0 Clearinghouse.

6.1 Purpose. The Clearinghouse is a mechanism to facilitate the movement of water between District Water Users and/or between Farm Units. Administration of the Clearinghouse may be delegated by the District to an entity authorized by the IID Board of Directors on a non-profit basis under rules approved by the IID Board of Directors, however all final transactions must be reported to the District for implementation.

6.2 Eligibility. Any District Water User may be a transferee. Any District Water User may be a transferor. All transferees and transferors must be current on their District water accounts and billings, including water availability charges.

6.3 Transfers. Water made available to the Clearinghouse for transfer will be assigned to Clearinghouse accounts and water shall be transferred through the Clearinghouse pursuant to procedures developed and implemented under and pursuant

to this Equitable Distribution Plan. Water available for transfer will be made on a first-come, first-serve basis for those District Water Users that have submitted an offer to transfer water or submitted a request for additional water.

6.4 Clearinghouse Notice of Transfer. The Notice of Transfer will be the Clearinghouse reporting mechanism to document all transfers of water including the relevant transactional information to execute the transaction between the transferor and transferee.

6.5 Water Transferred Through the Clearinghouse. The transferee shall be billed and shall pay the District the total payment amount due for the transferred water in the District billing issued for the same month the Notice of Transfer for the transferred water is made, or the next billing if that same month is infeasible due to the timing of the billing. The total amount due is based on the acre-feet of water transferred (not to exceed Clearinghouse Notice of Transfer) multiplied by the current District rate applicable to the District Water User pursuant to the District's Water Rate Schedules and *Rules and Regulations Governing the Distribution and Use of Water*. Such payment will be due regardless of whether the transferred water is used by the transferee. If the transferred water is used by the transferee before the District billing is issued, the District Water User will be billed only once for the current District rate applicable to the District Water User. After the District processes the Clearinghouse Notice of Transfer, the transferor shall have no further obligation for payment of that water on a Take-or-Pay Basis. Any supplemental transactional information or fees associated with the transfer of the water between the transferor and transferee but not relevant to the implementation of the transaction are a private matter and shall not be reported to the District. Any transfers of water through the Clearinghouse, whether within the Farm Unit or via the Clearinghouse, are only for the Calendar Year in which they occur and do not constitute a permanent transfer of water, or create a right to be apportioned water in future years.

6.6 Offers Remaining at Calendar Year End. Any offers for water to be transferred through the Clearinghouse not transferred by the end of the Calendar Year may be used by the District to meet the needs of other District Water Users, fulfilling conservation responsibilities, or for other District purposes. Use by the District in this manner will not relieve the District Water Users of payment required on the Take-or-Pay Basis.

7.0 On-Farm Conservation and Land Fallowing Programs.

7.1 An Agricultural Water User that participates in the District On-Farm Efficiency Conservation Program or District Fallowing Program is subject to a District Conservation Assignment of the Agricultural Water User's accepted Apportionment for the Farm Unit equal to the amount of water conserved by on-farm efficiency conservation measures or fallowing for which the Agricultural Water User is contracted.

7.2 If the Agricultural Water User's Apportionment is less than the District On-Farm Efficiency Conservation Program or District Fallowing Program contracted amount, the Agricultural Water User must procure this difference from either: the Agricultural Water User's accepted Apportionment on other Eligible Agricultural Acres within the Farm Unit, or the Clearinghouse.

7.3 If the Agricultural Water User's Apportionment is more than the District Fallowing Program contracted amount, the Agricultural Water User may use the difference on other Eligible Agricultural Acres within the Farm Unit not participating in a District Fallowing Program, on the fallowed field after the term of the District Fallowing Program, or offer it to the Clearinghouse.

8.0 **Miscellaneous.**

8.1 The IID Board of Directors, at its sole discretion, which may include consideration of recommendations by the Agricultural Water Advisory Committee, may declare a 15-day period in which all offers of water received by the Clearinghouse, of up to 7% (seven percent) of the District Water User's Apportionment, shall be accepted by the District thereby relieving the District Water Users of payment of that water on the Take-or-Pay Basis. This water accepted by the District will be offered back for transfer to other District Water Users via the Clearinghouse.

8.2 The General Manager is authorized and directed to do any and all things necessary to implement and effectuate these Regulations in a manner consistent with this policy, including the temporary modification of any dates necessary to facilitate implementation.

8.3 In the event of a Water Management Reduction, the IID Board of Directors, at its sole discretion, may take any actions it determines and finds are necessary to protect the public health and safety.

8.4 The IID Board of Directors may terminate the implementation of an annual Apportionment at any time at its discretion or upon recommendation of the Agricultural Water Advisory Committee. The District shall track actual water demands during the Calendar Year.