

**OCHOCO IRRIGATION DISTRICT
CROOK COUNTY, OREGON**

RESOLUTION NO. 24.03.18.00

A Resolution Regarding the Duty to Continuously Take and Use Ordered Water

FINDINGS:

A. The Ochoco Irrigation District (the “District”) is responsible for operating and maintaining its delivery system to supply water safely and equitably to water users. The District maintains that the highest and best use of the District’s water resources is the efficient application of water for irrigated agriculture.

B. One or more electrical power companies that provide service within the boundaries of the District offer incentive programs (“Power Conservation Incentive Programs”) to irrigators to reduce electricity use during times of peak electricity demand by shutting off irrigation pumps during those time periods.

C. District patrons may be eligible to participate in one or more Power Conservation Incentive Programs and participation may require a District patron to temporarily turn off his or her irrigation pump(s) during the irrigation season.

D. The District is responsible for delivery of water to diversion points, weirs, or meters of District patrons, at which point the water user takes control of the water. Beyond the point of delivery, District patrons and water users are responsible for maintaining control of the water and applying it to beneficial irrigation use, without waste.

E. District patrons must place orders to turn water *on* or to turn water *off* in accordance with the District’s policies and procedures.

F. If a District patron fails to take delivery of ordered water, that failure may cause increased water flows that result in damages to the District’s property (e.g., canal overtopping or breaches) or to the property, equipment, or crops of downstream District patrons or property owners (e.g., flooded crops, water damage to buildings). In addition, in the event of an unauthorized turn off of ordered water, the District may in its sole discretion decide to release (i.e., dump) water from the District’s water delivery system to prevent damages to property, equipment, or crops. This results in water waste. After dumping water, one or more days may be required to restabilize water levels, and District patrons may be unable to receive ordered water during that period. The District incurs additional expenses, including staff overtime, to manage the water delivery system in these circumstances.

G. The District Board of Directors (“Board”) has the authority to establish equitable bylaws, rules, and regulations for the administration of the District, for the distribution and use of water among the District patrons, and to generally perform all acts necessary to fully carry out the purposes of the Irrigation District Law. ORS 545.221(1)(c), (d).

H. The Board, by resolution, has authority to impose a charge on all persons receiving District-delivered water to help defray the expenses to care for, inspect, operate, manage, repair, and improve the District's water delivery system. ORS 545.417(1). Moreover, in establishing its charges, the Board may consider the imposition of additional charges for special services that require proportionally greater maintenance and operation and may also consider other factors the Board considers reasonable and appropriate. ORS 545.471(2). Finally, the Board may pass on charges to individual water users when the District incurs charges, fees, fines, or similar expenses for extraordinary services that are incurred by reason of some action or failure to act by a District patron or water user. ORS 545.471(3).

I. The Board finds that instances of District patrons turning back or failing to take delivery ("turnoffs") of ordered water results in increased costs and expenses for the District, inequitable treatment of District patrons, and water waste. The Board find that the most efficient method to help defray costs and expenses related to the unauthorized turnoffs of ordered water, to ensure equitable treatment of District patrons, and to prevent water waste, is to establish a policy imposing charges for unauthorized turnoffs of ordered water pursuant to ORS 545.471 and other applicable statutes.

NOW, THEREFORE, be it resolved that the Board of Directors as follows:

Section 1. Resolution.

The District Board hereby adopts this policy regarding the duty to continuously take and use ordered water ("Policy").

1. Continuous Use.

- a. Except in Emergencies, as defined below, it shall be the duty of all District patrons to take and beneficially use ordered water continuously, until that particular irrigation is completed or turnoff is authorized under a valid water order.
- b. District patrons shall not participate in a Power Conservation Incentive Program or any other program that may require the water user to turn off or otherwise not take delivery of ordered water.
- c. This Policy is not intended to penalize District patrons who are unable to take delivery of ordered water as a result of unforeseen power outages or equipment failures ("Emergencies").

2. Liability. A District patron who turns off their water contrary to or without a valid water order shall be liable for any and all damages to the property of the District, or any third party or parties, resulting from the water turnoff including, without limitation: damages to the District's water delivery system; damages to third parties' crops, buildings, equipment, or property resulting from increased water flows; and damages to third parties' crops resulting from water shortages, in circumstances where the District determines in its sole discretion to release water from the District's water delivery system in order to prevent damages that would otherwise result from the unauthorized turnoff.

3. Violations. Except in Emergencies, failure to take delivery of and beneficially use ordered water (for example, by voluntarily turning off pumps), is a violation under this Policy (“Violation”). The goals of enforcing this Policy are to (a) prevent water waste, (b) ensure equitable treatment of District patrons, and (c) allow the District to assess and collect charges based on the occurrence of Violations in order to defray the District’s additional costs associated with unauthorized water turnoffs.
4. Warning Letters. A Violation shall result in the District issuing a written warning (“Warning Letter”) to the violator, advising the violator of the Violation, furnishing a copy of this Policy to the violator, and advising the violator he or she will be subject to Charges, defined below, for any subsequent Violation(s) committed by the violator. The Warning Letter may be provided personally to the District patron or sent by certified mail.
5. Notice of Violation. If, after delivery of the Warning Letter, the violator commits any subsequent Violation(s), then the violator will be notified in writing by the District of the subsequent Violation (“Notice of Violation”). The Notice of Violation will advise the violator of the Violation and state the Charge associated with the Violation. The notice may be provided personally to the District patron or sent by certified mail.
6. Charge. All persons found in violation of this Policy shall be assessed a base charge of \$1,200.00.
7. Payment of Charge and Appeal. A violator shall pay the Charge specified in the Notice of Violation within 60 days of receiving the notice. Payment shall be sent to the District office. Additional Charges may be assessed for any subsequent Violation(s).

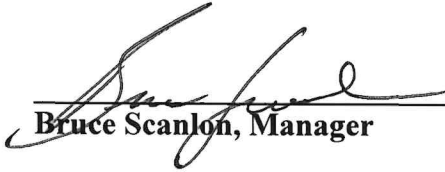
Any appeal of a Violation Charge may be made by petitioning the Board in writing within 30 days of receiving the Notice of Violation. Notwithstanding an appeal, Violation Charges will be charged for each successive Violation.

If any incurred Violation Charges remain unpaid beyond the due date of the incurred Violation Charges, the District manager may file a notice of claim of lien with the recording officer of the county in which the land is situated. If a notice of lien has been filed under ORS 545.494, the cost of filing and any cost of removing the lien, including but not limited to recording and filing fees, title search fees, and a reasonable administrative fee, shall be charged and collected. ORS 545.496(1), (3).

8. Miscellaneous. Whether the District pursues Charges under this Policy is in the District’s sole discretion, and the failure to pursue Charges for a particular Violation does not set any precedent for future Violations or Violations by others. Assessment of a base Violation Charge does not prevent assessment of additional charges in addition to the base Violation Charge if the District is required to undertake maintenance or repairs as a result of any unauthorized turnoff of ordered water.

THIS RESOLUTION SHALL TAKE EFFECT IMMEDIATELY UPON ADOPTION BY THE BOARD OF DIRECTORS.

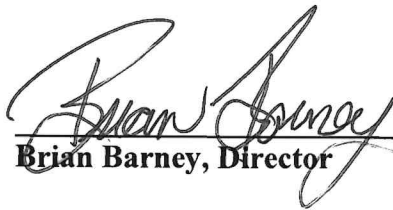
ADOPTED BY THE BOARD OF DIRECTORS OF OCHOCO IRRIGATION DISTRICT AT A REGULAR MEETING HELD ON THE 18TH DAY OF MARCH, 2024.



Bruce Scanlon, Manager



Wade Flegel, Board Chairman



Brian Barney, Director



Steve Forrester, Director