



SECTION 30
RECYCLED WATER SERVICE

A. SCOPE OF REGULATION

The State Legislature has determined that use of potable water for certain nonpotable uses is a waste or unreasonable use of water if recycled water is available which meets the conditions specified in California Water Code section 13550, et seq. District Policy 9.05 requires that customers of the District use recycled water for nonpotable uses when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health, and not injurious to plant life, fish, and wildlife. This Regulation governs the following: the purposes for which the District may require the use of recycled water; the manner in which the District determines whether to require recycled water use in a given case; and the rights and obligations of an applicant for water service or an existing District customer affected by the District's determination.

This Regulation does not govern the provision or use of untreated nonpotable water (also known as raw water). The District may agree to provide raw water, where available, for nonpotable use on a case-by-case basis pursuant to contractual terms and conditions.

B. DEFINITIONS

The following terms, when used in this Regulation, shall have the meanings given below.

Applicant. A person or entity who has applied to the District for new potable water service or recycled water service, or for a change in use of existing potable water service or recycled water service, at a given premises.

Customer. A person or entity who has established and receives potable water service or recycled water service from the District at a given premises.

Dual Plumbing. The installation of separate facilities for the distribution of potable and recycled water service. These facilities may include distribution piping from the water service main or water supply source to the water service meter, and facilities on the customer's side of the water service meter.

Nonpotable Use. Any use of water for which recycled water may be lawfully used, including irrigation of landscape areas (including parks, greenbelts, playgrounds, school yards, athletic fields, golf courses, cemeteries, residential landscaping, common areas, commercial or industrial landscaping, and freeway, highway, and street landscaping, but excluding designated outdoor eating areas subject to spray, mist or runoff); irrigation of crops and pasture land; industrial uses (including floor trap priming, cooling towers, and air-conditioning devices), toilet and urinal flushing in any structure described in California Water Code section 13553, subdivisions (c) and (d); construction; fire suppression; hydrostatic testing; dust control; street sweeping; and supply for recreational impoundment.

Recycled Water. Water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource. (Wat. Code, § 13050, subd. (n).)

Retrofit. The conversion or modification of existing water service facilities such that the facilities are suitable for recycled water service.



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Water Reuse Zone. A portion of the District's service area in which the District has determined that recycled water service is reasonably available. In general, a premises is within a Water Reuse Zone if it is no more than one-half mile from an existing or planned recycled water pipeline. The District's designated Water Reuse Zones are described on the District's public website. The District may designate new Water Reuse Zones or modify existing Water Reuse Zones from time to time, which shall become effective when made available on the District's website.

Water User. An applicant or a customer.

C. RECYCLED WATER USE REQUIREMENT

Each existing customer of the District, and each applicant for new or expanded service from the District, shall use recycled water for nonpotable uses within any designated Water Reuse Zone, if the District determines pursuant to this Regulation that recycled water is or will be available for the intended nonpotable uses and requires its use.

D. DETERMINATION OF AVAILABILITY OF RECYCLED WATER

The District may from time to time identify existing customers within a Water Reuse Zone and determine whether recycled water is available to serve the nonpotable uses of those customers. The District will also review applications for new or expanded service within a Water Reuse Zone to determine whether recycled water is available to serve an applicant's intended nonpotable uses. The District, in its sole discretion, will determine whether a source of recycled water is available to a particular water user for a particular nonpotable use.

When making that determination, the District will consider the following facts and circumstances:

1. Whether the identified source of recycled water is of adequate quantity for the water user's intended nonpotable use;
2. Whether the identified source of recycled water is of adequate quality for the water user's intended nonpotable use. In determining adequate quality, the District shall consider all relevant factors on a user-by-user basis, including applicable legal and regulatory requirements, food and employee safety, and level and types of specific constituents in the recycled water affecting the intended nonpotable use;
3. Whether it is technically feasible for the District to treat and deliver recycled water for the intended nonpotable use;
4. Whether recycled water may be furnished for nonpotable use at a reasonable cost to the water user and to the District. Before requiring recycled water use, the District shall determine that the cost to the water user of supplying treated recycled water for a particular nonpotable use of water is comparable to, or less than, the cost of supplying potable domestic water to the same water user for the same use. In making this determination, the District shall compare the present and projected costs to supply each source of water (potable vs. recycled) to the water user for specific nonpotable use(s), accounting for the following: (i) the expected cost to the water user



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for system capacity and for the acquisition, conveyance, treatment, and distribution of each source of water, (ii) the expected cost to the water user to construct any new improvements and infrastructure necessary to supply each source of water to the water user, which costs may be evaluated over a reasonable payback period, (iii) any cost savings to the water user expected to result from a difference in the unit rate charged for each water source, and (iv) any cost savings to a customer expected to result from an offer of payment by the District towards the cost of necessary retrofit work;

5. Whether the intended use of recycled water will be detrimental to public health;
6. Whether the intended use of recycled water will degrade water quality or be injurious to plant life, fish, and wildlife;
7. Whether there is an alternative higher or better use for the identified source of recycled water; and
8. Whether the use of recycled water for the water user's intended use would be consistent with all applicable federal, state, and local laws and regulations.

The District shall consider the facts and circumstances listed above. The District may consider any relevant information and any other relevant facts and circumstances. The District may require a water user to furnish information which the District determines to be relevant to the determination. However, nothing in this Regulation shall be construed to require the District to hold a hearing or take any evidence.

When determining whether recycled water is available for purposes of this Regulation, the District may consider both existing facilities and identifiable planned facilities. If the District determines that recycled water will be available in the future from planned recycled facilities not yet constructed or in operation and requires recycled water use on that basis, then the District will offer interim potable water service as provided in this Regulation until the District is able to deliver recycled water to the premises.

If the District determines in its sole discretion that recycled water is available to a water user for a particular nonpotable use, the District may require the water user to use recycled water in lieu of potable water for that use, and if the District so requires, then the District will not supply the water user with potable water for that nonpotable use, except (1) as a backup supply if authorized on conditions set by the District, and/or (2) on an interim basis as provided in this Regulation. The District will notify the water user in writing of the requirement to use recycled water. The notification will include information regarding District water service requirements, state a date by which the water user's premises must be ready to accept recycled water service, and describe any facilities that must be constructed on the water user's premises, including dual plumbing and backflow prevention devices, and the deadline for completing construction. The District may require a water user to retrofit existing water service facilities to accommodate recycled water service. Applicants may be required to pay for recycled water main extensions providing principal frontage and onsite piping, recycled water infrastructure, and dual plumbing, on terms and conditions specified by the District.



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E. RECYCLED WATER USE PERMITS

Water users who are required or desire to use recycled water shall submit a recycled water service application in a form specified by the District. Following receipt, review, and approval of the application, and the completion of construction, but before the start of recycled water service, the District will issue a recycled water use permit which states the approved use(s) for recycled water at the water user's premises and the other requirements the water user must meet as a condition of recycled water service.

Recycled water service will not commence until all fees and charges have been paid and the District has verified compliance with the permit requirements. Failure to comply with permit requirements is a violation of this Regulation and may result in suspension or termination of recycled water service.

F. INTERIM POTABLE WATER SERVICE

As solely determined by the District, a potable water supply for nonpotable use may be provided on an interim basis until all necessary construction and other requirements for receiving recycled water delivery is complete and a recycled water supply is ready to be served. The District may offer interim potable water service if the District is not yet ready to deliver recycled water to or near a customer's premises but has planned for a future capability to make such delivery. The District generally will not provide interim potable water service for nonpotable use if recycled water service is currently available for delivery to the customer's premises. All potable water delivered during the period of interim potable water service will be billed at the prevailing potable water rates.

The District may condition the provision of interim potable water service on the water user's agreement to comply with any or all of the following requirements:

1. Installation by the water user within a time specified by the District of water service facilities, separate from the potable water service facilities, necessary to convert to or begin receiving a recycled water supply when available;
2. Agreement by the water user to pay the District's cost to install water facilities which the water user is required or has agreed to install within a specified time, if the work is not completed within that time; and/or
3. Any other conditions deemed necessary by the District.

Applicants for new or expanded service who are approved to receive an interim potable water supply pending the commencement of delivery of recycled water to the premises shall pay the applicable System Capacity Charge for Nonpotable Water Service before interim service will be provided, notwithstanding the interim delivery of a potable water supply.

Interim potable water service to a customer shall be discontinued if and when the District makes any of the following determinations:

1. That the District is ready to deliver an adequate supply of recycled water to the customer's



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premises, in which case the customer henceforth must use recycled water, not potable water, for nonpotable use;

2. That the customer has not timely completed any required construction work or failed to comply with any other condition on the customer's receipt of interim potable service, in which case the customer must cease using potable water for nonpotable use; or
3. That the District no longer plans to develop the capability to deliver recycled water to or near the customer's premises, in which case the customer may continue using potable water for nonpotable use if the applicable System Capacity Charge for Potable Water Service is paid, provided that any prior payment received for the System Capacity Charge for Nonpotable Water Service will be credited towards the balance due.

G. EXISTING CUSTOMER RETROFIT WORK

1. APPLICABILITY

The District may require an existing customer who has previously established one or more nonpotable use(s) at a given premises within a Water Reuse Zone to cease using potable water for such nonpotable use(s) and to use recycled water henceforth instead, if the District determines in accordance with this Regulation that recycled water is or will be available to serve the nonpotable use(s) at the customer's premises, and the provisions of this Subsection G (entitled "Existing Customer Retrofit Work") apply to each such customer.

2. INSTALLATION, OPERATION, AND MAINTENANCE COSTS

- a. Financial Responsibility for Design and Construction Work. Except as otherwise provided herein, when an existing customer is required by the District to convert to recycled water service, the District will offer to (1) pay or reimburse the reasonable design and capital costs of any retrofitting of the water service facilities on the customer's side of the water service meter that is necessary for the customer to use recycled water in compliance with the customer's recycled water use permit and this Regulation, and (2) provide for installation of the recycled water service facilities necessary to deliver recycled water to the customer's water service meter which is payable or reimbursable by the District as specified in this Regulation. The District may require the customer to remove or downsize the existing potable water connection. Notwithstanding the foregoing, if the customer requests installation of recycled water service facilities to serve new development or to increase the capacity of a previously established nonpotable use, such facilities are subject to the provisions of Subsection H (entitled "New Customer Service Applications and Voluntary Conversions") and not this Subsection G.
- b. Financial Responsibility for Operation and Maintenance Costs. A customer may begin to receive service when the retrofit is completed, the customer's premises is ready to accept recycled water, and the customer has applied for and received a recycled water use permit. The customer is responsible for all costs of operating and maintaining the water service facilities on the customer's side of the water service meter(s) and for complying



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with all reporting and inspection requirements in accordance with District and State regulations, except where the District has determined that it would be in the best interests of the District to own, operate and maintain on-site treatment facilities on the customer's premises in which case the District may agree to accept responsibility for such costs. The customer shall pay the District's current nonpotable water rate for recycled water delivered to the customer. If recycled water is unavailable when the retrofit is complete, the customer shall be liable to pay the District's current potable water rates until recycled water is available for delivery to the customer's premises.

- c. Capacity Charges and Installation Charges. An existing customer who converts a previously established use of water at a given premises from potable water use to recycled water use, without increasing the meter size of the connection serving that previously established use, shall not be liable to pay the System Capacity Charge for Nonpotable Water Service. Fees and charges, including a capacity charge, previously paid to receive potable water service, shall not be refunded.

3. DESIGN AND CONSTRUCTION PROCESS

- a. Option to Construct. An existing customer required to convert to recycled water service may choose to authorize the District to design and construct the required retrofit work, or otherwise the customer must design and construct the required retrofit work by the date indicated in the District notification. If the District determines before construction begins that the retrofit of the customer's facilities is not feasible, the District shall be released from any obligation to perform or reimburse the cost of any retrofit work and the customer shall be released from the requirement to convert to recycled water service until such time as the District determines the retrofit is feasible.
- b. Retrofit Work By District. If a customer requests the District to design and construct the retrofit work, the customer shall sign a Retrofit Agreement which sets forth the rights and obligations of the District and the customer with respect to the retrofit work. The customer must comply with the Retrofit Agreement as a condition of the District's performance of the work. The customer may review the retrofit design. The customer must provide access to the premises as necessary for the District or its contractors to perform the design and construction work. Site access may be required for inspections, testing, or other purposes. The Retrofit Agreement may require the customer to indemnify the District, to allow entry and inspection by the District, and to consent to other provisions deemed appropriate by the District for the accomplishment of the work and the protection of the District and its customers. The District shall install backflow prevention devices when required by law and/or deemed appropriate by the District.
- c. Retrofit Work By Customer.
 - i. Design. If a customer does not enter into a Retrofit Agreement acceptable to the District, the customer must perform the design and construction of the retrofit work in accordance with the following requirements. The customer shall first submit to the



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District for review a cost estimate for a complete design for the retrofit construction work. If the District approves the cost estimate, the customer shall prepare, or have prepared, a conceptual (“30%”) design and submit it for District review. If the District approves the conceptual design, the customer shall complete the final design and submit it for District review. The customer’s retrofit design must include all retrofit elements required by state law. The District shall review the completed design for adherence to legal and District requirements and may approve, conditionally approve, or deny approval of the submitted design. The District may direct changes to the design, in which case the customer must submit a revised design incorporating the changes to the District for approval before construction begins. If the final design is approved, the District will thereafter pay the customer’s reasonable and documented actual design costs, provided that payment shall not exceed the approved design cost estimate absent prior written approval by District. Any changes to the proposed retrofit work must be submitted for District approval prior to construction.

- ii. Construction. After final design approval, the customer shall provide a construction cost estimate and schedule for District review. Construction work may not begin until the District has approved the construction cost estimate and schedule. The customer shall thereafter complete the retrofit work. The customer shall be exclusively responsible for compliance with all applicable federal, state, and local codes, laws, ordinances and regulations and for obtaining and complying with all necessary permits. The customer shall maintain compliance documents and furnish copies of said documents upon District request. Customers shall install backflow prevention devices as required by law or by the District. The District shall be entitled to review the scope of work and schedule set forth in a construction contract to verify the suitability and timeliness of the proposed retrofit work. However, the District shall not be party to any contract between the customer and a third-party consultant or contractor, and the District shall have no responsibility thereunder.
- iii. Inspection. After construction is complete, the customer shall notify the District, and the District may thereafter enter the premises and inspect the retrofit work to verify that the retrofit items are installed and properly functioning, and to perform required cross-connection and backflow prevention testing. The District may require the customer (or the customer’s representative) and any construction contractor used to perform the retrofit work to be present during the final inspection. The District may pass, conditionally pass, or fail the work. If the construction work passes the inspection, the District will thereafter pay the customer’s documented actual construction costs, provided that payment shall not exceed the approved construction cost estimate absent prior written approval by District.
- iv. Customer’s Failure to Complete Retrofit Work. A customer required to perform retrofit work must complete the required work and be ready to receive delivery of recycled water no later than the date specified by the District. The District may extend the time to complete retrofit work in the reasonable exercise of its discretion if the customer shows good cause. Failure to timely complete retrofit work is a violation of this



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Regulation.

- v. Indemnification and Liability. A customer, by accepting payment or reimbursement from the District for recycled water retrofit work which is completed by the customer or by a contractor or agent retained by the customer, is required to indemnify, defend, and hold harmless the District and its Directors, officers, and employees, from and against any and all loss, liability, expense, claims, lawsuits, and damages, including reasonable attorney's fees, arising out of or pertaining or relating to the design, construction, and/or operation of the recycled water retrofit work. Furthermore, by providing any review, inspection, or approval of customer work or customer submittals, the District does not intend to warrant or represent that the work or submittals are adequate or sufficient to meet legal or permit requirements or to function for the customer's intended purpose, and the District shall not be liable to the customer or any other party for any claims or losses arising in connection therewith.

H. NEW CUSTOMER SERVICE APPLICATIONS AND VOLUNTARY CONVERSIONS

1. APPLICABILITY

The provisions of this Subsection H (entitled "New Customer Service Applications and Voluntary Conversions") apply to the following applicants and customers:

- a. Each applicant for water service for a new or expanded nonpotable use who is required by the District to use recycled water pursuant to this Regulation.
- b. Each existing customer of the District who requests installation of additional recycled water service facilities to serve new development or to expand capacity.
- c. Each existing customer of the District who requests conversion from potable to recycled water service, where the conversion is not required by the District.

2. COSTS FOR WHICH APPLICANTS AND CUSTOMERS ARE RESPONSIBLE

Water users subject to this Subsection H shall be solely responsible for the full cost of all facilities and infrastructure necessary to deliver recycled water from the closest available recycled water facility to and within the premises. Water users are solely responsible to timely pay all applicable rates, charges, and fees in accordance with the District's Water System Schedules of Rates, Charges, and Fees and the Regulations Governing Water Service to Customers of the East Bay Municipal District. Failure to timely complete all work or to pay any sum due is a violation of this Regulation and will result in denial of water service.

3. MAIN EXTENSIONS; CONDITIONAL SERVICE CONNECTIONS

The District may require the installation of major recycled water main extensions with excess capacity to meet future customer demands in certain service areas. The District will evaluate the need and feasibility for main extension excess capacity on a case by case basis. The water



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user will only be charged for the size of the main required by District standards to serve the water user's recycled water demand. Extension of recycled water mains shall be subject to the requirements of Section 4 of the District's Regulations Governing Water Service to Customers of the East Bay Municipal District.

Section 3 of the Regulations Governing Water Service to Customers of the East Bay Municipal District specifies the conditions in which the District may locate a conditional service connection(s) at other than the principal frontage. The District may locate a conditional recycled water service connection(s) at other than the principal frontage if the conditions specified in Section 3 exist.

4. SYSTEM CAPACITY CHARGE

An applicant for new or expanded service who is required by the District to use recycled water for nonpotable use(s) shall pay the applicable System Capacity Charge for Nonpotable Water Service before service is provided in accordance with applicable provisions of the Regulations Governing Water Service to Customers of the East Bay Municipal District and the Water System Schedules of Rates, Charges, and Fees.

5. OPERATION AND MAINTENANCE COSTS; RATES

The customer is responsible for all costs of operating and maintaining the water service facilities for potable and recycled water on the customer's side of the water service meter(s) and for complying with all reporting and inspection requirements in accordance with District and State regulations, except where the District has determined that it would be in the best interests of the District to own, operate and maintain on-site treatment facilities on the customer's premises in which case the District may agree to accept responsibility for such costs. The customer shall pay the District's current nonpotable water rate for recycled water delivered to the customer. If recycled water is unavailable when construction is complete, the customer shall be liable to pay the District's current potable water rates until recycled water is available for delivery to the customer's premises.

I. ENFORCEMENT AND APPEALS

1. ENFORCEMENT & REMEDIES

The District may deny or hold in abeyance an application for new or expanded service if the applicant does not comply with this Regulation. The District may take enforcement action against an applicant or a District customer who does not comply with this Regulation, including any or all of the following actions:

- a. Denial or discontinuation of potable water service for nonpotable use.
- b. Installation of a flow restricting device on a customer's potable water connection, after a written warning to the customer and authorization by the General Manager or the Manager of the Customer and Community Services Department, to prevent the use of



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potable water for nonpotable uses for which the District has determined that recycled water is available.

- c. Pursuit of an order from the State Water Resources Control Board requiring the water user to use recycled water.
 - d. Initiation of legal action to enforce this Regulation and require completion of required work.
 - e. Pursuit of any other legal or equitable remedy available to the District.
2. COSTS AND ATTORNEYS' FEES

The District may recover from any person or entity in violation of this Regulation the costs it incurs in connection with enforcing this Regulation, including staff time, and may seek attorneys' fees in any court action or proceeding.

3. APPEALS

A water user aggrieved by a final decision made by the District in connection with this Regulation may seek relief by submitting a written appeal to the Manager of Water Supply Improvements within 30 days of the date of the decision. The appeal must describe (1) the decision at issue, (2) the specific relief requested, (3) a statement of facts which the appellant believes entitles the appellant to the requested relief, and (4) copies of all relevant supporting documentation or written evidence the appellant wishes the District to consider. The Manager of Water Supply Improvements or designee will consider the submitted material and any other relevant evidence and decide whether to (1) grant relief in whole or part or (2) affirm the original decision. The water user shall not be entitled to a hearing, except where a hearing is required by law. The decision of the Manager of Water Supply Improvements is final. This written appeal process is the exclusive means to seek further administrative review of a decision made in connection with this Regulation and failure to timely pursue this process shall be deemed a failure to exhaust administrative remedies.