

VICTOR VALLEY WASTEWATER RECLAMATION AUTHORITY

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ORDINANCE NO. 006

RECYCLED WATER PROGRAM

October 2015

AN ORDINANCE ESTABLISHING A RECYCLED WATER PROGRAM IN COMPLIANCE WITH THE REQUIREMENTS OF THE STATE WATER RESOURCES CONTROL BOARD, PURSUANT TO WHICH VVWRA WILL ACT AS THE PERMITTEE AND ADMINISTRATOR OF THE PROGRAM FOR THE DELIVERY OF RECYCLED WATER TO CUSTOMERS WITHIN THE SERVICE AREA OF THE MEMBER AGENCIES AND MEMBER AGENCIES WILL ACT AS DISTRIBUTORS OF SUCH WATER, ALL PURSUANT TO STATEMENT OF FINDINGS AND BOARD ACTION SET FORTH IN THIS ORDINANCE NO. 006.

**STATEMENT OF FINDINGS AND BOARD ACTION
REGARDING THE ADOPTION OF
ORDINANCE NO. 006**

WHEREAS, the Victor Valley Wastewater Reclamation Authority (“VWVRA”) currently produces “disinfected tertiary recycled water” which complies with Title 22 of the California Code of Regulations (“Recycled Water”) at its Westside Regional Water Reclamation Plant (“Regional WRP”), located in Victorville, California;

WHEREAS, Recycled Water produced at the Regional WRP is regulated by the Lahontan Regional Water Quality Control Board (“Lahontan”) under the authority of the State Water Resources Control Board (“SWRCB”) pursuant to Water Recycling Requirements (Order No. R6V-2003-028, Order No. R6V-2003-0028A1), and such Recycled Water is currently delivered to the City of Victorville for irrigation at the Westwinds Golf Course and non-contact cooling water at the High Desert Power Project;

WHEREAS, the Commission has approved the construction of satellite scalping plants within the wastewater collection system operated by VWVRA to produce additional Recycled Water closer to the end users and, among other things, minimize overall production and distribution costs, with the first two such plants expected to commence operation in the City of Hesperia and the Town of Apple Valley in 2017 (“Subregional WRPs”);

WHEREAS, the operation of the Subregional WRPs is regulated by Lahontan and the SWRCB under Waste Discharge Requirements and Water Recycling Requirements adopted in 2013 (Hesperia/Order No. R6V-2013-0005; Apple Valley/ Order No. R6V-2013-0004) and is intended to be used for a variety of uses including landscape irrigation;

WHEREAS, the SWRCB adopted General Waste Discharge Requirements for Recycled Water Use in June, 2014 (Order WQ 2014-0090-DWQ) (“General Order”), to provide a mechanism to streamline the permitting process for the production, use and discharge of Recycled Water and to delegate the administration of such programs to the local producer of such Recycled Water in lieu of continuing regulation under the regional boards such as Lahontan;

WHEREAS, VWVRA has submitted a Notice of Intent with Lahontan to obtain approval of its recycled water program and recognition as an “Administrator” with authority to approve new uses of Recycled Water within its service area in accordance with the requirements of the General Order, which Notice of Intent is supported by that certain Water Recycling Program Technical Report and Notice of Intent dated February, 2015, and prepared by Larry Walker Associates (“Technical Report”);

WHEREAS, the Commission believes that it is desirable to take advantage of the streamlined process under the General Order and obtain local control over new uses of Recycled Water within the framework set forth in the General Order by adopting an Ordinance for the adoption and regulation of the VWVRA Recycled Water Program;

WHEREAS, the Commission has reviewed the requirements of the General Order and the findings contained in the Technical Report, and believe that such requirements and findings provide a valid basis for this Ordinance;

NOW THEREFORE, the Board of Commissioners of the Victor Valley Wastewater Reclamation Authority hereby ordains as follows:

Section 1. Findings. The Board of Commissioners asserts and adopts the findings set forth above;

Section 2. CEQA Determination. Based upon its review of the entire record, including the facts outlined below, the Commission hereby finds and determines that this Ordinance is not a “project” for purposes of the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., or “CEQA”), and in the alternative, even if this Ordinance were to constitute a project for purposes of CEQA, it would be categorically exempt from environmental review pursuant to CEQA’s Class 7 and Class 8 categorical exemptions.

Not a Project

Pursuant to California Code of Regulations, Title 14, Division 6, Chapter 3 (“State CEQA Guidelines”), CEQA only applies to projects which have the potential for causing a significant effect on the environment. (State CEQA Guidelines, § 15061(b)(3).) Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This Ordinance has no potential for causing a significant effect on the environment because it is merely requesting a delegation of authority from the Lahontan Regional Water Quality Control Board and the State Water Resources Control Board to VVWRA for the permitting process for production, use and discharge of Recycled Water and the administration of such programs. While this delegation would provide VVWRA with the authority to approve new uses of Recycled Water within its service area, any such approvals must be done in accordance with the requirements of General Order WQ 2014-0090-DWQ. Thus, this Ordinance, in and of itself, does not alter the provisions of the General Order, does not approve any new uses of Recycled Water, and does not issue any permits. Discretionary actions taken by VVWRA in the future, consistent with its newly delegated authority, would be subject to the requirements of CEQA at that time. Thus, adoption of this Ordinance does not have the potential for causing a significant effect on the environment and is exempt from further CEQA review pursuant to State CEQA Guidelines section 15061(b)(3).

Class 7 and Class 8 Categorical Exemptions

In the alternative, if it is determined that the Ordinance constitutes a project pursuant to CEQA, the Ordinance is exempt from further CEQA review under State CEQA Guidelines sections 15307 and 15308. Under these exemptions, actions by regulatory agencies for protection of natural resources or the environment are exempt from CEQA review. These exemptions include actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a

natural resource or the environment. This Ordinance, consistent with State Water Resources Control Board's General Order, would streamline the permitting process for the production, use, and discharge of Recycled Water. Facilitation of the use of treated wastewater that meets the standards set by the Department of Public Health, was identified in a recent Executive Order B-29-15 as necessary to reduce demand on potable water supplies, and reduce harmful impacts from California's current drought. None of the circumstances identified in State CEQA Guidelines section 15300.2 excepting the use of categorical exemptions apply. Thus, this Ordinance constitutes a regulatory action taken for the protection of natural resources and the environment and is exempt from further CEQA review pursuant to State CEQA Guidelines sections 15307 and 15308.

In addition, on April 25, 2014, the Governor issued an Executive Order ("General Order") declaring a continued state of emergency due to severe drought conditions. Directive No. 10 of the Executive Order directs the State Water Board to adopt statewide general waste discharge requirements to facilitate the use of treated wastewater that meets standards set by the CDPH, in order to reduce demand on potable water supplies. This General Order is intended to satisfy the directive No. 10 requirement. Directive No. 19 of the Executive Order provides that the California Environmental Quality Act requirement to conduct an environmental review is suspended to allow the State Water Board to adopt this General Order as quickly as possible. There has been different interpretations of the General Order by regulatory agencies and the General Order will be reissued with clarifications in 2016. VVWRA believes the General Order applies to this case.

Section 3. Adoption of This Ordinance. This new Ordinance No. 006 is hereby adopted in its entirety.

Section 4. Effective Date. This Ordinance shall take effect and be in full force thirty (30) days after its adoption. Prior to the expiration of the fifteen (15) days from its adoption, the Ordinance or a summary of it shall be published in The Daily Press, a newspaper of general circulation within the boundaries of the Victor Valley Wastewater Reclamation Authority, or a newspaper of substantially equivalent circulation.

BEGIN TEXT OF ORDINANCE NO. 006

LEGISLATIVE HISTORY

ORDINANCE NO. 006

ADOPTED: NOVEMBER 19, 2015

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ORDINANCE NO. 006

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ATTACHMENTS:	

Water Recycling Program Technical Report and Notice of Intent prepared
by Larry Walker Associates dated March 2, 2015.

ARTICLE 01
GENERAL

1.01 The purpose of this Ordinance is to provide for the adoption of a recycled water program pursuant to the requirements of the General Waste Discharge Requirements for Recycled Water Use adopted by the State Water Resources Control Board (“SWRCB”) in June, 2014 (Order WQ 2014-0090-DWQ), as the same may be amended from time to time (the “General Order”) and to specify the authority of Victor Valley Wastewater Reclamation Authority (“Reclamation Authority”) as the Administrator of such recycled water program.

1.02 The recycled water program will govern the production, discharge and use of Recycled Water at the Westside Regional Water Reclamation Plant (“Regional WRP”) and all subregional wastewater reclamation facilities, including the facilities being constructed by VVWRA in the Town of Apple Valley and the City of Hesperia (each a “Subregional WRP”).

1.03 The Reclamation Authority shall act as the “Administrator” of the recycled water program as such term is defined in the General Order and will be responsible to administer, implement, and enforce the provisions of this Ordinance, the requirements of the General Order and the requirements of Title 22 of the California Code of Regulations applicable to the production, discharge and use of disinfected tertiary recycled water (“Recycled Water”).

1.04 Each Member Entity will act as a “Distributor” of Recycled Water from Reclamation Authority as such term is defined in the General Order and will develop its own priorities and requirements for the issuance of recycled water connections within its service areas, subject to the requirements of this Ordinance.

1.05 The Reclamation Authority will specify rules and regulations for the use of Recycled Water consistent with the terms of this Ordinance, the requirements of the General Order and Title 22 of the California Code of Regulations and any other federal, state or local law applicable to the use of Recycled Water (collectively, the “Governing Law”). The Reclamation Authority will provide the current rules and regulations to each customer when a permit is issued. Compliance with the rules and regulations will be specified by reference in the permit. If the rules and regulations are revised, a copy of the revised document will be distributed to all permitted customers.

ARTICLE 02 JURISDICTION

2.01 The Reclamation Authority is a Joint Powers Agency created expressly for the purpose of treatment of wastewater and the ultimate disposal of effluent and solids in compliance with waste discharge requirements and water recycling requirements set from time to time by the California Regional Water Quality Control Board, Lahontan Region, and any and all applicable federal, state, and local statutes, ordinances, regulations, and other requirements. Such disposal of effluent includes the right of the Reclamation Authority to treat wastewater for discharge and use as Recycled Water for the benefit of its Member Entities.

2.02 All Member Entities recognize that the violation of this Ordinance or any rule and regulation adopted hereunder regarding the use of Recycled Water by a Member Entity or any of its customers could jeopardize the ability of the Reclamation Authority to provide Recycled Water to the entity in question and to the other Member Entities and their customers. In addition, all Member Entities recognize the importance of fair, equitable, and uniform enforcement of this Ordinance and the rules and regulations issued in connection with each permit therewith throughout the regional system service area. Accordingly, each Member Entity pledges to comply with, honor, and enforce all requirements set forth in this Ordinance and the rules and regulations issued by the Reclamation Authority related to the recycled water program and the distribution and use of Recycled Water within their respective boundaries; and agrees to delegate to the Reclamation Authority the primary power and authority to regulate the production, discharge and use of Recycled Water.

2.03 Notwithstanding anything contained herein which may appear to be to the contrary, the Member Entities shall have and retain exclusive jurisdiction and control over their local distribution systems for Recycled Water and the Reclamation Authority shall have and retain exclusive jurisdiction and control over the production and discharge of Recycled Water at the Regional WRP and each Subregional WRP.

ARTICLE 03
USE OF RECYCLED WATER

3.01 Reclamation Authority will make Recycled Water available for distribution by the Member Entities. The right of each Member Entity to an allocation of Recycled Water will be determined by the Commission from time to time. Notwithstanding anything in this Ordinance to the contrary, the adoption of this Ordinance will not change any existing allocations or agreements for the allocation and/or use of Recycled Water amongst the Member Entities or between any of the Member Entities and the Reclamation Authority.

3.02 Subject to the requirements of this Ordinance, each Member Entity that desires to provide Recycled Water to customers will adopt its own rules, regulations, priorities and policies for the service of Recycled Water that is allocated and delivered to the Member Entity. The Member Entity will coordinate the adoption of such rules, regulations, priorities and policies to ensure compliance with this Ordinance. The rules and regulations of each Member Agency will include the procedure for customers within the service area of the Member Entity to apply for a permit to obtain Recycled Water service.

3.03 Each Member Entity will make its own determination whether to submit an application for Recycled Water service for final approval by Reclamation Authority for the issuance of a permit. Prior to making such determination or submitting the application for final approval, a Member Entity may further submit an application to Reclamation Authority for review and comment and Reclamation Authority will provide the Member Entity with comments concerning the application and the proposed use and whether the application is consistent with the Governing Law and rules and regulations of the Reclamation Authority. All applications for Recycled Water use will be subject to final approval by the Reclamation Authority, which approval will not be withheld provided that (i) the proposed use and terms set forth in the application and any proposed agreement between the Member Entity and the customer comply with the Governing Law and the rules and regulations of Authority; and (ii) there is sufficient Recycled Water available from the allocation of the Member Entity to service the customer. Reclamation Authority will issue the permit upon final approval of an application. The foregoing process of review and final approval will also apply to the use of Recycled Water by a Member Entity, its agencies or instrumentalities.

3.04 Reclamation Authority will provide each Member Entity with notice of any change in the General Order or other Governing Law that would impact the availability of Recycled Water for use by a Member Entity or its customers.

3.05 Reclamation Authority will collect data on Recycled Water use as necessary to comply with all reporting requirements under the Governing Law. Each Member Entity will cooperate with Reclamation Authority to obtain such data on Recycled Water use in its jurisdiction.

3.06 Reclamation Authority may provide for the delivery of Recycled Water directly to truck operators from the Regional WRP and the Subregional WRPs, subject to the requirements of Governing Law and upon terms and in such quantities as may be approved by the Commission from time to time for such direct delivery service. The terms of use shall include the right of the Reclamation Authority to suspend delivery of Recycled Water to any truck operator in the event of any violation of the terms of use.

**ARTICLE 04
SUSPENSION OF USE**

4.01 Reclamation Authority will have the right to inspect Recycled Water use by all permittees from time to time, including Member Entities, to ensure compliance with this Ordinance. Member Entities will also have the right to inspect Recycled Water use by permittees within their respective jurisdictions to ensure compliance both with this Ordinance and the rules and regulations of the Member Entity. A Member Entity that conducts such inspections will report to the Reclamation Authority any violation that is documented during an inspection.

4.02 In the event that Reclamation Authority determines that a Member Entity is in violation of Governing Law or the rules and regulations of Reclamation Authority with respect to the distribution and use of Recycled Water, and such violation is not cured within a reasonable period of time following notice thereof, then Reclamation Authority will have the right to suspend further delivery of Recycled Water to the Member Entity until such time as the Member Entity cures the failure.

4.03 In the event that Reclamation Authority determines that a customer of a Member Entity is in violation of Governing Law or the rules and regulations of Reclamation Authority with respect to the terms of use of Recycled Water, then Reclamation Authority shall notify the Member Entity and each Member Entity agrees to take prompt action to provide notice of the violation and to enforce the approved terms of Recycled Water use. In the event that the customer does not cure the violation within thirty (30) days of written notice, then Member Entity will suspend Recycled Water service to the customer until the violation has been cured. If a Member Entity fails to take action as required by this Section 4.01, then Reclamation Authority may treat such failure as a violation by the Member Entity pursuant to Section 4.02.

ARTICLE 05
ADMINISTRATIVE PROCEEDINGS

5.01 The General Manager of the Reclamation Authority will have the authority to make all decisions concerning the approval and suspension of permits pursuant to Article 3 and Article 4 of this Ordinance, subject to the appeals process set forth in this Article 5.

5.02 Any action taken by the Reclamation Authority with respect to the (i) denial of a recycled water permit application that is submitted for approval pursuant to Section 3.03; or (ii) a suspension of recycled water delivery to a permit holder as permitted pursuant to Sections 4.02 and 4.03, shall be set forth in a formal letter of decision addressed to the applicant or permittee and shall describe in reasonable detail the reason for the permit denial or suspension.

5.03 The Reclamation Authority shall adopt a procedure for the submission and resolution of appeals and shall include a copy of this procedure with each letter of decision.

5.04 An applicant or permittee shall have a period of thirty (30) calendar days from the date of the letter referenced in Section 5.01 to appeal the action of the Reclamation Authority to the Commission. A request for appeal will be submitted in writing in accordance with the procedure described in the letter of decision. In the event that an applicant or permittee does not submit an appeal within such thirty (30) days period in accordance with the process set forth in the letter of decision, then the action of the Reclamation Authority shall become final.

5.05 The decision of the Commission with respect to any appeal of a decision of the Reclamation Authority will be final.

5.06 Each Member Entity shall further have a process for the submission and resolution of appeals of decisions made by the Member Entity not to approve a permit application for submission to the Reclamation Authority for permit approval and issuance based upon a determination that the application does not comply with the rules, regulations, priorities and policies of the Member Entity.

5.07 Any action or decision that is taken directly by the SWRCB or by the California Regional Water Quality Control Board, Lahontan Region, in accordance with Governing Law, shall be subject to the conflict resolution process set forth in the Governing Law.

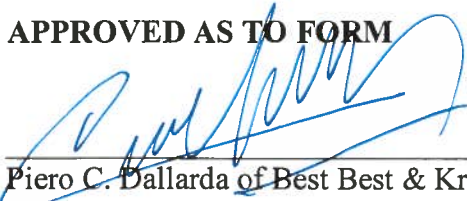
END OF TEXT OF ORDINANCE

THIS ORDINANCE NO. 006 IS APPROVED AND ADOPTED the 19th day of November, 2015.



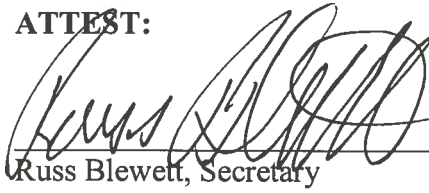
Scott Nassif, Chair
VWRA Board of Commissioners

APPROVED AS TO FORM



Piero C. Dallarda of Best Best & Krieger LLP
VWRA General Counsel

ATTEST:



Russ Blewett, Secretary
VWRA Board of Commissioners

CERTIFICATION

I, Kristi Casteel, Secretary to the Board of Commissioners (“Commission”) of the Victor Valley Wastewater Reclamation Authority, certify that the foregoing Ordinance was introduced at a regular meeting of the Board of Commissioners on the October 22, 2015, and was adopted by the Commission at a regular meeting held on the November 19, 2015, by the following vote of the Commissioners:

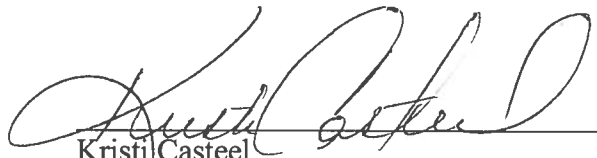
AYES: 4

NOES: 0

ABSTAINED: 0

ABSENT: 0

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Victor Valley Wastewater Reclamation Authority on this November 19, 2015.


Kristi Casteel
Secretary to the Board of Commissioners