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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF IMPERIAL

19 **THE PEOPLE OF THE STATE OF**  
20 **CALIFORNIA, ex rel. ROB BONTA,**  
21 **Attorney General of the State of California**  
22 **and the STATE WATER RESOURCES**  
**CONTROL BOARD,**

23 Plaintiffs,

24 v.

25 **CITY OF CALEXICO,**

26 Defendant.  
27  
28

CASE NO. ECU003547

**STIPULATION AND [PROPOSED]**  
**CONSENT JUDGMENT**

(Code Civ. Proc., § 664.6)

Date: June 27, 2024

Time: 8:30 a.m.

Dept: 9

Judge: Honorable L. Brooks Anderholt

Action File: May 21, 2024

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## 1. INTRODUCTION

1.1 This stipulation and proposed Consent Judgment (Consent Judgment) is entered into between Plaintiff People of the State of California (People) by and through Attorney General Rob Bonta (Attorney General), Plaintiff the State Water Resources Control Board (State Water Board or Board) and Defendant the City of Calexico (City) (collectively, the Parties).

1.2 This Consent Judgment stems from a joint investigation by the People and the State Water Board (collectively, STATE ENFORCEMENT AGENCIES). The Water Board has separately executed a SETTLEMENT AGREEMENT, attached as Exhibit A, to resolve the administrative penalty. Together, the SETTLEMENT AGREEMENT and Consent Judgment constitute the GLOBAL SETTLEMENT of the STATE ENFORCEMENT AGENCIES' claims.

1.3 This Consent Judgment sets forth the agreement and obligation of the Parties, and it is the Parties' mutual intent that this document constitutes a complete, final, and binding settlement to resolve the allegations set forth in the COMPLAINT filed by the People.

## 2. DEFINITIONS

2.1 "BILLING STATEMENT" shall refer to the utility services bills that are mailed monthly to the City's customers.

2.2 "COMPLAINT" shall refer to the complaint Plaintiffs filed on May 21, 2024.

2.3 "COURT" shall refer to the Imperial County Superior Court.

2.4 "DELINQUENT NOTICE" shall refer to the notices the City sends to customers about past-due utility bills including, both the notices labeled "Urgent Notice", and "48 Hour Notice."

2.5 "EFFECTIVE DATE" shall refer to the date on which the COURT enters the Consent Judgment.

2.6 "GLOBAL SETTLEMENT" shall refer to this Consent Judgment and the SETTLEMENT AGREEMENT entered into by the State Water Board and the City.

2.7 "PARTIES" refers collectively to the People, the State Water Board, and the City.

2.8 "SETTLEMENT AGREEMENT" shall refer to the agreement attached as Exhibit A that resolves the State Water Board's administrative penalty claims.

1           2.9     “SHUTOFF POLICY” shall refer to the policy adopted pursuant to this Consent  
2 Judgment and attached as Exhibit D that complies with the requirements of the Shutoff Act and  
3 the terms of this Consent Judgment and will be posted on the City’s website.

4           2.10    “STATE ENFORCEMENT AGENCIES” refers collectively to the People and the  
5 State Water Board.

6           2.11    “WATER ORDINANCE” shall refer to the ordinance adopted pursuant to this  
7 Consent Judgment and attached as Exhibit E that complies with the Shutoff Act and the terms of  
8 this Consent Judgment.

9                           **3.     BACKGROUND AND GENERAL ALLEGATIONS**

10          3.1     In 2019, the California Legislature adopted Senate Bill 998, the Water Shutoff  
11 Protection Act, Health and Safety Code Sections 116900 et. seq., increasing protections for  
12 residents facing termination of water service due to nonpayment. The Legislature recognized that  
13 water debt and residential water shutoffs threaten human health and well-being and “have  
14 disproportionate impacts on infants, children, the elderly, low-income families, communities of  
15 color, people for whom English is a second language, physically disabled persons and persons  
16 with life-threatening medical conditions.” (Sen. Bill 998 (2017-2018 Reg. Sess.) § 1, subd. (c).)  
17 Covered water systems were required to comply with the Act beginning in 2020. (Health & Saf.  
18 Code, § 116904, subd. (b).)

19          3.2     Due to the COVID-19 emergency, Governor Newsom issued Executive Order N-  
20 42-20 on April 2, 2020, which temporarily prohibited the discontinuation of residential water  
21 service for nonpayment. The moratorium on residential water shutoffs expired in January 2022.

22          3.3     The Water and Wastewater System Payments Under the American Rescue Plan  
23 Act of 2021 (Stats. 2021, Ch. 115; Health & Saf. Code, § 116773 et. seq.) (the Water Arrearages  
24 Act) took effect on July 22, 2021 for the purpose of assisting customers with past-due water bills.  
25 (Health & Saf. Code, § 116773.4, subd. (b)(1).) The Water Arrearages Act established a program  
26 (the Arrearages Payment Program) through which community water systems could apply for  
27 funding for customer arrearages accrued during the COVID-19 pandemic. The Water Arrearages  
28 Act also prohibited water systems from shutting of water service for nonpayment from July 22,

1 2021 through December 31, 2021. (*Id.*, § 116773.4, subd. (d)(2).) The State Water Board is  
2 authorized to administer the program, including by adopting guidelines and reporting  
3 requirements and allocating funding under the program. (*Id.*, § 116773.6, subds. (a), (c).)

4 3.4 The Attorney General, at the request of the Board or upon the Attorney General's  
5 own motion, may bring an action to enforce the requirements of the Water Shutoff Protection Act  
6 (the Shutoff Act) and to restore to any person in interest any money or property, real or personal,  
7 that may have been acquired by any method, act, or practice declared by the Act to be unlawful.  
8 (Cal. Const., art. V, § 13; Health & Saf. Code, § 116920.) The State Water Board is authorized to  
9 issue a citation to a public water system for violations of the Shutoff Act and the Water  
10 Arrearages Act and is authorized to seek an injunction in state court for violations of the Water  
11 Arrearages Act. (Health & Saf. Code, §§ 116906, subd. (c); 116773.6, subd. (d); 116660, subds.  
12 (b) & (c).) These statutes were enacted to reduce the number of Californians that lose access to  
13 water service due to their inability to pay and to provide financial assistance to those in need. It is  
14 the purpose of this Consent Judgment to effectuate the Legislature's purposes in passing these  
15 Acts. The State Water Board has executed a SETTLEMENT AGREEMENT with the City to  
16 resolve its administrative penalties under both the Shutoff Act and the Water Arrearages Act.  
17 (Exh. A.) The Consent Judgment and SETTLEMENT AGREEMENT together constitute the  
18 GLOBAL SETTLEMENT of the STATE ENFORCEMENT AGENCIES' claims under the  
19 Shutoff Act and Water Arrearages Act with the City.

20 3.5 On October 26, 2022, the Attorney General's Office issued a Legal Alert<sup>1</sup>  
21 reminding covered water systems of their responsibilities under the Shutoff Act as well as a  
22 Consumer Alert<sup>2</sup> to the public regarding the protections afforded by the Act. (Exhs. B, C.)

23 3.6 The City is classified as an urban water supplier and/or a community water system  
24 under the Shutoff Act and the Water Arrearages Act and serves drinking water to over 40,000

25 \_\_\_\_\_  
26 <sup>1</sup> Office of the Attorney General, Legal Alert, Water Shutoff Protection Act, Oct. 26,  
2022, *available at* <https://oag.ca.gov/housing/watershutoffs>.

27 <sup>2</sup> Office of the Attorney General, Consumer Alert, Know Your Rights – Avoiding Water  
28 and Utility Shutoffs, *available at* [https://oag.ca.gov/system/files/attachments/press-  
docs/Consumer%20Alert%20Water%20and%20Utility%20Shutoffs%20%285%29.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Consumer%20Alert%20Water%20and%20Utility%20Shutoffs%20%285%29.pdf).

1 Californians. United States Census Data indicates that the percentage of the City which is  
2 Hispanic or Latino is 97.8%.<sup>3</sup> The City is located in an area that faces challenging  
3 sociodemographic conditions, lagging behind the state and nation on a number of indicators,  
4 including Median Household Income poverty rates, and unemployment. The percentage of the  
5 population living below the federal poverty level is high at 21 percent in 2021, compared to  
6 approximately 12.5 percent for California and the United States. (U.S. Census Bureau, 2012-2021  
7 ACS 5-Year Estimates. Table S1701: Poverty Status in the Past 12 Months.) The unemployment  
8 rate in Calexico was 24 percent in 2022, compared to 15 percent in Imperial County and below 5  
9 percent in California and the United States. (U.S. Bureau of Labor Statistics, 2012-2022  
10 Unemployment Rates (Seasonally Unadjusted.) The City's population is also considered more  
11 vulnerable than about 90 percent of the state due to poverty, unemployment, housing burden,  
12 linguistic isolation, and health indicators such as rates of asthma, cardiovascular disease, and low-  
13 birth weight infants.<sup>4</sup>

14 3.7 The population served by the City faces significant affordability challenges in  
15 accessing safe, clean water. According to City data, as of December 31, 2022, 23 percent of its  
16 customers were delinquent in paying their water bill. The City's Basic Financial Statements and  
17 Independent Auditors' Reports document large account receivable balances in the City's water  
18 enterprise fund. For example, for the fiscal year ending on June 30, 2022, the City reported  
19 \$8,111,484 in annual water service revenue with a reported net accounts receivable of  
20 \$2,864,650.<sup>5</sup>

21 3.8 The City's violations of the Shutoff Act and the Water Arrearages Act have  
22 deprived many Californians of their human right to water. It is the purpose of the GLOBAL  
23

24 <sup>3</sup> United States Census Bureau, Calexico City, California Quick Facts, available at:  
25 <https://www.census.gov/quickfacts/fact/table/calexicocitycalifornia/PST045222>

26 <sup>4</sup> CalEnviroScreen 4.0 Data Dashboard, City of Calexico, available at  
27 <https://experience.arcgis.com/experience/6b863505f9454cea802f4be0b4b49d62>.

28 <sup>5</sup> City of Calexico Basic Financial Statements and Independent Auditors' Report, State of  
Net Position, Proprietary Funds, pp. 27-28, available at  
[https://www.calexico.ca.gov/vertical/sites/%7B342ED706-1EBB-4FDE-BD1E-9543BAD44C09%7D/uploads/YE\\_2021-22\\_Calexico\\_FINAL\\_Audit\\_Report\\_04-26-2023\(1\).pdf](https://www.calexico.ca.gov/vertical/sites/%7B342ED706-1EBB-4FDE-BD1E-9543BAD44C09%7D/uploads/YE_2021-22_Calexico_FINAL_Audit_Report_04-26-2023(1).pdf).

1 SETTLEMENT, including this Consent Judgment, to resolve multiple violations of both Acts that  
2 occurred between February 1, 2020, and April 17, 2024, including violations of:

3 3.8.1 Section 116904, subdivision (a) of the Health and Safety Code;

4 3.8.2 Section 116906 of the Health and Safety Code, subdivisions (a) and (b) and  
5 Section 116922;

6 3.8.3 Section 116908 of the Health and Safety Code, subdivisions (a);

7 3.8.4 Section 116910 of the Health and Safety Code;

8 3.8.5 Section 116916 of the Health and Safety Code;

9 3.8.6 Section 116773.4 of the Health and Safety Code, subdivisions (b)(1) and  
10 (b)(5);

11 3.8.7 Section 116773.4 of the Health and Safety Code, subdivision (c)(1);

12 3.8.8 Section 116773.4 of the Health and Safety Code, subdivision (d)(1);

13 3.8.9 Section 116773.4 of the Health and Safety Code, subdivision (d)(2);

14 3.8.10 Section B, p. 6 of the California Water And Wastewater Arrearage  
15 Payment Program Guidelines: Water Arrearages Program;

16 3.8.11 Section F.1.3, p. 12 of the California Water And Wastewater Arrearage  
17 Payment Program Guidelines: Water Arrearages Program; and

18 3.8.12 Section F.2.1, p. 12 of the California Water And Wastewater Arrearage  
19 Payment Program Guidelines: Water Arrearages Program.

20 3.9 As set out more fully in Plaintiff's COMPLAINT, at all relevant times as alleged  
21 herein and in the COMPLAINT, the City's policy on residential water discontinuation due to  
22 nonpayment did not comply with the requirements of the Shutoff Act. Among other violations,  
23 the City's policy allowed for shutoffs before accounts are 60 days delinquent, does not prohibit  
24 shutoffs for customers who meet certain medical and financial conditions, and does not inform  
25 customers of their right to enter into a payment plan to avoid shutoffs. In addition, the City  
26 conducted 1,090 illegal shutoffs between February 2020 and December 2022, collecting more  
27 than \$40,000 in fees associated with those shutoffs. The City also failed to submit accurate  
28 information to the Water Arrearages Program and misallocated funding provided by the State

1 Water Board to assist customers with water debt. The parties have agreed to resolve this matter  
2 through a GLOBAL SETTLEMENT that includes this Consent Judgment and the attached  
3 SETTLEMENT AGREEMENT, without the time and expense of litigation and judicial  
4 resolution, on the condition that each of the following commitments are implemented by the  
5 deadlines described below.

6 3.10 This Consent Judgment sets forth the obligations of the City. The Consent  
7 Judgment and the SETTLEMENT AGREEMENT together constitute the complete, final and  
8 exclusive agreement between the PARTIES and supersedes any prior agreements between the  
9 PARTIES except as specifically provided below.

#### 10 4. AGREEMENT TO SETTLE DISPUTE

11 4.1 The PARTIES enter into this Consent Judgment to establish the requirements and  
12 deadlines for revisions to the City's water shutoff policies, practices and website. It is the purpose  
13 of this Consent Judgment to ensure that the City's water shutoff policies, practices and website  
14 are updated to comply with the Act as set forth in the deadlines and timeframe below.

15 4.2 The PARTIES mutually consent to the entry by this COURT of the Consent  
16 Judgment.

17 4.3 The PARTIES are each represented by counsel, and this Consent Judgment was  
18 negotiated in good faith and at arms' length by the PARTIES to avoid expensive and protracted  
19 litigation regarding the alleged violations contained in the COMPLAINT, and to further the  
20 public interest.

21 4.4 The PARTIES agree that there has been no adjudication of any fact or law.

#### 22 5. JURISDICTION AND VENUE

23 5.1 The PARTIES agree and stipulate that, for purposes of this Consent Judgment  
24 only, that (i) the COURT has jurisdiction over the PARTIES to and the subject matter of this  
25 action; (ii) venue is proper in this COURT; and (iii) the COURT has personal jurisdiction over  
26 the City and the PARTIES request that the COURT retain jurisdiction over the PARTIES for the  
27 purposes of enforcing the terms of the Consent Judgment until performance in full of the terms of  
28 the Consent Judgment.

1           5.2     The PARTIES agree not to challenge this COURT’S jurisdiction to enforce the  
2 terms of this Consent Judgment, and this COURT maintains jurisdiction over this Consent  
3 Judgment for that purpose.

4                   **6.       WAIVER OF TRIAL AND ENTRY OF JUDGMENT**

5           6.1     By signing this Consent Judgment and consenting to its entry by the COURT, the  
6 PARTIES waive their right to a hearing and a trial on the matters alleged in the COMPLAINT,  
7 and also waive their right to appeal from the entry of the Consent Judgment.

8           6.2     The PARTIES agree to cooperate in good faith in supporting entry of this Consent  
9 Judgment, with the Plaintiff responsible for preparing any necessary motion for entry.

10                   **7.       APPLICABILITY**

11           7.1     The provisions of this Consent Judgment shall apply to and be binding on the  
12 STATE ENFORCEMENT AGENCIES, the City and its directors, officers, agents, employees,  
13 representatives, successors, assigns, and any persons or entities acting under the City. The City  
14 shall ensure that its directors, officers, agents, employees, representatives, successors, assigns,  
15 and any other persons or entities acting under the City, for the City, or on the City’s behalf with  
16 respect to the matters covered herein comply with the terms of this Consent Judgment.

17                   **8.       INJUNCTIVE RELIEF**

18           8.1     Compliance with Water Shutoff Protection Act. Nothing in this Consent Judgment  
19 shall relieve the City from complying with all applicable requirements and standards set forth in  
20 Health and Safety Code sections 116900 et seq:

21                   8.1.1   Pursuant to the Health and Safety Code sections 116900 et seq., the  
22                   STATE ENFORCEMENT AGENCIES acknowledge that the City has  
23                   adopted the SHUTOFF POLICY (Exh. D), and that the SHUTOFF  
24                   POLICY complies with the Shutoff Act.

25                   8.1.2   The STATE ENFORCEMENT AGENCIES acknowledge that the City has  
26                   adopted the WATER ORDINANCE (Exh. E) that amends Calexico  
27                   Municipal Code sections 13.01.010 through 13.01.720.

28                   8.1.3   The City shall amend its DELINQUENT NOTICES to comply with the



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Shutoff Act by removing the following: “Our records show that your account is delinquent more than 30 days. Please make payment to avoid disconnection of your water or possible civil action against you.”

8.1.4 The City shall amend its BILLING STATEMENT, by removing the following language:

8.1.4.1 “City of Calexico reserves the right to disconnect service if an account has reached an overdue balance of \$20.00 or is one month past due. Past due accounts are subject to disconnection at any time without prior written notice.”

8.1.4.2 **“PAST DUE ACCOUNTS AFTER 30 DAYS ARE SUBJECT TO SHUT OFF’S ON THE MIDDLE OF EACH MONTH.”**

[Bold and underline in original.]

8.1.5 The City shall provide a notification to customers explaining the changes in these policies, which shall include a copy of the Attorney General’s October 26, 2022 Consumer Alert. (Exh. C.)

8.1.6 Failure to adopt and maintain a compliant SHUTOFF POLICY in accordance with the Shutoff Act and/or the terms of this Consent Judgment shall constitute a breach of the Consent Judgment entitling the People to enforce the Consent Judgment in court without regard to the City’s compliance with any other terms of this Consent Judgment.

8.2 Changes to Billing Practices to Reduce Shutoffs. The City shall make changes to its utility billing practices, reflected in the adopted SHUTOFF POLICY (Exh. D) and WATER ORDINANCE. (Exh. E.)

8.2.1 The City shall change its practice of billing its customers for water service using a unified bill that combines charges for water, sewer and refuse service increases the number of City residents who are at risk of losing access to water due to their inability to pay all charges that appear in the unified bill. Specifically, the City’s municipal ordinance mandates that

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payments on the City’s unified bill are to be applied in the following order:  
(1) fines, penalties, assessments or delinquencies; (2) deposit; (3) refuse;  
(4) sewer; (5) fire line, (6) base rate or fixed component charge; and lastly  
(7) water service billable units. (Calexico Ord. No. 1157, § 2, 10-21-14;  
City of Calexico Mun. Code § 13.01.290. The customer’s failure to pay all  
charges in arrears results in the discontinuance of water service. (Calexico  
Ord. No. 1157, § 2, 10-21-14; City of Calexico Mun. Code § 13.01.320.)

8.2.2 The City has adopted the WATER ORDINANCE (Exh. E), which amends  
Municipal Code section 13.01.300 to prohibit interest from being charged  
on delinquencies.

8.2.3 The City has adopted the WATER ORDINANCE, which amends  
Municipal Code section 13.01.290 to provide that customer payments be  
applied in the following manner and order: (1) Proportionally to each  
utility service (water, refuse, sewer); (2) Fire line; (3) Fines, penalties, fees,  
charges, or assessments; (4) Deposit.

8.2.4 The City shall modify its water shutoff practices, as described in the  
WATER ORDINANCE and SHUTOFF POLICY. The circumstances  
under which the City will shut off a customer’s water for nonpayment  
include the following:

8.2.4.1 For customers not enrolled in a payment plan, the City will not  
discontinue residential water service unless: (1) there is a  
delinquency in payments specifically related to water service, that  
by itself, exceeds \$150; (2) the water-related delinquency is more  
than 90 days delinquent; and (3) in compliance with the Shutoff  
Act, the City has offered the customer a payment plan and the  
customer declined to enroll.

8.2.4.2 For customers enrolled in a payment plan, the City will not  
discontinue residential water service unless: (1) the customer has

1 failed to comply with the payment plan for at least 30 days, or (2)  
2 the customer has failed to pay their current residential water service  
3 bill for at least 90 days and the delinquency exceeds \$150.

4 8.2.5 The City shall restore residential water service that was disconnected due  
5 to nonpayment if the customer enters into a payment plan, including a plan  
6 that allows the customer to pay 1/12th the delinquent charges on their  
7 account in order to restore service, and the remaining delinquency in equal  
8 payments over the next 11 months or on a time schedule agreed to by the  
9 customer and City. This type of plan shall only be available to customers  
10 once every 12 months. The City shall comply with Health and Safety Code  
11 section 116912 and provide customers with the information about how to  
12 restore water service after a water shutoff.

13 8.3 Revisions to Late Fees.

14 8.3.1 The City has adopted the SHUTOFF POLICY, which revises the City's  
15 late fee to be 5% of the delinquent utility bill balance. The late fee will be  
16 charged only one time for each delinquent bill and not cumulatively to the  
17 full delinquent balance. No late fee will be assessed or collected until the  
18 bill is at least 30 days delinquent.

19 8.3.2 No late fee will be assessed if: (1) the customer makes a payment of \$10.00  
20 or more on the delinquent bill balance; (2) the customer requests and enters  
21 into a payment plan prior to being more than 30 days late on a payment; or  
22 (3) the customer has an abnormally large bill of at least five times the  
23 average bill during the previous 12 months due to a leak or other water  
24 delivery issue on the premises that was identified and timely addressed as  
25 shown by documentation provided to the City.

26 8.3.3 Disconnection and limitation on other charges: The only fees, interest or  
27 charges of any kind that will be assessed in connection with water shutoffs  
28 are the following three fees: (1) the applicable late fee; (2) the \$26.64

1 disconnection fee; and (3) the \$75 after-hours fee (if applicable). The City  
2 agrees to provide notice of the specific dollar amounts of these fees on all  
3 notices it provides the customer in advance of the water shutoff.

4 8.4 Amendments to SHUTOFF POLICY and/or WATER ORDINANCE. If, during  
5 the term of this Consent Judgment, the City’s overall water fund delinquencies approach or  
6 exceed 150 percent of recent historical average for water fund delinquencies, STATE  
7 ENFORCEMENT AGENCIES agree to consider amendments to the SHUTOFF POLICY and/or  
8 WATER ORDINANCE. Any changes made to the policies must comply with the Shutoff Act and  
9 must be approved by STATE ENFORCEMENT AGENCIES. The City shall provide STATE  
10 ENFORCEMENT AGENCIES a draft of the proposed changes for their approval at least 30 days  
11 before the City will submit them to the City Council for adoption. Proposed changes shall be  
12 provided to: Christie Vosburg at [Christie.Vosburg@doj.ca.gov](mailto:Christie.Vosburg@doj.ca.gov), Monica Heger at  
13 [Monica.Heger@doj.ca.gov](mailto:Monica.Heger@doj.ca.gov), Mari Mayeda at [Mari.Mayeda@doj.ca.gov](mailto:Mari.Mayeda@doj.ca.gov), Laura Mooney at  
14 [Laura.Mooney@waterboards.ca.gov](mailto:Laura.Mooney@waterboards.ca.gov), Zach Miller at [Zach.Miller@waterboards.ca.gov](mailto:Zach.Miller@waterboards.ca.gov), and  
15 Michael Cayaban at [mike.cayaban@doj.ca.gov](mailto:mike.cayaban@doj.ca.gov).

16 8.5 Changes in Administrative Policies and Practices.

17 8.5.1 The City shall retain a dedicated Utility Billing Staff Member by June 30,  
18 2024. The person employed in this position shall have proficiency in or  
19 immediately be trained to have proficiency in the use of the City’s utility  
20 management software and shall have the ability to independently utilize  
21 that software. The Utility Billing Staff Member’s job duties shall include  
22 compliance with the Consent Judgment as well as skill and ability to use  
23 Starnik (or other utility management software). The Utility Billing Staff  
24 Member shall report at least annually to immediate supervisors regarding  
25 tasks performed to assist residents in avoiding water shutoffs and to  
26 comply with the Shutoff Act and the Consent Judgment. Within 30 days of  
27 the retention of the Utility Billing Staff Member, that individual shall  
28 attend a meeting with the People to discuss compliance with the Shutoff

1 Act, the Act's purposes, and the Consent Judgment.

2 8.5.2 Training: Within 30 days of the EFFECTIVE DATE of the Consent  
3 Judgment and before restarting residential shutoffs for nonpayment, the  
4 City will train employees about the City's updated policies and compliance  
5 with the Shutoff Act. Employees receiving training shall include at a  
6 minimum, employees in the Finance / Financial Services and Public Works  
7 departments, the Human Resources/Risk Management Manager, and any  
8 other employee who makes management and/or policy decisions that  
9 involve the City's delivery of water service to residents. The City will  
10 require new staff to review the training and/or training materials, and will  
11 re-conduct the training on an annual basis. The required training will  
12 include education and training on compliance with the Shutoff Act and the  
13 City's required compliance with all terms of the Consent Judgment entered  
14 in settlement of this matter. Members of the City Council will also be  
15 briefed on the updated policies and compliance with the Shutoff Act.

16 8.6 Application to Extended Arrearage Payment Program. As a condition to this  
17 Consent Judgment, the City has applied to the Extended Arrearages Payment Program available  
18 under the Water Arrearages Act for the purpose of obtaining funding to issue bill credits to  
19 customers with eligible COVID-19 period arrearages. The City will provide the STATE  
20 ENFORCEMENT AGENCIES with documentation of the following: (1) the agreement it entered  
21 into for the assistance of an independent consultant, accountant, or auditor to prepare the City's  
22 applicable; and (2) the City's return of funds from the initial round of the Arrearages Payment  
23 Program in connection with it re-applying for funding.

24 8.6.1 The City will comply with the Water Arrearages Act and all Program  
25 guidelines in handling and disbursing any future funds received from the  
26 Arrearages Payment Program.

27 8.6.2 The City acknowledges that the information provided in connection with  
28 its initial application and follow up reporting to the Water and Wastewater

1 Arrearage Payment Program was inaccurate. The City represents and  
2 warrants that the information provided in the City’s Extended Arrearage  
3 Application submitted on January 31, 2024, and updated as of April 4,  
4 2024, is true and correct and that the data provided accurately accounts for  
5 eligible COVID-19 period water and waste water arrearages under the  
6 original Water and Wastewater Arrearage Payment Program and the  
7 Extended Water and Wastewater Arrearage Payment Program.

8 **9. RESTITUTION**

9 9.1 Return of Fees.

10 9.1.1 For each customer who was assessed a late fee for arrearages accrued  
11 during the COVID-19 pandemic relief period (March 4, 2020 to June 21,  
12 2021, inclusive), the City will return to each customer or credit to their  
13 account all late fees assessed on the COVID-19 period arrearage, plus 3  
14 years interest at 10 percent annually, calculated by multiplying the total by  
15 1.35. The payment to each qualifying customer account shall be made by  
16 July 1, 2024.

17 9.1.2 For each water shutoff conducted during the period February 1, 2020  
18 through December 31, 2022, the City will return to each shutoff customer  
19 or credit to their account all fees assessed in connection with the illegal  
20 shutoff, which shall include: (1) the disconnection fee; (2) late fees  
21 assessed by the City in connection with the water shutoff if not returned or  
22 credited pursuant to Paragraph 28 subdivision (a); (3) the reconnection fee  
23 in those instances where one was assessed; and (4) 3 years interest at 10  
24 percent annually (calculated by multiplying the combined total of amounts  
25 1-3 by 1.35). Customers that experienced multiple water shutoffs during  
26 this time period will be refunded the illegally assessed fees for each water  
27 shutoff. The payment to each qualifying customer account shall be made  
28 by July 1, 2024.

1 9.1.3 For customers who qualify for either payment, but who are no longer active  
2 customers, the City shall make a good faith effort to locate the customer  
3 using the addresses and telephone numbers on file and pay the amount due.  
4 The City will issue letters to addresses on file by July 1, 2024. If there is no  
5 response from customers, the City will make a good faith effort to contact  
6 the telephone numbers on file during the period of August 1, 2024 through  
7 October 31, 2024. If contacted, the City will issue checks within 30 days of  
8 eligible former customers confirming their identities and providing a  
9 current address for check issuance.

10 9.1.4 If the City is unable to identify or locate the customers referenced in  
11 paragraphs 9.1.1, 9.1.2 or 9.1.3 by October 31, 2024, the amount of the bill  
12 credit owed that customer shall instead be paid to the Board for deposit in  
13 the Safe Drinking Water Account by November 30, 2024. The City's check  
14 for any such fees shall be made payable to "State Water Resources Control  
15 Board" and shall bear on its face the above-entitled case name and civil  
16 action number. Payment shall be delivered to the State Water Resources  
17 Control Board, Attention: Accounting Office, P.O. Box 1888, Sacramento,  
18 CA 95812-1888.

19 9.1.5 At the time the City issues the required bill credit or payment to the  
20 customer, the City will provide a notice to the customer that the bill credit  
21 or payment is provided in accordance with the Consent Judgment.

22 9.1.6 For those closed accounts that the City has furnished information to any  
23 collection agency regarding an arrearage that is satisfied pursuant to the  
24 Consent Judgment, the City agrees to reduce the full amount satisfied by  
25 the Consent Judgment.

26 9.1.7 By December 31, 2024, the City shall send a verified report documenting  
27 the amount of each bill credit issued or payment made and certify all  
28 required bill credits and payments have been made by email to Christie

1 Vosburg at Christie.Vosburg@doj.ca.gov, Monica Heger at  
2 Monica.Heger@doj.ca.gov, Mari Mayeda at Mari.Mayeda@doj.ca.gov,  
3 Laura Mooney at Laura.Mooney@waterboards.ca.gov, Zach Miller at  
4 [Zach.Miller@waterboards.ca.gov](mailto:Zach.Miller@waterboards.ca.gov), and Michael Cayaban at  
5 mike.cayaban@doj.ca.gov.

6 9.2 Payment to Customers Illegally Shut Off.

7 9.2.1 Within 180 calendar days of the parties' execution of a stipulation for entry  
8 of Consent Judgment, the City shall pay to or apply a bill credit of \$105.00  
9 to each of the 484 unique customers that experienced a City water shutoff  
10 during the period February 2020 through December 2022. This shall be in  
11 addition to the payment and/or bill credit made pursuant to Paragraph 9.1.

12 9.2.2 For those customers who qualify for this payment but no longer have an  
13 account with the City, the City shall follow the procedures in Paragraph  
14 9.1.3 to locate those customers. If those customers cannot be located, the  
15 City shall make payment to the Board per the procedures in Paragraph  
16 9.1.4.

17 9.2.3 At the time the City issues the required bill credit or payment to the  
18 customer, the City will include a notice to the customer that the bill credit  
19 or payment is provided in accordance with the Consent Judgment.

20 9.2.4 By December 31, 2024, the City shall send a verified report documenting  
21 the amount of each bill credit issued or payment made and certify all  
22 required bill credits and payments have been made by email to Christie  
23 Vosburg at Christie.Vosburg@doj.ca.gov, Monica Heger at  
24 Monica.Heger@doj.ca.gov, Mari Mayeda at Mari.Mayeda@doj.ca.gov,  
25 Laura Mooney at Laura.Mooney@waterboards.ca.gov, Zach Miller at  
26 [Zach.Miller@waterboards.ca.gov](mailto:Zach.Miller@waterboards.ca.gov), and Michael Cayaban at  
27 Mike.Cayaban@doj.ca.gov..  
28



1 **10. COMPLIANCE VERIFICATION**

2 10.1 Within 60 days after adopting the WATER ORDINANCE, the City shall send the  
3 STATE ENFORCEMENT AGENCIES examples of updated BILLING STATEMENTS and  
4 DELINQUENT NOTICES that reflect the terms of this Consent Judgment for their comment and  
5 approval.

6 10.2 The City shall provide a copy of the draft of the notifications described in  
7 Paragraphs 9.1.5 and 9.2.3 to the STATE ENFORCEMENT AGENCIES for approval prior to its  
8 distribution. The City shall distribute the notice within 30 days from the adoption the WATER  
9 ORDINANCE.

10 10.3 The City shall report quarterly to the STATE ENFORCEMENT AGENCIES  
11 regarding compliance with this Consent Judgment and the Shutoff Act. Such reports shall include,  
12 without limitation, a report of each discontinuation of residential water service due to  
13 nonpayment for five years from the EFFECTIVE DATE. For each discontinuation reported, the  
14 City shall provide: customer number, payment due date, amount of bill delinquency, dates of any  
15 notices sent to the customer, and whether customer was offered and enrolled in a payment plan.  
16 The quarterly reports shall also include the number of delinquent accounts, the amount each  
17 account is delinquent, and how the total water fund delinquency compares to the City’s historical  
18 average. Quarterly reports are due beginning 180 days from the EFFECTIVE DATE.

19 10.4 The City shall notify the STATE ENFORCEMENT AGENCIES within two  
20 business days after hiring a Utility Billing Staff Member and within two business days following  
21 the completion of the staff training described in Paragraph 8.5.2.

22 10.5 The City shall report annually to the STATE ENFORCEMENT AGENCIES  
23 regarding any arrearages funding, including without limitation the City’s applications for, grants  
24 of and distribution of monies by date, customer account number and funding applied or credited  
25 to each account, and the arrearage amount of each customer account.

26 10.6 The City shall verify compliance with Section 9 through the procedures described  
27 in Paragraphs 9.1.7 and 9.2.4.  
28

1 **11. ADDITIONAL TERMS**

2 11.1 Term. The City shall be permanently enjoined from violating the Shutoff Act. The  
3 remaining provisions shall be in effect for five years from the EFFECTIVE DATE of this  
4 Consent Judgment, except under the circumstances detailed in Paragraph 8.4.

5 11.2 Representation and Warranty. The City recognizes that information provided to the  
6 STATE ENFORCEMENT AGENCIES during their investigation has been relied upon by the  
7 STATE ENFORCEMENT AGENCIES in agreeing to this Consent Judgment. The City therefore,  
8 hereby represents and warranties that: (1) its response to Responses to Investigative  
9 Interrogatories (Set Two), Interrogatory No. 8, with supporting spreadsheet CALEXICO Chart  
10 Responsive to Interrogatory 8.xlsx, is true and correct and that the data provided accurately  
11 accounts for each water shutoff conducted between February 2020 through 2022; and (2) its  
12 response to Request Nos. 6 and 7 in the City of Calexico’s Verified Responses to Information  
13 Requests Nos. 1-10 is true and correct and that the responses accurately account for all late fees  
14 charged by the City on COVID-19 period arrearages.

15 11.3 Claims Covered and Reserved. This Consent Judgment is a full, final, and binding  
16 resolution between the STATE ENFORCEMENT AGENCIES, on the one hand, and the City and  
17 its successors and assigns, on the other hand, of any violations of the Act that were asserted in the  
18 COMPLAINT against the City prior to the EFFECTIVE DATE. All claims other than those  
19 asserted in the COMPLAINT and covered in the GLOBAL SETTLEMENT are reserved. The  
20 Parties affirm that nothing in this Consent Judgment in any way affects the STATE  
21 ENFORCEMENT AGENCIES’ rights, claims, or defenses in any past, present, or future lawsuit  
22 or dispute against the City related to the Shutoff Act.

23 11.4 Enforcement. Prior to enforcing the Consent Judgment, the STATE  
24 ENFORCEMENT AGENCIES shall provide the City written notice identifying the terms with  
25 which the City has failed to comply and 10 business days to cure its breach. In an action to  
26 enforce any provision of this Consent Judgment, the STATE ENFORCEMENT AGENCIES,  
27 individually or together, may seek whatever fines, costs, attorneys’ fees, penalties, or remedies  
28 provided by law for failure to comply with any individual provision of this Consent Judgment.

1 The City agrees it will not contest its obligation to comply with the terms of this Consent  
2 Judgment as set forth herein in any proceeding to enforce this Consent Judgment. Where a failure  
3 to comply with the Consent Judgment also constitutes a violation of law independent of the  
4 Consent Judgment, the STATE ENFORCEMENT AGENCIES, individually or together, are not  
5 limited to enforcement of this Consent Judgment. Except as expressly provided herein, nothing in  
6 this Consent Judgment is intended nor shall be construed to limit the STATE ENFORCEMENT  
7 AGENCIES, or any other local, state, or federal agency from taking appropriate enforcement  
8 actions or otherwise exercising their authority under any law.

9       11.5 Penalty for Non-Compliance. The STATE ENFORCEMENT AGENCIES,  
10 individually or together, will provide written notice and the opportunity for the City to cure any  
11 breach of this Consent Judgment. If the City fails to cure the breach within 10 business days, a  
12 penalty of \$100 per day applies to each day the City is out of compliance with a term in the  
13 Consent Judgment, which penalties are cumulative (i.e., each term violated gives rise to an  
14 independent \$100 per day penalty) and continue until cured by the City, in addition to any other  
15 remedy available or provided by this Consent Judgment. If there is a dispute as to whether the  
16 City has violated any of the terms of the Consent Judgment, Plaintiff may move the COURT to  
17 compel compliance for each and every violation and order the payment of any penalties that are  
18 due. The STATE ENFORCEMENT AGENCIES may move the COURT for such compliance  
19 individually or together. The moving STATE ENFORCEMENT AGENCY OR AGENCIES will  
20 provide the City with written notification 14 days before any such motion is filed.

21       11.6 Modification. At any time, should any part of this Consent Judgment become  
22 inoperative for any reason, all other parts of this Consent Judgment shall remain in effect unless  
23 modified by the Court as provided for in this paragraph. This Consent Judgment may be modified  
24 from time to time by written stipulation of the Parties and the COURT'S entry of such stipulation  
25 and order. The Consent Judgment may also be modified upon entry of an order of this COURT in  
26 accordance with law. Grounds for considering modification shall include any that are permitted  
27 by law, including that any part of this Consent Judgment is or has become preempted by federal  
28 law or regulation. Before filing an application with the COURT for a modification to the Consent

1 Judgment, the PARTIES shall meet and confer to determine whether they can agree on the  
2 proposed modification. If a proposed modification is agreed upon, then the PARTIES will present  
3 the modification to the COURT by means of a stipulated modification to the Consent Judgment as  
4 set forth in the first sentence of this paragraph.

5 11.7 Joint Preparation. This Consent Judgment has been jointly drafted. No  
6 presumptions or rules of interpretation based upon the identity of the party preparing or drafting  
7 the Consent Judgment, or any part thereof, shall be applicable or invoked.

8 11.8 Execution in Counterparts. This Consent Judgment may be executed in  
9 counterparts, which taken together shall be deemed to constitute one and the same document.

10 11.9 Severability. Even if a court holds one or more parts of this Consent Judgment  
11 ineffective, invalid, or void, all remaining provisions shall remain valid.

12 11.10 Retention of Jurisdiction. The PARTIES agree that this COURT has continuing  
13 jurisdiction to interpret and enforce the provisions of this Consent Judgment and to address any  
14 other matters arising out of or regarding this Consent Judgment.

15 11.11 Validity of Consent Judgment. All PARTIES agree that this Consent Judgment is  
16 valid and enforceable and waive any collateral attack on this Consent Judgment or other assertion  
17 that this Consent Judgment is contrary to law.

18 11.12 PARTIES' Costs and Fees. The PARTIES shall each pay their own attorneys' fees  
19 and costs in this matter. This provision shall not apply to any fees and costs incurred in  
20 successfully enforcing this Consent Judgment as set forth in Paragraph 11.4, above.

21 11.13 Entry of Consent Judgment. This Consent Judgment shall be binding and effective  
22 on the EFFECTIVE DATE, and the clerk is ordered to enter this Consent Judgment forthwith.

23 11.14 COURT Entry of Consent Judgment. This Consent Judgment shall be submitted to  
24 the COURT for entry by the COURT. The PARTIES' submission of the Consent Judgment for  
25 entry by the Court shall have no bearing or effect on the Board's authority to bring an  
26 administrative civil liability or other administrative enforcement action against the City nor on the  
27 Board's right to enter into a separate agreement to settle those administrative claims. If this  
28 Consent Judgment is not entered by the COURT, it shall be of no force or effect, and may not be

1 used by the PARTIES, or any other person or entity, for any purpose whatsoever.

2           11.15 Governing Law. The terms of this Consent Judgment shall be governed by the  
3 laws of the State of California.

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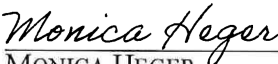
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1 **IT IS SO STIPULATED.**

2  
3 Dated: May 17, 2024

ROB BONTA  
Attorney General of California  
CHRISTIE VOSBURG  
Supervising Deputy Attorney General


4  
5  
6   
7 MONICA HEGER  
8 MARI MAYEDA  
9 Deputy Attorneys General  
10 *Attorneys for the People of the State*  
11 *of California*

12 Dated: May 17, 2024, 2024

ROB BONTA  
Attorney General of California  
13   
14 MICHAEL CAYABAN  
15 Supervising Deputy Attorney General  
16 *Attorneys for Plaintiff State Water*  
17 *Resources Control Board*


18 Dated: 05-17-, 2024

CITY OF CALEXICO

19   
20 ESPERANZA COLIO WARREN  
21 City Manager

22 Dated: May 17, 2024


CITY OF CALEXICO

23   
24 NICHOLAUS NORVELL  
25 WILLIAM SHEPHERD  
26 Best Best & Krieger LLP  
27 *Attorneys for Defendant City of Calexico*  
28

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**IT IS SO ORDERED AND ADJUDGED.**

Dated: \_\_\_\_\_ 06/27/2024

\_\_\_\_\_  
  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT A**



## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between City of Calexico (“City”) and the State Water Resources Control Board (“State Water Board” or “Board”), Division of Drinking Water (the “Division”), referred to hereinafter jointly as the Parties. This Agreement is executed on the last date of the signatures below.

### RECITALS

This Agreement is made in the following circumstances which for purposes of this Agreement shall constitute recitals of fact:

1. The State Water Board is authorized to enforce the requirements of section 116906 of the Water Shut Off Protection Act (Health & Saf. Code, § 116900 et. seq.) and the Water and Wastewater System Payments Under the American Rescue Plan Act of 2021 (Health & Saf. Code, § 116773 et. seq.) (collectively, the “Acts”) using its authorities under Health and Safety Code Sections 116557, 116650 and 116655, including without limitation by issuing a citation with monetary penalties. (Health & Saf. Code, §§ 116906, subd. (c)(1) and 116773.6, subd. (d).) The Deputy Director of the Division is authorized to issue a citation and a compliance order to a public water system for certain violations of the Acts. (Health & Saf. Code, §§ 116650, 116655, 116271, subd. (k)(2).)
2. The Acts were enacted to reduce the number of Californians that lose access to water service due to their inability to pay and to provide financial assistance to those in need. The Division alleges that the City is in violation of both Acts and that the City’s alleged violations have deprived many Californians of their human right to water, as well as State-funded assistance to pay past due water bills. The Division also alleges that the City has also misused state funds allocated by the State Water Board for which it applied and received under the Water and Wastewater System Payments Under the American Rescue Plan Act of 2021 (“Water Arrearages Act”).
3. The Division alleges that the City committed multiple violations of the Acts, including, but not limited to, failing to have a written policy on the discontinuation of residential service for nonpayment available to customers in the languages required by section 1632 of the Civil Code from February 2020 through December 2022, during which time the City discontinued water service to 484 unique customers (violations of section 116906 of the Health and Safety Code, subdivisions (a) and (b)); failing to calculate or estimate the total amount of outstanding past-due bills that accumulated during the COVID-19 pandemic bill relief period (violations of section 116773.4 of the Health and Safety Code, subdivision (b)(5)); failing to credit customer accounts within 60 days of receiving funds under the Water Arrearages Act (violations of section 116773.4 of the Health and Safety Code, subdivision (c)); failing to provide customers with arrearages accrued during the COVID-19 pandemic bill relief period a notice that they may enter into a payment plan and that they have 30 days from the date of

the notice to enroll in the payment plan (violations of section 116773.4 of the Health and Safety Code, subdivision (d)(1)); and discontinuing water service due to nonpayment of past-due bills during the period of July 21, 2021 through December 31, 2021 (violations section 116773.4 of the Health and Safety Code, subdivision (d)(2)).

4. The Division also alleges that the City committed multiple violations of the California Water And Wastewater Arrearage Payment Program Guidelines, including violations of sections B, F.1.3 the requirement to waive late fees, and F.2.1 the requirement to notify customers that the bill credit was provided by the Water Arrearages Act.
5. The Division is authorized to issue a citation for the alleged violations of the Acts that includes a monetary penalty of up to \$1,000 per day for each day that a violation occurred, and for each day that a violation continues to occur. A separate penalty may be assessed for each violation. (*Id.*, § 116650.)
6. The California Attorney General's Office, through the independent authority of the Attorney General as the chief law enforcement officer of the State, has similarly alleged that the City has violated the Acts. The Division and the Attorney General's Office (referred to as the "State Enforcement Agencies") engaged in a joint investigation of the City's violations of the Acts. The State Enforcement Agencies and the City agreed to conduct a joint settlement negotiation to resolve the alleged violations collaboratively and efficiently. As a result of the joint negotiation, the State Enforcement Agencies and the City have agreed to settle the alleged violations in parallel settlement agreements whereby the City agrees to, *inter alia*, pay a monetary penalty, as more fully described below.
7. The State Enforcement Agencies and the City have also separately executed a Stipulation and Proposed Consent Judgment ("the Consent Judgment") that will be filed by the parties in the Superior Court for Imperial County. The Consent Judgment requires the City to, without limitation, make restitution to customers who were harmed by the City's violations of the Act and to comply with numerous injunctive relief provisions, including, without limitation, modification of the City's policies, billing practices, and staffing, and applying to the Extended Water and Wastewater Arrearages Program to provide further assistance to the City's customers.

## STIPULATIONS

In consideration of the above recitals and in consideration of the mutual covenants set forth in this Agreement, the Parties agree to settle the City's monetary liability for violations of the Acts as follows:

1. **Recitals Incorporated.** The preceding recitals are incorporated herein.

2. **Settlement Conditionally Confidential.** The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154. If the State Water Board's Executive Director does not issue the Order Approving Settlement Agreement, this Agreement is not admissible in an adjudicative proceeding or civil action pursuant to Government Code section 11415.60.
3. **Payment of Monetary Penalty.** To settle the City's monetary liability, the City agrees to a penalty totaling \$350,000 to be accounted for as follows:
  - a. No later than 30 calendar days after the issuance of the Order Approving Settlement Agreement, the City shall pay \$150,000 to the State Water Board's Safe Drinking Water Account. Payment must be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board Safe Drinking Water Account." Reference should be made to the order number appearing on the Order Approving Settlement Agreement. The City shall properly execute and deliver payment to:

State Water Resources Control Board  
Attention: Accounting Office  
P.O. Box 1888  
Sacramento, CA 95812-1888

A copy of the check shall be sent to Laura Mooney, Attorney IV, State Water Board Office of Enforcement, 801 K Street, Suite 2300, Sacramento, CA 95814.

- b. Within 180 calendar days of issuance of the Order Approving Settlement Agreement, the City shall fund a Water Conservation Program for the benefit of City residential customers ("Program"). The City shall disburse at least \$200,000 in program benefits to City residential customers who qualify under the Program, exclusive of any administrative or other cost incurred by the City to create and/or operate the Program, including compensation of a third party to design and/or implement the Program.

The purpose of the Program shall be to promote water efficiency and conservation for residential water customers, thereby reducing a resident's water bill and the likelihood their water will be shut off due to the inability to pay the bill. The City is granted the discretion to design and implement the Program conditioned upon the following: (1) the Program must serve the agreed upon purpose. (2) The Program must provide a direct benefit to individual residential customers rather than promote water conservation generally. Examples of a direct benefit include distributing no cost low-flow showerheads and other easily installed water conservation devices, distributing vouchers or other direct payments for water conservation devices or services, providing no cost water

audits, distributing no cost irrigation control and/or weather-based devices, and other mechanisms that incentivize individual water conservation. (3) To the greatest extent possible, the Program will be designed to eliminate barriers to participation, such as favoring vouchers and direct payments over rebates or other conditions that require the customer to expend money or other resources in order to obtain Program benefits. (4) The Program will take into account that a high percentage of City residents rent their homes. The Program will be designed with a view towards benefiting the resident who uses the water and suffers when the water is shut off.

Within 120 calendar days of issuance of the Order Approving Settlement Agreement, the City shall submit to the State Enforcement Agencies a written proposal that sets forth the goals, detailed plans for implementation, implementation schedules and milestones, and a budget for the Program. The City shall consider and address the State Enforcement Agencies' response, if any, to the proposal to ensure the Program meets the agreed upon purpose, as set forth above.

4. **Reporting.** The City shall provide the State Enforcement Agencies with written quarterly progress reports identifying all steps taken to create and implement the Program and all disbursements made in connection with the Program. The first report is due 90 days after issuance of the Order Approving Settlement Agreement. The City must provide quarterly reports on program implementation to the State Enforcement Agencies until the entire \$200,000 in funding is disbursed, and it shall provide a certified closing report accounting for the disbursement of all funds under the Program as of the date of the closing report, which shall be no later than 36 months of the Order Approving Settlement Agreement. If the City has not disbursed the entire \$200,000 in funding by this date, the balance shall be paid to the account listed in Stipulation 3 subdivision (a).
5. **Satisfaction of Monetary Liability.** The City's completion of Stipulations 3 and 4 will constitute a complete and final satisfaction of the City's monetary liability associated with the Division's alleged violations described in Recitals 2, 3 and 4, above. The State Water Board will not bring any further administrative civil liability or other enforcement action regarding the same alleged violations.
6. **Performance by City.** The City shall comply with Sections 8, 9, and 10 in the Consent Judgment. If the Consent Judgment is not entered by the court then the City shall comply with Sections 8, 9 and 10 in the Stipulation and Proposed Consent Judgment filed by the parties in the Superior Court for Imperial County, and (i) references in the Agreement to paragraph numbers in the Consent Judgment shall instead apply to paragraph numbers in the Stipulation and Proposed Consent Judgment filed by the parties in the Superior Court for Imperial County; and (ii) the State Water Board may enforce any violation of Sections 8, 9, and 10 as if each term was fully set forth herein. Further, if any

term in Sections 8, 9 and/or 10 of the Consent Judgment is stricken or deemed unenforceable by the court, then the State Water Board may enforce the term as if fully set forth herein. The State Water Board's enforcement of any term in Sections 8, 9, or 10 of the Stipulation and Proposed Consent Judgment shall not limit or preclude any enforcement authority, remedies, or action available by law to the Attorney General.

7. **Enforcement of this Agreement.** The State Water Board may exercise its enforcement authority under the California Safe Drinking Water Act for violation of the Agreement and the Order Approving Settlement Agreement pursuant to Health and Safety Code section 116740, in addition to any other remedy at law.
8. **State Water Board Authority.** The Agreement is not intended to and shall not be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law. Nothing in the Agreement shall excuse the City from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority.
9. **Waiver of Reconsideration and Petition for Writ of Mandate.** The City waives its right to request reconsideration of the State Water Board Executive Director's Order Approving Settlement Agreement pursuant to Health and Safety Code section 116701, provided no material modifications to this Agreement or additional requirements beyond the requirements of this Agreement are included in the Order Approving Settlement Agreement. The City further waives its right to petition the superior court for a writ of mandate pursuant to Health and Safety Code section 116700.
10. **Successors.** The Agreement is binding on any successors or assigns of the Parties.
11. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to the Agreement, including without limitation documents in connection with the City's compliance with Stipulations 3 and 4, above.
12. **Entire Agreement.** The Agreement reflects and represents the entire agreement between and among the Parties and supersedes all prior understandings, representations, and agreements whether written or unwritten, with the exception of the understandings, representations, and agreements in the Consent Judgment. Each Party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in the Agreement, or the Consent Judgment.
13. **Counterparts.** The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

14. **Reasonableness of Settlement.** The Parties represent and warrant that the Agreement is made in good faith and in full recognition of the implications of such agreement.
15. **Section Headings.** The parties intend that the paragraph headings of this Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Agreement.
16. **Representations.** The City represents and warranties that: (1) its response to investigation Interrogatory No. 8, with supporting spreadsheet CALEXICO Chart Responsive to Interrogatory 8.xlsx, is true and correct and that the data provided accurately accounts for each water shutoff conducted between February 2020 through 2022; and (2) its response to Request Nos. 6 and 7 in the City of Calexico's Verified Response to Information Requests Nos. 1-10 is true and correct and that the responses accurately account for all late fees charged by the City on COVID-19 period arrearages.
17. **Effective Date.** The Agreement shall become effective immediately upon the State Water Board Executive Director's execution of the Order Approving the Settlement Agreement.
18. **Choice of Law.** The Agreement shall be interpreted and governed by the laws of the State of California.
19. **Authorization.** Each Party warrants that the individual executing the Agreement on behalf of such Party is duly authorized to do so.
20. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City or its employees, agents, representatives, or contractors in carrying out activities pursuant to the Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City or its employees, agents, representatives, or contractors in carrying out activities pursuant to the Agreement.
21. **Public Notice:** The Parties understand that the Agreement and Order Approving Settlement Agreement will be noticed for a fifteen (15)-day public review period prior to consideration by the State Water Board or its delegee. If significant new information is received that reasonably affects the propriety of presenting the Order to the State Water Board or its delegee for adoption, the Executive Director of the State Water Board Assistance may unilaterally decide not to issue an Order Approving Settlement. The City agrees that it may not rescind or otherwise withdraw its approval of the Agreement. The Parties agree that the procedure contemplated for adopting the Agreement and review of this Stipulated Order by the public is lawful and adequate. In the event procedural objections are

raised prior to the Order Approving Settlement Agreement becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

**IT IS SO STIPULATED**

State Water Board, Division of Drinking Water

By:  \_\_\_\_\_  
Darrin Polhemus  
Deputy Director

 Digitally signed by Darrin Polhemus  
Date: 2024.05.16 13:34:02 -07'00'

\_\_\_\_\_ Date

Respondent, City of Calexico

By: \_\_\_\_\_  
Esperanza Colio Warren  
City Manager

\_\_\_\_\_ Date

Approved as to Form:

By: \_\_\_\_\_  
Nicholaus Norvell  
Best Best & Krieger LLP  
Attorneys for City of Calexico

raised prior to the Order Approving Settlement Agreement becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

**IT IS SO STIPULATED**

State Water Board, Division of Drinking Water

By: \_\_\_\_\_  
Darrin Polhemus  
Deputy Director


\_\_\_\_\_  
Date

Respondent, City of Calexico

By:   
Esperanza Colio Warren  
City Manager

05-16-2024  
Date

Approved as to Form:

By:   
Nicholaus Norvell  
Best Best & Krieger LLP  
Attorneys for City of Calexico



# **EXHIBIT B**

<p>California Department of Justice</p> <p>OFFICE OF THE ATTORNEY GENERAL</p> 	<h1>Legal Alert</h1>	
<p><i>Subject:</i></p> <p>The Water Shutoff Protection Act</p>	<p><i>No.</i></p> <p>OAG-2022-04</p> <p><i>Date:</i></p> <p>October 26, 2022</p>	<p><i>Contact for information:</i></p> <p><a href="mailto:EJ@doj.ca.gov">EJ@doj.ca.gov</a></p>

**TO: All Urban and Community Water Systems**

The Office of the California Attorney General issues this legal alert to remind all water systems of the requirements of the Water Shutoff Protection Act.

In 2019, the Legislature adopted Senate Bill 998, the Water Shutoff Protection Act (the Act), Health and Safety Code Sections 116900 *et. seq.*, increasing protections for residents facing termination of water service due to non-payment.<sup>1</sup> In enacting these protections, the Legislature recognized that water debt and residential water shutoffs threaten human health and well-being and “have disproportionate impact on infants, children, the elderly, low-income families, communities of color, people for whom English is a second language, physically disabled persons, and persons with life-threatening medical conditions.” (Sen. Bill. 998 (2017-2018 Reg. Sess.) §1, subd. (c).)

Although covered water systems were required to comply with the Act beginning in 2020, Governor Newsom issued Executive Order N-42-20 on April 2, 2020 due to the COVID-19 emergency, which temporarily prohibited the discontinuation of residential service for non-payment of a water bill. The COVID-19 emergency moratorium on residential water shutoffs expired in January 2022. The provisions of the Water Shutoff Protection Act remain in effect.

The Act applies to each “urban and community water system,” which it defines as “a public water system that supplies water to more than 200 service connections.” (§116902, subd. (d).) The Act applies only to the discontinuation of residential water service for nonpayment. (§§116906, subd. (a); 116902, subd. (c).) The Act does not apply to terminations due to an unauthorized action by a customer. (§116926.) The Act has several new requirements for termination of water service due to nonpayment, discussed below.

Urban and community water systems should immediately cease all water shutoffs that do not comply with the Act. Water systems that have not yet adopted compliant policies and made them available to the public must do so immediately. The State Water Resources Control Board and the California Public Utilities Commission have authority to issue citations with monetary penalties to non-compliant water systems. The Attorney General and the California Public Utilities Commission can enforce the Act by seeking a temporary or permanent injunction against non-compliant water systems.

**No Water Shutoffs Unless At Least 60-Days Delinquent**

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<sup>1</sup> All statutory references are to the Health and Safety Code.

- Under the Act, an urban and community water system cannot discontinue service until a payment by a customer has been delinquent for at least 60 days. (§116908, subd. (a)(1)(A).)
- If service is discontinued for nonpayment, the water system is required to provide information about how to restore residential service. (§116912.)
- The Act also prohibits water shutoffs for residents who meet certain health and financial requirements and who are willing to make alternative payments. (§116910.)
- Reconnection fees are limited by the Act for residents with income below 200 percent of the federal poverty level and those residents are entitled to a waiver of interest charges on delinquent bills once every 12 months. (§116914.)

## **Written Policy Required**

The Act requires every urban and community water system to have a written policy on discontinuation of residential water service for nonpayment. The policy shall include all of the following:

- (1) a plan for deferred or reduced payments;
- (2) alternative payment schedules;
- (3) a formal mechanism for a customer to contest or appeal a bill; and
- (4) a telephone number for a customer to discuss options to avoid discontinuation of service due to nonpayment. (§116906, subd. (a).)

This policy shall be available on a website if the provider has one. (§116906, subd. (b).) The policy shall be available in English, Spanish, Chinese, Tagalog, Vietnamese and Korean and any other language spoken by at least 10 percent of the people residing in the service area. (§116906, subd. (a); Civil Code, §1632.) If the water system does not have a website, the policy shall be provided to the customer upon request. (§116906, subd. (b).)

## **Telephone or Written Notification Requirements**

The Act also addresses the notice which must be provided to the person listed on the water bill and provides notification protections for tenants, including:

- Notice must be provided to the person listed on the water bill at least 7 business days before the possible termination of service. (§116908, subd. (a)(1)(B).)
- If the customer's address is not the address of the property where water service is provided, notice must also be mailed to the property address, addressed to "Occupant."
- If the water system is unable to make contact with the customer or an adult occupying the residence by telephone, and written notice is returned as undeliverable, the water system is required to make a good faith effort to visit the residence and leave or make arrangements for placement in a conspicuous place a notice of imminent discontinuation for nonpayment and the system's discontinuation policy. (§116908, subd. (a)(2).)
- The notice must include the following: customer's name and address; amount of delinquency; date by which payment or arrangement for payment is required to avoid discontinuation of service; description of the process to apply for an extension of time to pay the delinquent charges; description of the procedure to petition for bill review and appeal; and description of the procedure by which the customer can request a deferred, reduced, amortized or alternative payment schedule. (§116908, subd. (a)(1)(C).)

- Tenants of individually metered residences must be notified in writing that they have the right to become customers to whom water service will be billed without having to pay any of the delinquent amounts. (§116916, subd. (b).)

If an appeal is filed by “an adult at the residence,” a covered water system cannot terminate service while the appeal is pending. (§116908, subd. (b).)

### **Annual Reporting**

An urban and community water system (as defined in the Act) is required to report annually to the State Water Resources Control Board on water shutoffs due to inability to pay and post the information on its website if it has one.

### **FAQ**

As an additional resource, in 2020, the State Water Resources Control Board issued [an FAQ regarding the Act](#).

# **EXHIBIT C**



## KNOW YOUR RIGHTS – AVOIDING WATER AND UTILITY SHUTOFFS

### WHAT TO DO IF YOU ARE BEHIND ON YOUR WATER PAYMENTS

- **Get Information from Your Water Provider:** California law prohibits most water providers from shutting off your water unless your bill is 60 days overdue. The water provider must contact you by phone or mail at least seven business days before your water is shut off, and must post their water-shutoff policy on their website. If they do not have a website, they must provide you a copy of the policy upon request. These requirements do not apply to water providers with fewer than 200 customers.
- **Talk to Your Water Provider About a Payment Plan:** Water providers must make available an alternative payment plan before shutting off residential water service. You have a right to discuss options with your water provider to avoid a water shutoff. You can also go through an appeals process to challenge the water shutoff if you disagree with your water bill. Your water service cannot be stopped while you are in the appeals process. Information about the Water Shutoff Protection Act can be found [here](#) and [here](#). These requirements do not apply to water providers with fewer than 200 customers. Some water providers also offer reduced rates to lower-income residents. Check with your provider to see if you can lower your monthly water bill.
- **Get Help Paying a Past Due Water Bill:** Depending on your income, you may qualify for a one-time payment towards your water or wastewater bill through the Low Income Household Water Assistance Program. Find out more about eligibility and how to apply [here](#). In addition, if you receive certain benefits such as CalFresh, Medi-Cal, SSI, general assistance, or other benefits, or if your income is less than 200% of the federal poverty level, your water provider must waive any interest charges you owe once every 12 months.

### WHAT TO DO IF YOU ARE BEHIND ON OTHER UTILITY PAYMENTS

- **Ask Your Utility Provider for a Payment Plan:** Most private utility companies must offer a payment plan that gives you more time to pay what you owe. Your power cannot be shut off once you agree to a payment plan, and must remain on if you are making timely payments. Click [here](#) for information about how the California Public Utilities Commission (CPUC) can help you negotiate a payment plan. If you and your utility company can't agree on a plan, you can [file a complaint with the CPUC](#). The company cannot shut off your electricity or gas during the CPUC complaint resolution process.

If you get your utilities from your city, county, or other local government – such as Los Angeles Department of Water and Power (LA DWP) or Sacramento Municipal Utility District (SMUD) – check with your utility provider about payment plan options.

- **Sign Up for Lower Gas and Electric Bills:** If you get your utilities from a private company, you may be eligible for discounts on your electric and gas bill, depending on your income. [California's CARE program](#) provides discounts of up to 30-35% for electricity and 20% for natural gas. If you don't qualify for CARE because your income is slightly above the income limits, you may be eligible for the [Family Electric Rate Assistance program](#), which offers an 18% discount on electricity bills.

If you get your gas and electricity from a city, county, or other local government provider, call the number on your bill or visit your provider's website to learn about monthly discounts for lower-income families.



- **Get One-Time Payment Help for a Gas or Electric Bill:** Lower-income residents may be eligible for a one-time payment to help with heating or cooling costs. For this program, it does not matter what type of utility provides your power. Click [here](#) to find out more about the Low-Income Home Energy Assistance Program (LIHEAP).
- **Additional Protections for Life-Threatening Situations:** If an electricity shutoff would be life threatening for you, contact your provider immediately. You may have additional options, and your provider may arrange an in-person visit to try to resolve the situation before shutting off your power.

## TIPS FOR TENANTS

- **Know Your Rights as a Tenant:** Landlords can never shut off the water, electricity, heat, gas, or other utilities to force you out of your rental home or evict you without a court order. Click [here](#) to learn more about your rights as a tenant in California.
- **Avoid Water Shutoff If Your Landlord Has Not Paid the Bill:** For tenants with individually metered service, [California law](#) gives you the right to transfer the water bill to your own name if your landlord pays the water bill but is behind on payments. Your water provider must give you an opportunity to become a customer to avoid a water shutoff at least 10 days before shutting off water service. If you transfer water service to your own name, you will not be responsible for your landlord's unpaid balance, but you will be responsible for paying the water bill in the future. Tenants who share a single water meter may be able to continue water service if they can all agree to be responsible for the water bill and meet the water provider's requirements.

## WHERE TO GO FOR MORE HELP

- **Get Financial Help from a Nonprofit or Government Program in Your Area:** In addition to the government programs and resources mentioned above, if you are suffering a financial hardship, a social service organization, religious organization, or government agency in your city or county may be able to help with your bills, depending on your eligibility. [Your local legal aid office](#) may be able to refer you to the appropriate organization in your area. You can also click [here](#) for a list of social service agencies in each county.
- If you try these steps, and they don't work, get help. To find a free or low-cost legal aid office near where you live, visit [LawHelpCA.org](#). If you do not qualify for legal aid, you may also obtain a referral to a certified lawyer referral service by contacting the [California State Bar](#).
- To notify the Attorney General's Office of violations, visit [oag.ca.gov/report](#). Although the Attorney General's Office cannot represent or provide legal advice to individuals, complaints from concerned Californians are critical to developing information about patterns and practices that Californians are facing statewide.
- If you have a complaint about a water shutoff or an investor-owned utility, you can also contact your [State Water Board](#) or the [California Public Utilities Commission](#), respectively.

# **EXHIBIT D**



## POLICY ON DISCONTINUATION OF RESIDENTIAL WATER SERVICE

1. **Application of Policy.** This Policy on Discontinuation of Residential Water Service (this "Policy") shall apply to all City accounts for residential water service, but shall not apply to any accounts for non-residential service. To the extent this Policy conflicts with any other rules, regulations, or policies of the City, this Policy shall control.

2. **Contact Information.** For questions or assistance regarding your water bill, the City's Customer Service staff can be reached at (760) 768-2120 or (760) 768-2122. Customers may also visit the City's Customer Service desk in person Monday through Thursday and every other Friday, from 8:00 a.m. to 5:00 p.m., except on City holidays.

### 3. **Billing Procedures and Late Fees.**

3.1 Billing Procedures. Water service charges are payable to the City once every month or at such other frequency as determined by the City Council from time to time. All bills for water service are due and payable 30 days after mailing or e-mailing by the City. Any bills not paid within such period are considered delinquent.

3.2 Late Fees. Delinquent bills are subject to a late fee of five percent (5%) of the delinquent utility service charges. The late fee shall only apply to the portion of the bill for delinquent utility service charges, but not to other fees or charges included on the bill. No late fee will be assessed or collected until the bill is at least 30 days delinquent. In addition, no late fee will be assessed if: (1) the customer makes a payment of \$10.00 or more on the bill by the due date; (2) the customer requests and enters into a payment plan under Section 6 prior to the due date; (3) the customer has an abnormally large bill of at least five (5) times the average bill during the previous 12 months due to a leak or other water delivery issue on the premises that was identified and timely addressed as shown by documentation provided to the City.

4. **Discontinuation of Water Service for Nonpayment.** If a customer's delinquency for the water-service portion of a bill is at least \$150, and has been delinquent for at least 90 days, the City may discontinue water service to the service address.

4.1 Written Notice to Customer. The City will provide a mailed notice to the customer of record at least fifteen (15) days before discontinuation of water service. The notice will contain:

- (a) the name and address of the customer;
- (b) the amount of the delinquency;
- (c) the date by which payment or payment arrangements must be made to avoid discontinuation of service;
- (d) the procedure by which the customer may initiate a complaint or request an investigation or appeal concerning service or charges;

- (e) a description of the procedure by which the customer may request an alternative payment arrangement, which may include an extension, amortization, or alternative payment schedule, or if available, a flat-rate payment plan for future bills;
- (f) the City's standard fees and charges for delinquent bills or disconnection of service, including late fees, disconnection fees, and reconnection fees;
- (g) the procedure for the customer to obtain information on financial assistance, if applicable; and
- (h) the telephone number where the customer may request a payment arrangement or receive additional information from the City.

#### 4.2 Written Notice to Occupants or Tenants.

(a) The City will also send a notice to the occupants living at the service address at least ten (10) days before discontinuation of water service under the following circumstances: (1) the City furnishes individually metered service to a single-family dwelling, multi-unit residential structure, mobile home park, or farm labor camp and the owner, manager, or operator is the customer of record; or (2) the customer of record's mailing address is not the same as the service address. The notice will be addressed to "Occupant," will contain the information required in Section 4.1 above, and will inform the residential occupants that they have the right to become customers of the City without being required to pay the amount due on the delinquent account. Terms and conditions for occupants to become customers of the City are provided in Section 7 below.

(b) If the City furnishes water through a master meter in a multi-unit residential structure, mobile home park, or permanent residential structures in a labor camp and the owner, manager, or operator is the customer of record, the City will make a good faith effort to inform the occupants, by means of written notice posted on the door of each residential unit at least 15 days prior to termination, that the account is in arrears and the service will be terminated on a date specified in the notice. If it is not reasonable or practicable to post the notice on the door of each unit, the City will post two (2) copies of the notice in each accessible common area and at each point of access to the structure or structures. The notice will inform the residential occupants that they have the right to become customers of the City without being required to pay the amount due on the delinquent account. The notice will also specify what the occupants are required to do in order to prevent termination of, or to reestablish service; the estimated monthly cost of service; the title, address, and telephone number of a representative of the City who can assist the occupants in continuing service; and the address or telephone number of a qualified legal services project that has been recommended by the local county bar association. Terms and conditions for occupants to become customers of the City are provided in Section 7 below.

4.3 Posting of Notice at Service Address. The City will leave a notice of imminent discontinuation of residential service and a copy of this Policy in a conspicuous place at the service address at least 48 hours before discontinuation of service. The notice will include:

- (a) the name and address of the customer;
- (b) the amount of the delinquency;
- (c) the date by which payment or payment arrangements must be made to avoid discontinuation of service;
- (d) the City's standard fees and charges for delinquent bills or disconnection of service, including late fees, disconnection fees, and reconnection fees;
- (e) the procedure for the customer to obtain information on financial assistance, if applicable; and
- (f) the telephone number where the customer may request a payment arrangement or receive additional information from the City.

4.4 Circumstances Under Which Service Will Not Be Discontinued. The City will not discontinue residential water service for nonpayment under the following circumstances:

- (a) When the delinquency for the water-service portion of a bill is less than \$150 or less than 90 days delinquent;
- (b) During an investigation by the City of a timely customer dispute or complaint under Section 5.1 below;
- (c) During the pendency of a timely appeal under Sections 5.3 or 5.4 below; or
- (d) During the period of time in which a customer's payment is subject to a City-approved extension, amortization, or alternative payment schedule under Section 6, and the customer remains in compliance with the approved payment arrangement.

4.5 Circumstances Under Which Service Through a Master Meter Will Not Be Discontinued. If the City furnishes water through a master meter in a multi-unit residential structure, mobile home park, or permanent residential structures in a labor camp and the owner, manager, or operator of the dwelling, structure, or park is the customer of record, the City will not discontinue residential water service for nonpayment under the following circumstances:

(a) When the customer's indebtedness is owed to another public agency, or when the obligation represented by the delinquent account or indebtedness was incurred with any public agency other than the City's water utility;

(b) If a delinquent account relates to another property owned, managed, or operated by the customer;

(c) If a public health or building officer certifies that termination would result in a significant threat to the health or safety of the residential occupants or the public.

4.6 Special Medical and Financial Circumstances Under Which Services Will Not Be Discontinued.

(a) The City will not discontinue water service if all of the following conditions are met:

(i) The customer, or a tenant of the customer, submits to the City the certification of a licensed primary care provider that discontinuation of water service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises where residential service is provided;

(ii) The customer demonstrates that he or she is financially unable to pay for residential service within the City's normal billing cycle. The customer is deemed financially unable to pay during the normal billing cycle if: (a) any member of the customer's household is a current recipient of CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children, or (b) the customer declares under penalty of perjury that the household's annual income is less than 200 percent of the federal poverty level; and

(iii) The customer is willing to enter into an alternative payment arrangement, including an extension, amortization, or alternative payment schedule with respect to the delinquent charges.

(b) For any customers who meet all of the above conditions, the City shall offer the customer one of the following options, to be selected by the City in its discretion: (1) an extension of the payment period; (2) amortization of the unpaid balance; or (3) an alternative payment schedule. The City's Finance Director will select the most appropriate payment arrangement, taking into consideration the information and

documentation provided by the customer, as well as the City's payment needs.

- (c) The customer is responsible for demonstrating that the conditions in subsection (a) have been met. Upon receipt of documentation from the customer, the City will review the documentation within seven (7) days and: (1) notify the customer of the alternative payment arrangement selected by the City and request the customer's signed assent to participate in that alternative arrangement; (2) request additional information from the customer; or (3) notify the customer that he or she does not meet the conditions in subsection (a).
- (d) The City may discontinue water service if a customer who has been granted an alternative payment arrangement under this section fails to do any of the following for sixty (60) days or more: (a) to pay his or her unpaid charges by the extended payment date; (b) to pay any amortized amount due under the amortization schedule; (c) to pay any amount due under an alternative payment schedule; or (d) to pay his or her current charges for water service for ninety (90) days or more and the water service delinquency exceeds \$150. The City will post a final notice of intent to disconnect service in a prominent and conspicuous location at the service address at least five (5) business days before discontinuation of service. The final notice will not entitle the customer to any investigation or review by the City.

4.7 Time of Discontinuation of Service. The City will not discontinue water service due to nonpayment on a Thursday, Friday, Saturday, Sunday, legal holiday, or at any time during which the City's office is not open to the public.

4.8 Restoration of Service. Customers whose water service has been discontinued may contact the City by telephone or in person regarding restoration of service. Restoration shall be subject to payment of: (a) any past-due amounts, including late fees; (b) any disconnection or reconnection fees, if applicable; (c) and a security deposit, if required by the City. Notwithstanding the above, the City will restore service to a customer following the discontinuation of water service for nonpayment if the customer agrees to enter into a payment plan under Section 6 and, under such payment plan, the customer immediately pays at least one-twelfth (1/12th) of the amounts due and will pay the remaining amounts in equal payments over the next 11 months, or another schedule agreed to by the customer and the City. A customer is entitled to receive a payment plan to restore service only once in any 12 month period.

## **5. Procedures to Contest or Appeal a Bill.**

5.1 Disputed Bills. A customer may initiate a complaint or request an investigation regarding the amount of a bill prior to the date the bill becomes delinquent. Any amounts withheld by the customer pending resolution of said dispute shall be considered delinquent to the extent said amounts are withheld after they have become

due. Notwithstanding, the City will not discontinue water service for nonpayment during an investigation by the City of a complaint or request for investigation that was timely received by the City before the bill becomes delinquent, or during a timely appeal.

5.2 City Review. A timely complaint or request for investigation will be reviewed by a manager of the City, who will provide a written determination to the customer. The review will include consideration of whether the customer may receive an extension, amortization, or alternative payment schedule. The City may, in its discretion, review untimely complaints or requests for investigation; however, such complaints or requests are not subject to appeal. After reviewing the disputed bill, the City will:

- (a) Issue a corrected bill or reflect the corrections on the bill in a subsequent billing period; or
- (b) Advise the customer that the bill is correct as presented, in which case the customer may choose to have the meter removed for testing at the customer's own expense, or may appeal the City's determination.

5.3 Appeal to City Manager. Any customer whose timely complaint or request for an investigation has resulted in an adverse determination may appeal the determination to the City Manager or his or her designee, who are hereby authorized to hear appeals regarding water service bills and make any corrections of any assessments or charges that he or she believes is just and appropriate under the circumstances. The appeal may be made by filing a written notice of appeal with the City Clerk within ten (10) business days of the City's mailing of its initial determination.

5.4 Appeal to City Council. Any residential customer whose timely complaint or request for an investigation has resulted in an adverse determination from the City Manager or his or her designee may appeal the determination to the City Council by filing a written notice of appeal with the City Clerk within ten (10) business days of the City Manager or his or her designee's mailing of their determination. Upon receiving the notice of appeal, the City Clerk will set the matter to be considered at an upcoming City Council meeting and mail the customer written notice of the time and place of the meeting at least ten (10) days before the meeting. The decision of the City Council shall be final as to residential customers.

## **6. Extensions and Other Alternative Payment Arrangements.**

6.1 Time to Request an Extension or Other Alternative Payment Arrangement. If a customer is unable to pay a bill during the normal payment period, the customer may request an extension or other alternative payment arrangement described in this Section 6. If a customer submits his or her request within 13 days after mailing of a written notice of discontinuation of service by the City, the request will be reviewed by a manager of the City. City decisions regarding extensions and other alternative payment arrangements are final and are not subject to appeal to the City Council.

6.2 Extension. If approved by the City, a customer's payment of his or her unpaid balance may be temporarily extended for a period not to exceed six (6) months after the balance was originally due. The City's Finance Director shall determine, in his or her discretion, how long an extension shall be provided to the customer. The customer shall pay the full unpaid balance by the date set by the City and must remain current on all water service charges accruing during any subsequent billing periods. The extended payment date will be set forth in writing and provided to the customer.

6.3 Amortization. If approved by the City, a customer's payment of his or her unpaid balance may be amortized over a period not to exceed 12 months, as determined by the City's Finance Director, in his or her discretion. If amortization is approved, the unpaid balance will be divided by the number of months in the amortization period, and that amount will be added to the customer's monthly bills for water service until fully paid. During the amortization period, the customer must remain current on all water service charges accruing during any subsequent billing periods. The amortization schedule and amounts due will be set forth in writing and provided to the customer.

6.4 Alternative Payment Schedule. If approved by the City, a customer may pay his or her unpaid balance pursuant to an alternative payment schedule that will not exceed 12 months, as determined by the City's Finance Director, in his or her discretion. If approved, the alternative payment schedule may allow periodic lump-sum payments that do not coincide with the City's established payment date or may provide for payments made more or less frequently than the City's regular payment date. During the period of the alternative payment schedule, the customer must remain current on all water service charges accruing during any subsequent billing periods. The alternative payment schedule and amounts due will be set forth in writing and provided to the customer.

6.5 Failure To Comply. If a customer has been granted a payment arrangement under this Section 6 and fails to: (1) pay the unpaid charges by the extension date; (2) pay an amount due under an amortization schedule; or (3) pay an amount due under an alternative payment schedule; and such amounts remain delinquent for at least 30 days, then the City may terminate water service. The City may also terminate water service if the customer has been granted a payment arrangement under this Section 6 and fails to pay his or her current charges for water service and such delinquencies exceed \$150. The City will post a final notice of intent to disconnect service in a prominent and conspicuous location at the service address at least five (5) business days before discontinuation of service. The final notice will not entitle the customer to any investigation or review by the City.

## **7. Procedures for Occupants or Tenants to Become Customers of the City.**

7.1 Applicability. This Section 7 shall apply only when the property owner, landlord, manager, or operator of a residential service address is listed as the customer of record and has been issued a notice of intent to discontinue water service due to nonpayment.

7.2 Agreement to City Terms and Conditions of Service. The City will make service available to the actual residential occupants if each occupant agrees to the terms and conditions of service and meets the requirements of the City's rules and regulations. Notwithstanding, if one or more of the occupants are willing and able to assume responsibility for the subsequent charges to the account to the satisfaction of the City, or if there is a physical means, legally available to the City, of selectively discontinuing service to those occupants who have not met the requirements of the City's rules and regulations, the City shall make service available to the occupants who have met those requirements.

7.3 Verification of Tenancy. To be eligible to become a customer without paying the amount due on the delinquent account, the occupant shall verify that the delinquent account customer of record is or was the landlord, manager, or agent of the dwelling. Verification may include, but is not limited to, a lease or rental agreement, rent receipts, a government document indicating that the occupant is renting the property, or information disclosed pursuant to Section 1962 of the Civil Code, at the discretion of the City.

8. **Language for Certain Written Notices.** All written notices under Section 4 and Section 6.6 of this Policy shall be provided in English, Spanish, Chinese, Tagalog, Vietnamese, Korean, and any other language spoken by ten percent (10%) or more people within the City's service area.

9. **Other Remedies.** In addition to discontinuation of water service, the City may pursue any other remedies available in law or equity for nonpayment of water service charges, including, but not limited to: securing delinquent amounts by filing liens on real property, filing a claim or legal action, or referring the unpaid amount to collections. In the event a legal action is decided in favor of the City, the City shall be entitled to the payment of all costs and expenses, including attorneys' fees and accumulated interest.

10. **Discontinuation of Water Service for Other Customer Violations.** The City reserves the right to discontinue water service for any violations of City ordinances, rules, or regulations other than nonpayment.

11. **Fees and Charges Incurred.** Except as otherwise expressly stated in this Policy, any fees and charges incurred by a customer under any other rules, regulations, or policies of the City shall be due and payable as set forth therein.

12. **Decisions by City Staff.** Any decision which may be taken by the City's Finance Director under this Policy may be taken by his or her designee.



# **EXHIBIT E**

**ORDINANCE NO. 1237**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF CALEXICO, CALIFORNIA, AMENDING TITLE 13,  
CHAPTER 13.01, RELATING TO WATER SERVICE**

The City Council of the City of Calexico, California, does hereby ordain as follows:

**SECTION 1. Amendment to Municipal Code.** Calexico Municipal Code Section 13.01.270, *Charges for Water Service*, is hereby amended to read as follows:

**13.01.270 Charges for water service.**

- A. **Water Fees.** The city council shall by resolution or ordinance set the amount of charges, fees, and assessments that include, but are not limited to the following:
1. Base rate or fixed component water service charge.
  2. Water usage charge or variable component charges based upon billing units used by the customer. A billing unit equals one hundred cubic feet or seven hundred forty-eight gallons of water.
  3. Service charges other than the base rate.
  4. Late fees.
  5. Return-check fees.
  6. Development water impact fees.
  7. Water connection fees.
  8. Shut-off notice processing fee.
  9. Reconnection fees during regular business hours after water shut off.
  10. Reconnection fees during non-regular business hours after water shut off.
  11. Fire hydrant water use fees from construction or roving meters.
  12. Fire line fee.
  13. Fee for water used by contractors in new construction.
  14. Meter tampering fee.
  15. Missed appointment fee after second missed appointment.

16. Penalty fee for unauthorized water connections and use of city water by the use of "cheater pipes, "straight lines," "hoses" or other means.
  17. Other fees as determined by the city council.
- B. **Water Billing Duration.** The city shall determine the duration of the billing period and may change the duration of the billing period from time to time. If the due date is a Saturday, Sunday or legal holiday, charges shall become delinquent at the close of business on the next business day after said Saturday, Sunday, or legal holiday. Postmarks will not be accepted as the date the payment was received.
  - C. **Unified Billing.** Municipal utility services shall be billed under a unified bill which includes water, sewer, garbage collection charges and other charges as the city designates.
  - D. **Unpaid Water Bills are Liens.** All unpaid accounts for water delivered at any premises shall constitute a lien against the same and shall be subject to collection all as provided by the Revenue Bond Law of 1941 as found in Title 5, Division 2, Part 1, Chapter 6 of the California Government Code.
  - E. The city council may, by resolution or motion, adopt or amend a policy on discontinuation of residential water service, which will comply with the provisions of Health & Safety Code Section 116900, *et seq.*, and Public Utilities Code Section 10009, *et seq.* The policy may include, but may not be limited to, provisions concerning discontinuation of service, notification, restoration of service, procedures to contest or appeal a water bill, extensions or other alternative payment arrangements, protections available to qualified low-income consumers, procedures for becoming a consumer under specified circumstances, and related matters.

**SECTION 2. Amendment to Municipal Code.** Calexico Municipal Code Section 13.01.290, *Application of Utility Bill Payments*, is hereby amended to read as follows:

**13.01.290 Application of utility bill payments.**

Any payments received by the city for the payment of utility bills shall be applied to the outstanding balances of service charges in the following order:

- A. Water (fixed and variable charges), refuse, and sewer,
- B. Fire line,
- C. Fines, penalties, fees, charges, or assessments,
- D. Deposit.

Payments applied to water, refuse and sewer shall be applied proportionally among the three services. Moneys paid where any portion of an account is delinquent shall first be credited to the delinquent portion of the bill and then to the current billing.

**SECTION 3. Amendment to Municipal Code.** Calexico Municipal Code Chapter Section 13.01.300, *Payment Delinquency*, is hereby amended to read as follows:

**13.01.300 Payment delinquency.**

Penalties shall be charged on all delinquencies as established by resolution of the city council. All delinquent charges are considered liens against the property and the city manager, finance director or their designees are empowered to file liens against the appropriate premises for charges as set forth in this chapter. For the purposes of this chapter, a water bill will be delinquent if a user is withholding all or portions of said water bill pending resolution of a dispute regarding said water bill. The city reserves the right to refer accounts to a collection agency when past-due balances exceed one hundred twenty calendar days.

**SECTION 4. Amendment to Municipal Code.** Calexico Municipal Code Chapter 13.01.310, *Water Service Shut-Off Notice*, is hereby amended to read as follows:

**13.01.310 Water service shut-off notice.**

A. Notices to Non-Residential Customers. If a service charge remains unpaid for one complete billing period, the financial services department shall notify in writing by mail the customer of the premises at least nineteen days after the delinquent bill is sent, that the water service will be discontinued if payment is not made within fifteen calendar days after the date on the shut-off notice. A shut-off notice processing fee as determined by resolution of the city council may be charged at the time that the notice is sent. In addition to the fifteen day termination notice, a final forty-eight hour termination notice shall be given to the customer if a water service charge remains unpaid.

B. Notices to Residential Customers. If a service charge remains unpaid for one complete billing period, and the amount of the delinquency exceeds \$150 for the water portion of the service charges, the financial services department shall notify in writing by mail the customer of the premises at least nineteen days after the delinquent bill is sent, that the water service will be discontinued if payment is not made within ninety calendar days after the date the charges became delinquent. The notice shall be sent at least fifteen calendar days prior to shut-off. A shut-off notice processing fee as determined by resolution of the city council may be charged at the time that the notice is sent. In addition to the fifteen day termination notice, a final forty-eight hour termination notice shall be given to the customer if at least \$150 of water service charges remain unpaid. The city shall provide additional notices to residential customers as provided in its policy on discontinuation of residential water service. The notices shall comply with all applicable provisions of the City's policy on discontinuation of residential water service.

**SECTION 5. Amendment to Municipal Code.** Calexico Municipal Code Section 13.01.320, *Water Service Shut-Off*, is hereby amended to read as follows:

### **13.01.320 Water service shut-off.**

Except for shut-down of services related to those violations set forth in Section 13.01.330, for which no notice is required, notice must be provided to customers prior to a shutdown of services in accordance with Section 13.01.310. No service shall be disconnected on a Thursday, Friday or the day before a holiday. However, notwithstanding the foregoing provisions of this section, financial services department authorized personnel under the direction of the city manager may, at their discretion, agree to forbear discontinuance of water service for a limited period of time and by special, written agreement with the water user in arrears. For non-residential customers, failure of the water customer to keep future charges current and fulfill all the terms of the agreement may make the agreement null and void and make all charges in arrears due immediately. Failure of non-residential customers to pay immediately all charges in arrears will result in discontinuance of water service. For residential customers, failure of the water customer to keep future charges current and fulfill the terms of the agreement will be subject to shutoff as provided in the policy on discontinuation of residential water service. Water services shall be restored within two working days at such time as the financial cause for termination or discontinuance has been rectified and payment has been made of all proper charges due, including any reconnection charges and meter tampering charges approved by resolution of the city council. If water service has been shut-down due to some physical cause, water service shall be restored upon such cause being rectified.

**SECTION 6. Amendment to Municipal Code.** Calexico Municipal Code Section 13.01.340, *Appeals*, is hereby amended to read as follows:

### **13.01.340 Billing Disputes and Appeals.**

- A. **Disputed Bills.** A customer may initiate a complaint or request an investigation regarding the amount of a bill prior to the date the bill becomes delinquent. Any amounts withheld by the customer pending resolution of said dispute shall be considered delinquent to the extent said amounts are withheld after they have become due. Notwithstanding, the city will not discontinue water service for nonpayment during an investigation by the city of a complaint or request for investigation that was timely received by the city before the bill becomes delinquent, or during the pendency of a timely appeal.
- B. **City Review.** A timely complaint or request for investigation will be reviewed by a manager of the city, who will provide a written determination to the customer. The review will include consideration of whether the customer may receive an extension, amortization, alternative payment schedule, or payment reduction. The city may, in its discretion, review untimely complaints or requests for investigation; however, such complaints or requests are not subject to appeal. After reviewing the disputed bill, the city will:
  - 1. Issue a corrected bill or reflect the corrections on the bill in a subsequent billing period; or

2. Advise the customer that the bill is correct as presented, in which case the customer may choose to have the meter removed for testing at the customer's own expense, or may appeal the city's determination.
- C. **Appeal to City Manager.** Any customer whose timely complaint or request for an investigation has resulted in an adverse determination may appeal the determination to the city manager or his or her designee, who are hereby authorized to hear appeals regarding water service bills and make any corrections of any assessments or charges that he or she believes is just and appropriate under the circumstances. The appeal may be made by filing a written notice of appeal with the city clerk within ten (10) business days of the city's mailing of its initial determination. The decision of the city manager or his or her designee shall be final as to non-residential customers.
  - D. **Appeal to City Council.** Any residential customer whose timely complaint or request for an investigation has resulted in an adverse determination from the city manager or his or her designee may appeal the determination to the city council by filing a written notice of appeal with the city clerk within ten (10) business days of the city manager or his or her designee's mailing of their determination. Upon receiving the notice of appeal, the city clerk will set the matter to be considered at an upcoming city council meeting and mail the customer written notice of the time and place of the meeting at least ten (10) days before the meeting. The decision of the city council shall be final as to residential customers.

**SECTION 7. Effective Date.** This Ordinance shall take effect thirty (30) days after its adoption.

**SECTION 8. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof, is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional. If for any reason any portion of this Ordinance is found to be invalid by a court of competent jurisdiction, the balance of this Ordinance shall not be affected.


**SECTION 9. Certification and Publication.** The City Clerk of the City of Calexico shall certify to the adoption of this Ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the City in a manner permitted under California Government Code Section 36933.

**SECTION 10. CEQA.** The City Council finds that adoption of this Ordinance is not a "project," as defined in the California Environmental Quality Act because it does not have a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment and concerns general policy and procedure making.

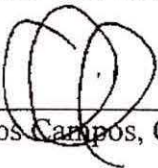
**PASSED, APPROVED, AND ADOPTED** this 8<sup>th</sup> day of May 2024, by the City Council of the City of Calexico.

  
Gloria G. Romo, Mayor

**ATTEST:**

  
Veronica L. Alvarado, City Clerk


**APPROVED AS TO FORM:**

  
Carlos Campos, City Attorney

State of California )  
County of Imperial ) ss.  
City of Calexico )

I, Veronica L. Alvarado, City Clerk of the City of Calexico hereby certify that the foregoing is a true copy of Ordinance No. 1237, introduced at a regular meeting held on the 17<sup>th</sup> day of April 2024, and duly adopted by the City Council of the City of Calexico, California at a regular meeting thereof held the 8<sup>th</sup> day of May, 2024, with the following vote:

AYES: Romo, Moreno, Garcia  
NOES: None  
ABSTAIN: Nonc  
ABSENT: None

  
\_\_\_\_\_  
Veronica L. Alvarado, City Clerk



**DECLARATION OF SERVICE BY E-MAIL**

Case Name: **People of the State of California, et al. v. City of Calexico**

Case No.: **ECU003547**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On June 4, 2024, I served the **STIPULATION AND [PROPOSED] CONSENT JUDGMENT** by transmitting a true copy via electronic mail, addressed as follows:

Nicholaus Norvell  
William Shepherd  
Best Best & Krieger, LLP - San Diego  
655 W. Broadway  
San Diego, CA 92101  
E-Mail: nicholaus.norvell@bbklaw.com  
E-Mail: william.shepherd@bbklaw.com  
*Attorneys for Defendant City of Calexico*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on June 4, 2024, at Los Angeles, California.

\_\_\_\_\_  
Beatriz Davalos  
Declarant

  
\_\_\_\_\_  
Signature