

**WALNUT VALLEY WATER DISTRICT  
ORDINANCE NO. 09-12-08**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF  
WALNUT VALLEY WATER DISTRICT  
ADOPTING AND IMPLEMENTING CLAIMS PROCEDURES**

**WHEREAS**, it is in the best interest of the Walnut Valley Water District to adopt and implement its own claim procedures,

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE WALNUT VALLEY WATER DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1. Claims Presentation Procedures**

**1.1 Claims against the District**

This claims presentation procedure shall govern all claims against the District for money or damages which are excepted by Government Code Section 905, and which are not governed by any other statutes or regulations expressly relating to such claims.

**1.2 Claim Prerequisite**

All persons or entities which have any claim for money or damages against the District shall first file a claim in accordance with the procedures set forth herein as a prerequisite to the filing of any lawsuit against the District.

**1.3 Accrual of Cause of Action**

For the purpose of computing the time limits prescribed herein, the date of the accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable to a cause of action based upon such claim.

**1.4 Contents and Presentation of Claim**

A claim shall be presented by the claimant or by a person acting on his or her behalf and shall show all of the following:

- a) The name and post office address of the claimant;

- b) The post office address to which the person presenting the claim desires notices to be sent;
- c) The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim;
- e) The name or names of the District employee or employees causing the injury, damage, or loss, if known;
- f) The amount claimed if it totals less than ten thousand dollars \$(10,000.00) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000.00), no dollar amount shall be included in the claim. However, the claim shall indicate whether jurisdiction over the claim would rest in municipal or superior court, in the event a lawsuit is filed on the claim.
- g) The claim shall be signed by the claimant or by some person acting on his or her behalf.

#### **1.5 Time for Presentation of Claim**

Any claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented not later than six (6) months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented not later than one year after the accrual of the cause of action.

#### **1.6 Amendment of Claims**

Any claim may be amended at any time before the expiration of the period designated in Section 1.5 above, or before final action on such claim is taken by the Board of Directors, whichever is later. The amended claim must relate to the same transaction or occurrence which gave rise to the original claim. The amendment shall be considered a part of the original claim for all purposes.

#### **1.7. Notice of Insufficiency of Claim**

If, in the opinion of the District's General Manager or such other person designated by the Board of Directors to review claims submitted to the District, a

claim fails to comply substantially with the requirements of this procedure, the District may give written notice of the insufficiency of such claim in the manner provided by Section 1.11 below, within 20 days after presentation of the claim, which notice shall state with particularity the defects or omissions in the claim. The Board may not take action on the claim for a period of fifteen (15) days after such notice is mailed. Thereafter, the Board shall take action on the claim as presented, or if the claim is amended by the claimant, the Board shall take action on the amended claim, as provided below.

### **1.8 Notice of Late Claim**

Where a claim which must be presented no later than six (6) months after accrual of the cause of action is presented after such time without an Application for Leave to Present a Late Claim, the General Manager or such other person designated by the Board may, at any time within 45 days after the claim is presented, give written notice in accordance with Government Code Section 911.3(a) to the person presenting the claim that the claim was not filed timely and that it is being returned without further action.

### **1.9 Application for Leave to Present Late Claim**

When a claim that is required to be presented no later than six (6) months after the accrual of the cause of action is not presented within such time, the claimant must make written application to the District for leave to present such claim.

An Application for Leave to Present Late Claim must be presented to the District as hereinafter provided within a reasonable time not to exceed one (1) year after the accrual of the cause of action. The application shall state the reason for the delay in presenting the claim, and the proposed claim shall be attached to the application.

In computing the one year period within which an Application for Leave to Present Late Claim must be made, the time during which the person who sustained the alleged injury, damage, or loss is a minor shall be counted, but the time during which he or she is mentally incapacitate and does not have a guardian or conservator of his or her person shall not be counted.

The Board of Directors shall grant or deny the Application for Leave to Present Late Claim within 45 days after it is presented to the District. The claimant and the District may extend the period within which the Board of Directors is required to act by written agreement made before the expiration of the 45-day period.

The Board of Directors shall grant the Application for Leave to Present Late Claim where one or more of the following is applicable:

- a) The failure to present the claim was through mistake, inadvertence, surprise or excusable neglect and the District was not prejudiced in its defense of the claim by the failure to present the claim within the time required under Government Code Section 911.2.
- b) The person who sustained the alleged injury, damage or loss was a minor during all of the time provided for presentation of the claim.
- c) The person who sustained the alleged injury, damage, or loss was physically or mentally incapacitated during all of the time provided for presentation of the claim, and because of such disability failed to present the claim during such time.
- d) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified for presentation of the claim.

If the Board fails or refuses to act on an Application within 45 days after it is presented to the District, the Application shall be deemed to have been denied on the 45<sup>th</sup> day after presentation or, if the period within which the Board is required to act is re-extended by agreement pursuant to this Section, the last day of the period specified in the agreement.

If the Application is denied, the notice of such denial shall include a warning in substantially the following terms:

- “WARNING: If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code Section 945.4 (Claims Presentation Requirement). See Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your Application for Leave to Present a Late Claim was denied.

“You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult with an attorney you should do so immediately.”

If an Application for Leave to Present a Late Claim is granted by the Board of Directors, the claim shall be deemed to have been presented to the Board on the day that leave to present the late claim is granted. The Board shall then take action on the claim as provided below.

**1.10 District Action on Claim**

- a) The Board of Directors shall act on a claim within forty-five (45) days after the claim has been presented. If a claim is amended, the Board shall act on the amended claim within forty-five (45) days after the amended claim is presented.
- b) The claimant and the District may extend the period within which the Board is required to act on the claim by written agreement made (a) before the expiration of such period; or (b) after the expiration of such period if an action based on the claim has not been commenced and is not yet barred by the limitation period specified in Government Code Section 945.6.
- c) If the Board fails or refuses to act on a claim within the time prescribed, the claim shall be deemed to have been rejected by the Board on the last day of the period within which the Board was required to act upon the claim.
- d) The Board may act on a claim in one of the following ways:
  - If the Board finds the claim is not a proper charge against the District, it shall reject the claim.
  - If the Board finds the claim is a proper charge against the District and is for an amount justly due, it shall allow the claim.
  - If the Board finds the claim is a proper charge against the District but is for an amount greater than that which is justly due, it shall either reject the claim in its entirety, or allow it in the amount justly due and reject it as to the balance.
  - If the District's liability or the amount justly due is disputed, the Board may reject the claim or may settle the claim.
- e) The District shall pay the amount allowed on the claim or in compromise of the claim in the same manner as if the claimant had obtained a final judgment against the District for that amount. The District may require the claimant to execute a release in favor of the District as a condition of allowing or compromising the claim. If an agreement for payment of the claim in installments is made, the District may, in its discretion, prepay without penalty any one or more installments or any part of an installment. Any agreement for payment of a claim in more than ten equal annual installments must be approved by a court of competent jurisdiction.

### **1.11 Delivery or Mailing of Claim, Amendment, or Application**

Any notice of a Board action with respect to a claim or Application for Leave to Present a Late Claim shall be given by either of the following methods:

- a) Personally delivering the notice to the person presenting the claim or making the application; or
- b) Mailing notice to the address, if any, stated in the claim or application as the address to which the person presenting the claim or making the application desires notices to be sent, or, if no such address is stated in the claim or application, by mailing the notice to the address, if any, of the claimant as stated in the claim or application.

No notice need be given where the claim or application fails to state either an address to which the person presenting the claim or making the application desires notices to be sent or an address of the claimant.

Where notice from the District is given by mail, the notice shall be mailed in the manner prescribed herein, and deposited in the United States Post Office, or a mailbox, sub-post office, substation or other likely facility regularly maintained by the government of the United States, in a sealed envelope, properly addressed, with postage paid. The notice shall be deemed to have been presented and received at the time of the deposit. Proof of the mailing may be made in the manner prescribed by Section 1013a of the Code of Civil Procedure. The District may include in any written agreement to which it is a party, provisions governing the presentation of any claims arising out of or related to that agreement and the consideration and payment of such claim. Such agreement may incorporate by reference these claim presentation procedures and may include a requirement that a claim be presented and acted upon as a prerequisite to a suit thereon.

### **1.12 Prohibition Against Suit in Absence of Presentation of Claim**

No suit for money or damages may be brought against the District on a cause of action for which a claim is required to be presented in accordance with these claims presentation procedures or with the Tort Claims Act (Government Code Sections 900 et seq.) until a written claim therefore has been presented to the District and has been acted upon by the Board of Directors, or has been deemed to have been rejected by the Board, in accordance with this procedure and with the California Tort Claims Act.

Any suit brought against the District on a cause of action where a claim is required to be presented must be commenced:

- a) If written notice of Board action on the claim is given by the District, not later than six months after the date such notice is personally delivered or deposited in the mail; or
- b) If written notice of Board action on the claim is not given by the District, within two years from the accrual of the cause of action.

**SECTION 2**

If any section, subsection, paragraph, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid, unconstitutional or unenforceable, these decisions shall not affect the validity of the remaining portions of this ordinance. The Board of Directors hereby declares that this ordinance and each section, subsection, division, paragraph, sentence, clause, phrase, and portion thereof would have been adopted irrespective of the fact that one or more portions of this ordinance may be declared invalid, unconstitutional or unenforceable.

**SECTION 3**

This ordinance shall take effect 30 days after its adoption. The District's Secretary or the District Secretary's duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner required by law.

ORDINANCE NO. 09-12-08 WAS DULY PASSED, APPROVED, AND ADOPTED BY THE BOARD OF DIRECTORS OF THE WALNUT VALLEY WATER DISTRICT AT ITS REGULAR MEETING OF NOVEMBER 19, 2012 BY THE FOLLOWING VOTE:

Ayes: Directors Wu, Hilden, Carrera, and Ebenkamp  
Noes: None  
Abstain: None  
Absent: Director Kwong

/s/ Allen L. Wu  
Allen L. Wu, President

ATTEST:

/s/ Michael Holmes  
Michael Holmes, Secretary