

ORDINANCE NO. 00-1

**AN ORDINANCE ESTABLISHING
REGULATIONS AND RULES FOR WATER
SALES BY THE MENDOCINO COUNTY
RUSSIAN RIVER FLOOD CONTROL AND
WATER CONSERVATION IMPROVEMENT
DISTRICT**

The Board of Trustees of the Mendocino County Russian River Flood Control and Water Conservation Improvement District does ordain as follows:

Article 1	General Provisions
Article 2	Definitions
Article 3	Application for Purchase of Water
Article 4	General Use Regulations
Article 5	Meters
Article 6	Pricing
Article 7	Billing
Article 8	Discontinuation of Water Supply
Article 9	District Water Conservation Program

**ARTICLE 1
GENERAL PROVISIONS**

Sections:

- 1.10 Short Title
- 1.15 Tense, Gender and Number
- 1.20 Water System
- 1.25 Notices
- 1.30 Uniformity of Application
- 1.35 Severability
- 1.40 Penalty for Violation
- 1.45 Ruling Final
- 1.50 References
- 1.55 Water Purchase Applications
- 1.60 Attorneys' Fees
- 1.65 Non-Responsibility of District

1.10 **Short Title.** This Ordinance shall be known and may be cited as "Russian River Flood Control and Water Conservation Improvement District Ordinance Regarding Water Sales."

1.15 **Tense, Gender and Number.** As used herein, the present includes the past and future tenses, and the future includes the present; the masculine gender includes the feminine and neuter; and the singular number includes the plural, and the plural the singular.

1.20 **Water System.** The District's Water System consists of all rights, and property used for, and useful in, obtaining, treating, conserving and distributing water for all uses both public and private. The System includes, but is not limited to all land, easements, personal property, water rights, contract rights, permits, licenses, franchises, other intangible property or rights, wells, tanks, dams, reservoirs, storage facilities, buildings, structures, pumps, pipes and pipelines, intake facilities, treatment plants, and property of any and every description which is now, or hereafter may be, a part of the District's water enterprise.

The District's Water System shall be under the management and control of the District's Board of Directors. No person, other than an employee or agent of the District, shall have any right to operate any part of the District's Water System. Any person who tampers or interferes with any part or component of said System, or causes or permits any act or tampering or interfering with the System, shall be liable for any injury or damage caused thereby or resulting therefrom.

1.25 **Notices.** Any notice, approval, consent, waiver, or other communication required or permitted under this Ordinance shall be in writing and given as follows:

A. Any such notice shall be personally served, sent by facsimile, telegram, or cable, or sent prepaid by registered or certified mail with return receipt requested, or sent by reputable overnight delivery service such as Federal Express.

B. Said notices shall be deemed given: (a) if personally served when delivered to the party to whom such notice is addressed; (b) if given by facsimile, telegram, or cable, when sent; (c) if given by prepaid or certified mail with return receipt requested, on the date of execution of the return receipt; (d) if sent by reputable overnight delivery service such as Federal Express, when received with confirmation of delivery.

1.30 **Uniformity of Application.** Where provision is made in this Ordinance for implementation by resolution, the provisions of such resolution shall apply uniformly to all persons similarly situated and affected thereby.

1.35 **Severability.** If any provision of this Ordinance is held by a court of competent jurisdiction or an arbitrator or arbitration panel to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way notwithstanding such invalidity, illegality or unenforceability.

1.40 **Penalty for Violation.** For failure of the Customer to comply with any part of this Ordinance, or any ordinance, resolution or order fixing the price for sales of water and the terms and conditions for payment of water sold to the public by the District, the Customer's water supply may be discontinued and water shall not be available to the Customer until he or she has complied with the Ordinance, resolution or regulation violated.

1.45 **Rulings Final.** All rulings of the Board shall be final unless written appeal is made to the Board within five (5) days after receipt of notice of such ruling. The Board's ruling on an appeal shall be final.

1.50 **References.** Any reference to a statute, ordinance, or other source enclosed in brackets [] is not part of this Ordinance and shall not be used in interpreting scope or meaning of this Ordinance. Such reference is intended solely for the information and convenience of the user.

1.55 **Water Purchase Applications.** All applicants for purchase of water shall be required to accept such conditions of delivery as exist at their point of diversion and to hold the District harmless from any and all damages and claims arising out of low or no water conditions.

1.60 **Attorneys' Fees.** If the District prevails in any action to enforce the provisions of this Ordinance, or of any resolution adopted by the Board to implement this Ordinance, or the provisions of any state or federal statute that it has a duty to enforce, it shall be entitled to recover from the opposing party or parties its reasonable attorneys' fees incurred in prosecuting the action.

1.65 **Non-Responsibility of District.** The District will not be responsible for any loss or damage caused by any negligent or unlawful act of any customer or any other person in installing, maintaining, supplying or using any facilities, equipment or appliance for which water is furnished by the District.

ARTICLE 2 DEFINITIONS

Sections:

- 2.10 Generally
- 2.15 Applicant
- 2.20 Board
- 2.25 General Manager
- 2.30 Project Water
- 2.35 Control Valve
- 2.40 Costs
- 2.45 District
- 2.50 Customer
- 2.55 Person
- 2.60 Water Sale and Purchase

2.10 **Generally.** Unless otherwise provided or the context otherwise requires, the following definitions shall apply to this Ordinance and to any resolution, rule, regulation or order made pursuant to this Ordinance.

2.15 **Applicant.** "Applicant" means any person, firm, corporation, partnership, limited liability company, trust, public agency, or special district making written application for purchase of water from the District.

2.20 **Board.** "Board" means the Board of Trustees of the District.

2.25 **General Manager.** "General Manager" means that individual hired by and working under the direction of the Board who is responsible for the administration of the District's business and the development, maintenance and operation of its facilities and programs.

2.30 **Project Water.** “Project water” means water that is released from Coyote Dam that is either surface or underflow as described in Permit #12947-B issued by the State Water Resources Control Board, Division of Water Rights.

2.35 **Control Valve.** “Control valve” means a valve, located in the Customer’s piping as close to the meter as practicable, the operation of which will control the entire water supply from the meter to the Customer.

2.40 **Costs.** “Costs” means and includes where the context permits, all costs of environmental review, administration, labor, materials, transportation, supervision, engineering, construction of capital improvements, maintenance and operations expenses, and costs of funding a prudent reserve.

2.45 **District.** “District” means Mendocino County Russian River Flood Control and Water Conservation Improvement District.

2.50 **Customer.** “Customer” means any individual, corporation, limited liability company, partnership, trust, public agency or special district whose Application for purchase of water from the District is accepted by the District, and who executes a Water Sale and Purchase Agreement in the form approved by the District’s Board of Trustees.

2.55 **Person.** “Person” means any human being, individual, company, limited liability company, partnership, corporation, governmental entity, governmental agency, special district, public corporation, political subdivision, the State of California, the United States of America, and any federally recognized Indian tribe or band, or any group or combination of the foregoing acting in concert.

2.60 **Water Sale and Purchase.** “Water sale and purchase” means the provision of water supply by the District to a Customer pursuant to a fully executed Water Sale and Purchase Agreement in a form approved by the District’s Board of Trustees which sets forth the terms and conditions for purchase of water supply by the Customer from the District.

ARTICLE 3 APPLICATION FOR PURCHASE OF WATER

Sections:

- 3.10 Application - Required
- 3.15 Application - Contents
- 3.20 Payments to Accompany Application
- 3.25 Other Preconditions

3.10 **Application - Required.** Each Applicant for the purchase of water from the District shall complete, sign and submit an application in writing on a form provided by the District. The Applicant shall be the Customer who proposes to purchase water from the District. Submission of an application shall not

constitute a contract or other obligation requiring the District to sell water to the Applicant.

3.15 Application - Contents. The application shall be in the form and contain such information as the District may prescribe. The application shall accurately describe the point of diversion at which the Applicant proposes to divert water to be sold and supplied by the District. The application shall also contain covenants by the Applicant to comply with this Ordinance and all the regulations of the District regarding the purchase and sale of water, to promptly pay all fees and charges for water purchased from the District, and to enter into a form of Water Sale and Purchase Agreement in a form previously approved by the District's Board of Trustees. The application shall contain an estimate of the quantity of water the Applicant proposes to purchase from the District over a one (1) year period.

3.20 Payments to Accompany Application. The District may charge an application fee to defray the administrative and environmental costs of analyzing and responding to the application. The District may also require any Applicant to pay a deposit which may be forfeited if the Applicant does not execute a Water Sale and Purchase Agreement in a form approved by the District's Board of Trustees within thirty (30) days after notice from the District that the application has been accepted and approved. The application fee and the deposit will be established by Board resolution pursuant to Section 6.15 of this Ordinance.

3.25 Other Preconditions. The application shall not be accepted and the District shall not enter into a Water Sale and Purchase Agreement with the Applicant until the District has determined that the Applicant has constructed sufficient pumping, conveyance, storage and metering facilities to maximize the beneficial use of water to be sold by the District to the Applicant, to further water conservation efforts by the District, and to provide a reliable and verifiable system for metering the amount of water to be purchased by the Applicant from the District.

ARTICLE 4 GENERAL USE REGULATIONS

Sections:

- 4.10 Water Waste
- 4.15 District Equipment and Facilities
- 4.20 Damage
- 4.25 Mandatory Conservation
- 4.30 Health and Safety, Suspension of Delivery
- 4.35 Interruption of Water Service
- 4.40 District Access to Private Property
- 4.45 Regulation of Customer Facilities
- 4.50 Responsibility for Equipment
- 4.55 Water Pressure Regulation
- 4.60 Resale of Water

4.10 **Water Waste.** No person willfully or negligently shall permit leaks or any kind of waste of water supplied by the District, including waste by allowing water to flow in unusual or excessive amounts onto the user's premises or elsewhere without being applied to a beneficial use. The District may discontinue service to a Customer who fails to take corrective action within five (5) days after notice is given to the Customer of such condition of waste.

4.15 **District Equipment and Facilities.** Normally, a Customer will be required to install its own meter, pumping facilities, and conveyance facilities to transfer the water sold by the District to the Customer from the Customer Service Connection. To the extent that a Customer's facilities are supplemented by similar facilities installed by the District on private property to facilitate the sale and delivery of water to a Customer, such facilities and equipment installed by the District shall remain the District's property, and may be maintained, repaired or replaced by the District without prior notice to or consent of the Customer. The Customer shall exercise reasonable care in protecting any such District facilities, equipment and water resources. In no event shall the District be required to install or maintain its own facilities on private property to assist in measuring, pumping or conveyance of water after delivery by the District to the Customer's Service Connection. Likewise, the District assumes no responsibility for the delivery of water to privately owned pipelines or systems, nor shall it assume any responsibility for damages resulting from the operation of any such private conveyance system even though water may be received from the District's Water System.

4.20 **Damage.** The Customer shall promptly notify the District of any damage to District or Customer provided facilities or equipment used to account for water or electric usage or measurement..

4.25 **Mandatory Conservation.** The Board by resolution shall adopt a conservation plan for all Customers. The plan shall incorporate key elements of Chapter 3 of the State of California Water Code, Minimum Element - Forecast supply, assess drought mitigation options, establish triggering levels, develop demand reduction programs, adopt a drought plan, monitor results and adjust drought status.

4.30 **Health and Safety, Suspension of Delivery.** The District may suspend the delivery of water purchased by a Customer to a Customer's Service Connection on twenty-four (24) hour notice when the District determines that a hazard to public health and safety or the environment exists which arises from or relates to the metering, pumping and conveyance facilities and any other apparatus or equipment installed by the Customer at its Service Connection. The Customer and District representative shall meet and confer regarding corrective actions to be taken to remove the health and safety hazard. Any and all corrective actions taken shall be at the sole cost and expense of Customer. District reserves the right to continue the suspension of deliveries until the hazardous condition has been remedied.

4.35 **Interruption of Water Service.** The District does not guarantee continuous delivery of water on demand. From time to time it may be necessary for the District to shut off the flow of water in its water system. Except in emergencies, such stoppages will not be made without prior notice to the Customers involved. The District shall not assume any responsibility for loss or damages which may occur due to interruption of water service.

4.40 **District Access to Private Property.** Authorized agents of the District shall be allowed to enter Customer's private property in order to evaluate, test, inspect and/or monitor the operation of metering,

pumping and conveyance facilities installed by the Customer at its Service Connection, with prior notice to and consent of the Customer. No person shall prevent an authorized agent of the District from carrying out his or her duties pursuant to this section.

4.45 **Regulation of Customer Facilities.** The District may, by ordinance or resolution, specify regulations setting forth minimum specifications for those metering, pumping and conveyance facilities to be installed by Customer at its Service Connection.

4.50 **Responsibility for Equipment.** At his or her own risk and expense, each Customer shall furnish, install and keep in good and safe condition all equipment, including meters, that may be required to receive, control and use water sold and delivered to Customer by District. The District shall not be liable for any loss or damage caused by improper installation or use of such equipment caused by the agents, employees, contractors, licensees and permittees of Customer. Nor shall the District be liable for damage to property, either upon commencement of deliveries to a Customer Service Connection, or when deliveries resume after temporary interruption.

4.55 **Water Pressure Regulation.** The District assumes no responsibility for water pressure regulation with respect to water delivered to a Customer. The Customer shall be responsible for providing whatever water pressure regulation measures are necessary for Customer's water distribution system.

4.60 **Resale of Water.** No Customer may resell any portion of the water furnished by the District, except that public agencies and private companies authorized to sell and/or distribute water may receive special authorization to resell water furnished by the District upon approval of the District's Board of Directors.

**ARTICLE 5
METERS**

Sections:

- 5.10 Installation
- 5.15 Service Connections
- 5.20 Meter Installations
- 5.25 Repair and Maintenance
- 5.30 Change in Location
- 5.35 Change in Equipment
- 5.40 Meter Readings
- 5.45 Meter Testing
- 5.50 Non-Registering Meters
- 5.55 Violations
- 5.60 Damaging or Tampering with Meters

5.10 **Installation.** All deliveries of water sold by the District to a Customer shall be metered. Meters are the property of the owner unless specifically otherwise provided, and the District reserves the

right to independently inspect, test, and to require service of such meters. Only authorized employees and agents of the District shall be permitted to seal, inspect and test meters. All meters shall be sealed at time of installation and no seal shall be altered or broken except by an authorized agent of the District.

5.15 **Service Connections.** Upon the approval of an application from a Customer for the purchase and delivery of water by the District to the Customer, the Customer shall furnish and install a meter of such size and at such diversion point as the applicant requests, subject to the approval of District.

5.20 **Meter Installations.** After approval of a Customer's application by the District, the Customer shall install a meter at the point of diversion from which Customer proposes to divert water to be purchased from District for Customer's use. The Customer and the District shall mutually agree as to the size and location of the meter. The District shall not be liable for rents or other charges related to Customer's placement or installation of Customer's meter. The District must install a seal on the meter before it can be used. All meters will be tested by the District prior to full operation. No meter may be used that registers more than two percent (2%) fast or slow.

5.25 **Repair and Maintenance.** It shall be the responsibility of the Customer to maintain the meter in good working order at all times.

5.30 **Change in Location.** No meter shall be relocated without the prior written approval of the General Manager. All relocation work shall be done by the Customer or under Customer's direction. All costs of relocating a meter shall be borne (a) by the Customer where the meter is moved for the Customer's convenience or to provide required access to the meter; or (b) by the District where the District requests that the meter be relocated.

5.35 **Change in Equipment.** Where a larger meter is required because of material change in the size, character or extent of a Customer's equipment, operations, or water supply needs, the Customer shall obtain and install a larger meter at its own expense after District approval.

5.40 **Meter Readings.** District shall have the authority to enter Customer's property for purposes of reading the meter. Meters shall be read at a frequency established by the General Manager or his/her designated agent, or as specified in the Water Sale and Purchase Agreement between the District and the Customer to permit the computation, preparation and mailing of bills as soon thereafter as practicable.

5.45 **Meter Testing.** District shall have the authority to enter Customer's property for purpose of testing accuracy of meters.

5.50 **Non-Registering Meters.** If a meter does not register, amounts of water sold and delivered will be estimated based on previous use.

5.55 **Violations.** The District may, at its option, either discontinue service or require installation of a District owned meter of appropriate size at Customer's cost.

5.60 **Damaging or Tampering with Meters.** Whenever the District has determined that a water meter has been damaged or tampered with in such a manner that the meter does not properly register the

consumption of water, the meter shall be locked or removed and the water service terminated. The meter shall not be opened or reinstalled for service until all the following charges have been paid: (1) outstanding water bills for the property being served by the meter; (2) a charge for servicing or repairing the meter equal to the District's expense for time and materials; (3) a charge for estimated quantity of water consumed but not paid for since the last regular correct reading, which shall be determined on the basis of prior use with respect to the account of the Customer with the meter that has been damaged or tampered with.

ARTICLE 6 PRICING

Sections:

- 6.10 Price Schedule
- 6.15 Other Fees
- 6.20 Modification of Price Schedule

6.10 Price Schedule. The Board shall, by resolution, fix the price per unit at which water will be sold to each Customer of the District on an annual basis. Such price shall reflect all costs and out-of-pocket expenses directly incurred by the District in delivering water for sale to the Service Connection of each Customer. The District's costs shall include the actual cost per acre foot to (a) obtain water from its sources in California; (b) convey the water to each Customer Service Connection; (c) pay any required fees and costs for water supply and conveyance to each Customer Service Connection; (d) pay any costs of environmental review; (e) pay any conveyance cost of the water supplied to each Customer including costs of electrical power; (f) pay the principal and interest on any bonded debt for capital improvements and any bond redemption costs; (g) pay ordinary administration and maintenance expenses of the District; (h) pay the cost of construction of new capital improvements; (i) pay the cost of maintenance and operation of all capital improvements; (j) set aside funds for the funding of a prudent reserve.

6.15 Other Fees. By resolution the Board shall fix the amount of the following fees applicable to Customers who have entered into a Water Sale and Purchase Agreement with the District:

- A. Charge to reseal meter
- B. Charge to test or witness meter test
- C. Return check charges
- D. Late payment charge for failure to pay contract payments and other fees in a timely manner
- E. Charge for unauthorized meter use
- F. Application fee
- G. Deposit regarding execution of Water Sale and Purchase Agreement
- H. Reconnect fees
- I. Penalties and collection charges

6.20 Modification of Price Schedule. By resolution the Board may amend, alter, modify, increase, or decrease any fees provided for in Section 6.15 above. The price schedule applicable to any particular Water Sale and Purchase Agreement between the District and any Customer is subject to change

during the term of the Agreement only by mutual agreement of the Parties. However, the District reserves the right to alter its pricing schedule on an annual basis so as to include all of the District's costs incurred in providing water supply to its Customers.

ARTICLE 7 BILLING

Sections:

- 7.10 Billing Period
- 7.15 Payment
- 7.20 Delinquency
- 7.25 Penalties and Collection Charges
- 7.30 Billing of Separate Meters

7.10 **Billing Period.** Billing arrangements are subject to negotiation between the District and the Customer prior to execution of a Water Sale and Purchase Agreement between the District and the Customer.

7.15 **Payment.** Bills for sale and delivery of water shall be mailed or delivered to the Customer no later than the tenth day of the month following meter reading, and all such bills are payable upon presentation.

7.20 **Delinquency.** Bills for sale and delivery of water not paid on or before the twenty-fifth day following the billing date shall be considered delinquent, at which time a notice will be sent from the District to the Customer advising the Customer that water supply and delivery will be discontinued if full payment is not received within five (5) days.

7.25 **Penalties and Collection Charges.** The District shall impose and collect such reasonable late payment penalties for delinquent accounts as the Board may fix by resolution pursuant to Section 6.15 of this Ordinance. Such charges include returned check charges, bank fees, rebilling costs, redeposit and accounting costs, and field collection fees.

7.30 **Billing of Separate Meters.** Separate bills will be rendered for each meter installation.

ARTICLE 8 DISCONTINUATION OF WATER SUPPLY

Sections:

- 8.10 Discontinuation of Water Supply
- 8.15 Deposits and Refunds
- 8.20 Resumption of Water Supply After Discontinuation
- 8.25 Noncompliance with Regulations

8.10 Discontinuation of Water Supply. District may discontinue water supply to a Customer Service Connection for nonpayment of bills no earlier than the thirty-fifth day following the end of the billing period for which the bill was sent. At least five (5) days prior to such discontinuance of water supply, the Customer will be sent a final notice that discontinuance of water supply will be enforced if payment is not made within the time specified in said notice. If a Customer receives water supply at more than one Service Connection and the bill for water supply at any one Service Connection is not paid within the time provided for payment, water supply may be discontinued at all Service Connections utilized by that Customer.

8.15 Deposits and Refunds. Upon discontinuation of water supply to a Customer for nonpayment, the District shall apply any deposit previously paid by the Customer to the District as credit towards the amount of the Customer's delinquent bill. If the deposit exceeds the amount of any unpaid bill or debt owed to the District, the District will promptly refund the balance of the deposit to the Customer.

8.20 Resumption of Water Supply After Discontinuation. If a Customer defaults in the performance of its Water Sale and Purchase Agreement with the District by reason of nonpayment or any other event of default, the District shall have the right to discontinue water supply to that Customer until all contract payments and other fees due and owing to the District have been paid by Customer. In order to resume water supply after any such discontinuance, the Customer will be required to execute a new Water Sale and Purchase Agreement in the form approved by the District's Board of Trustees and may be required to pay a deposit to the District, in an amount to be determined by the Board of Trustees, sufficient to prepay a significant portion of the bills to be incurred by the Customer for water sale and delivery pursuant to the new Water Sale and Purchase Agreement executed by the Customer and the District.

8.25 Noncompliance with Regulations. Water supply may be discontinued by the District for noncompliance by a Customer with this or any other ordinance or regulation adopted by the District's Board of Trustees with respect to the sale and delivery of water to Customers. In the event of violation of any terms of this Ordinance other than failure of a Customer to pay any water service charge prior to delinquency, District may discontinue water supply to the Customer by providing ten (10) days written notice prior to the proposed discontinuance of the District's intent to discontinue service and the grounds upon which the action is taken. Notice shall be mailed to the address of record for the Customer. Before discontinuance of the service, the Customer shall have the opportunity to discuss the reasons for the proposed discontinuance with the District's General Manager, or his/her designated agent, who shall be empowered to review all letters and statements, rectify any errors, and settle any controversies pertaining to the discontinuance of service.

ARTICLE 9 DISTRICT WATER CONSERVATION PROGRAM

Sections:

- 9.10 Establishment of Conservation Program
- 9.15 Determination and Declaration by General Manager of Water Supply Conditions
- 9.20 Water Conservation Enforcement Measurers

9.10 Establishment of Conservation Program. There is hereby established the District Water Conservation Program which shall be administered as provided in this section. This Program is adopted

pursuant to the laws of the State of California. Any violation of the provisions in this section is a misdemeanor.

9.15 Determination and Declaration by General Manager of Water Supply Conditions. During any period of threatened or actual water shortage, the District has the right to apportion its available water supply among consumers in a manner that appears most equitable with due regard to public health and safety.

The General Manager of the District with Board concurrence, based upon all available data, shall determine and declare whether the District's water supply and/or distribution is in one of the five following conditions, and post a notice at the District Administration Building.

A. **Stage I - Normal Water Supply.** The District's supply or distribution system is able to meet all the water demands of its Customers in the immediate future.

B. **Stage II - Water Alert.** There is a probability that the District's supply or distribution system will not be able to meet all of the water demands of its Customers.

C. **Stage III - Water Warning.** The District's supply or distribution system is not able to meet all of the water demands of its Customers.

D. **Stage IV - Water Crisis.** The District's supply or distribution system is not able to meet all the water demands of its Customers under Stage III - Water Warning requirements.

E. **Stage V - Water Emergency.** The District is experiencing a major failure of a supply, storage, or distribution facility.

As soon as a particular condition is declared to exist, the water conservation measures provided for herein for that condition shall apply to the area designated for District water service until a different condition is declared (See Water Conservation Measures Appendix).

9.20 Water Conservation Enforcement Measures. Water conservation enforcement measures for persistent water wasters shall offer the following sequence of notification, discontinuance of service and progressive reconnect fees.

A. Notify Customer of water waste condition in writing on District information form with first letter offering service to help correct the situation and follow up with one-on-one contact over a two (2) week period.

B. Send a second letter giving a specific date for correction and notice that the District will, after that date, terminate service until a reconnect fee is paid. Said reconnect fees shall be established in a resolution by the Board of Trustees of the District.

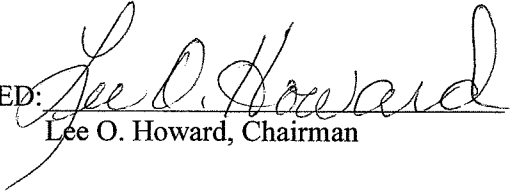
The foregoing Ordinance was introduced and read once at a regular meeting of the Board of Trustees

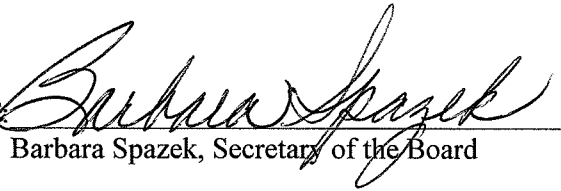
of the Mendocino County Russian River Flood Control and Water Conservation Improvement District held on April 24, 2000, and was passed and adopted at a regular meeting of said Board of Trustees held on June 26, 2000, by the following vote:

Ayes: Lee O. Howard
Bill Townsend
Dan Rogina

Noes: 0

Absent: 0

SIGNED: 
Lee O. Howard, Chairman

ATTEST 
Barbara Spazek, Secretary of the Board

The following is a text of proposed Ordinance No. 00-1 of the Mendocino County Russian River Flood Control and Water Conservation Improvement District (the "District") which the Board of Trustees of the District proposes to consider and adopt at a public meeting to be held at its regular meeting place located in the County Administrative Center, Conference Room A, 501 Low Gap Road, Ukiah, CA on June 26, 2000, commencing at 7:00 PM:

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1.30 **Uniformity of Application.** Where provision is made in this Ordinance for implementation by resolution, the provisions of such resolution shall apply uniformly to all persons similarly situated and affected thereby.

1.35 **Severability.** If any provision of this Ordinance is held by a court of competent jurisdiction or an arbitrator or arbitration panel to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way notwithstanding such invalidity, illegality or unenforceability.

1.40 **Penalty for Violation.** For failure of the Customer to comply with any part of this Ordinance, or any ordinance, resolution or order fixing the price for sales of water and the terms and conditions for payment of water sold to the public by the District, the Customer’s water supply may be

discontinued and water shall not be available to the Customer until he or she has complied with the Ordinance, resolution or regulation violated.

1.45 **Rulings Final.** All rulings of the Board shall be final unless written appeal is made to the Board within five (5) days after receipt of notice of such ruling. The Board's ruling on an appeal shall be final.

1.50 **References.** Any reference to a statute, ordinance, or other source enclosed in brackets [] is not part of this Ordinance and shall not be used in interpreting scope or meaning of this Ordinance. Such reference is intended solely for the information and convenience of the user.

1.55 **Water Purchase Applications.** All applicants for purchase of water shall be required to accept such conditions of delivery as exist at their point of diversion and to hold the District harmless from any and all damages and claims arising out of low or no water conditions.

1.60 **Attorneys' Fees.** If the District prevails in any action to enforce the provisions of this Ordinance, or of any resolution adopted by the Board to implement this Ordinance, or the provisions of any state or federal statute that it has a duty to enforce, it shall be entitled to recover from the opposing party or parties its reasonable attorneys' fees incurred in prosecuting the action.

1.65 **Non-Responsibility of District.** The District will not be responsible for any loss or damage caused by any negligent or unlawful act of any customer or any other person in installing, maintaining, supplying or using any facilities, equipment or appliance for which water is furnished by the District.

ARTICLE 2 DEFINITIONS

Sections:

- 2.10 Generally
- 2.15 Applicant
- 2.20 Board
- 2.25 General Manager
- 2.30 Project Water
- 2.35 Control Valve
- 2.40 Costs
- 2.45 District
- 2.50 Customer
- 2.55 Person
- 2.60 Water Sale and Purchase

2.10 **Generally.** Unless otherwise provided or the context otherwise requires, the following definitions shall apply to this Ordinance and to any resolution, rule, regulation or order made pursuant to this Ordinance.

2.15 **Applicant.** "Applicant" means any person, firm, corporation, partnership, limited liability company, trust, public agency, or special district making written application for purchase of water from

the District.

2.20 **Board.** “Board” means the Board of Trustees of the District.

2.25 **General Manager.** “General Manager” means that individual hired by and working under the direction of the Board who is responsible for the administration of the District’s business and the development, maintenance and operation of its facilities and programs.

2.30 **Project Water.** “Project water” means water that is released from Coyote Dam that is either surface or underflow as described in Permit #12947-B issued by the State Water Resources Control Board, Division of Water Rights.

2.35 **Control Valve.** “Control valve” means a valve, located in the Customer’s piping as close to the meter as practicable, the operation of which will control the entire water supply from the meter to the Customer.

2.40 **Costs.** “Costs” means and includes where the context permits, all costs of environmental review, administration, labor, materials, transportation, supervision, engineering, construction of capital improvements, maintenance and operations expenses, and costs of funding a prudent reserve.

2.45 **District.** “District” means Mendocino County Russian River Flood Control and Water Conservation Improvement District.

2.50 **Customer.** “Customer” means any individual, corporation, limited liability company, partnership, trust, public agency or special district whose Application for purchase of water from the District is accepted by the District, and who executes a Water Sale and Purchase Agreement in the form approved by the District’s Board of Trustees.

2.55 **Person.** “Person” means any human being, individual, company, limited liability company, partnership, corporation, governmental entity, governmental agency, special district, public corporation, political subdivision, the State of California, the United States of America, and any federally recognized Indian tribe or band, or any group or combination of the foregoing acting in concert.

2.60 **Water Sale and Purchase.** “Water sale and purchase” means the provision of water supply by the District to a Customer pursuant to a fully executed Water Sale and Purchase Agreement in a form approved by the District’s Board of Trustees which sets forth the terms and conditions for purchase of water supply by the Customer from the District.

ARTICLE 3 APPLICATION FOR PURCHASE OF WATER

Sections:

- 3.10 Application - Required
- 3.15 Application - Contents
- 3.20 Payments to Accompany Application
- 3.25 Other Preconditions

3.10 **Application - Required.** Each Applicant for the purchase of water from the District shall complete, sign and submit an application in writing on a form provided by the District. The Applicant shall be the Customer who proposes to purchase water from the District. Submission of an application shall not constitute a contract or other obligation requiring the District to sell water to the Applicant.

3.15 **Application - Contents.** The application shall be in the form and contain such information as the District may prescribe. The application shall accurately describe the point of diversion at which the Applicant proposes to divert water to be sold and supplied by the District. The application shall also contain covenants by the Applicant to comply with this Ordinance and all the regulations of the District regarding the purchase and sale of water, to promptly pay all fees and charges for water purchased from the District, and to enter into a form of Water Sale and Purchase Agreement in a form previously approved by the District's Board of Trustees. The application shall contain an estimate of the quantity of water the Applicant proposes to purchase from the District over a one (1) year period.

3.20 **Payments to Accompany Application.** The District may charge an application fee to defray the administrative and environmental costs of analyzing and responding to the application. The District may also require any Applicant to pay a deposit which may be forfeited if the Applicant does not execute a Water Sale and Purchase Agreement in a form approved by the District's Board of Trustees within thirty (30) days after notice from the District that the application has been accepted and approved. The application fee and the deposit will be established by Board resolution pursuant to Section 6.15 of this Ordinance.

3.25 **Other Preconditions.** The application shall not be accepted and the District shall not enter into a Water Sale and Purchase Agreement with the Applicant until the District has determined that the Applicant has constructed sufficient pumping, conveyance, storage and metering facilities to maximize the beneficial use of water to be sold by the District to the Applicant, to further water conservation efforts by the District, and to provide a reliable and verifiable system for metering the amount of water to be purchased by the Applicant from the District.

ARTICLE 4 GENERAL USE REGULATIONS

Sections:

- 4.10 Water Waste
- 4.15 District Equipment and Facilities
- 4.20 Damage
- 4.25 Mandatory Conservation

- 4.30 Health and Safety, Suspension of Delivery
- 4.35 Interruption of Water Service
- 4.40 District Access to Private Property
- 4.45 Regulation of Customer Facilities
- 4.50 Responsibility for Equipment
- 4.55 Water Pressure Regulation
- 4.60 Resale of Water

4.10 **Water Waste.** No person willfully or negligently shall permit leaks or any kind of waste of water supplied by the District, including waste by allowing water to flow in unusual or excessive amounts onto the user's premises or elsewhere without being applied to a beneficial use. The District may discontinue service to a Customer who fails to take corrective action within five (5) days after notice is given to the Customer of such condition of waste.

4.15 **District Equipment and Facilities.** Normally, a Customer will be required to install its own meter, pumping facilities, and conveyance facilities to transfer the water sold by the District to the Customer from the Customer Service Connection. To the extent that a Customer's facilities are supplemented by similar facilities installed by the District on private property to facilitate the sale and delivery of water to a Customer, such facilities and equipment installed by the District shall remain the District's property, and may be maintained, repaired or replaced by the District without prior notice to or consent of the Customer. The Customer shall exercise reasonable care in protecting any such District facilities, equipment and water resources. In no event shall the District be required to install or maintain its own facilities on private property to assist in measuring, pumping or conveyance of water after delivery by the District to the Customer's Service Connection. Likewise, the District assumes no responsibility for the delivery of water to privately owned pipelines or systems, nor shall it assume any responsibility for damages resulting from the operation of any such private conveyance system even though water may be received from the District's Water System.

4.20 **Damage.** The Customer shall promptly notify the District of any damage to District or Customer provided facilities or equipment used to account for water or electric usage or measurement..

4.25 **Mandatory Conservation.** The Board by resolution shall adopt a conservation plan for all Customers. The plan shall incorporate key elements of Chapter 3 of the State of California Water Code, Minimum Element - Forecast supply, assess drought mitigation options, establish triggering levels, develop demand reduction programs, adopt a drought plan, monitor results and adjust drought status.

4.30 **Health and Safety, Suspension of Delivery.** The District may suspend the delivery of water purchased by a Customer to a Customer's Service Connection on twenty-four (24) hour notice when the District determines that a hazard to public health and safety or the environment exists which arises from or relates to the metering, pumping and conveyance facilities and any other apparatus or equipment installed by the Customer at its Service Connection. The Customer and District representative shall meet and confer regarding corrective actions to be taken to remove the health and safety hazard. Any and all corrective actions taken shall be at the sole cost and expense of Customer. District reserves the right to continue the suspension of deliveries until the hazardous condition has been remedied.

4.35 **Interruption of Water Service.** The District does not guarantee continuous delivery of water on demand. From time to time it may be necessary for the District to shut off the flow of water in its water system. Except in emergencies, such stoppages will not be made without prior notice to the Customers involved. The District shall not assume any responsibility for loss or damages which may occur due to interruption of water service.

4.40 **District Access to Private Property.** Authorized agents of the District shall be allowed to enter Customer's private property in order to evaluate, test, inspect and/or monitor the operation of metering, pumping and conveyance facilities installed by the Customer at its Service Connection, with prior notice to and consent of the Customer. No person shall prevent an authorized agent of the District from carrying out his or her duties pursuant to this section.

4.45 **Regulation of Customer Facilities.** The District may, by ordinance or resolution, specify regulations setting forth minimum specifications for those metering, pumping and conveyance facilities to be installed by Customer at its Service Connection.

4.50 **Responsibility for Equipment.** At his or her own risk and expense, each Customer shall furnish, install and keep in good and safe condition all equipment, including meters, that may be required to receive, control and use water sold and delivered to Customer by District. The District shall not be liable for any loss or damage caused by improper installation or use of such equipment caused by the agents, employees, contractors, licensees and permittees of Customer. Nor shall the District be liable for damage to property, either upon commencement of deliveries to a Customer Service Connection, or when deliveries resume after temporary interruption.

4.55 **Water Pressure Regulation.** The District assumes no responsibility for water pressure regulation with respect to water delivered to a Customer. The Customer shall be responsible for providing whatever water pressure regulation measures are necessary for Customer's water distribution system.

4.60 **Resale of Water.** No Customer may resell any portion of the water furnished by the District, except that public agencies and private companies authorized to sell and/or distribute water may receive special authorization to resell water furnished by the District upon approval of the District's Board of Directors.

ARTICLE 5 METERS

Sections:

- 5.10 Installation
- 5.15 Service Connections
- 5.20 Meter Installations
- 5.25 Repair and Maintenance
- 5.30 Change in Location
- 5.35 Change in Equipment

- 5.40 Meter Readings
- 5.45 Meter Testing
- 5.50 Non-Registering Meters
- 5.55 Violations
- 5.60 Damaging or Tampering with Meters

5.10 **Installation.** All deliveries of water sold by the District to a Customer shall be metered. Meters are the property of the owner unless specifically otherwise provided, and the District reserves the right to independently inspect, test, and to require service of such meters. Only authorized employees and agents of the District shall be permitted to seal, inspect and test meters. All meters shall be sealed at time of installation and no seal shall be altered or broken except by an authorized agent of the District.

5.15 **Service Connections.** Upon the approval of an application from a Customer for the purchase and delivery of water by the District to the Customer, the Customer shall furnish and install a meter of such size and at such diversion point as the applicant requests, subject to the approval of District.

5.20 **Meter Installations.** After approval of a Customer's application by the District, the Customer shall install a meter at the point of diversion from which Customer proposes to divert water to be purchased from District for Customer's use. The Customer and the District shall mutually agree as to the size and location of the meter. The District shall not be liable for rents or other charges related to Customer's placement or installation of Customer's meter. The District must install a seal on the meter before it can be used. All meters will be tested by the District prior to full operation. No meter may be used that registers more than two percent (2%) fast or slow.

5.25 **Repair and Maintenance.** It shall be the responsibility of the Customer to maintain the meter in good working order at all times.

5.30 **Change in Location.** No meter shall be relocated without the prior written approval of the General Manager. All relocation work shall be done by the Customer or under Customer's direction. All costs of relocating a meter shall be borne (a) by the Customer where the meter is moved for the Customer's convenience or to provide required access to the meter; or (b) by the District where the District requests that the meter be relocated.

5.35 **Change in Equipment.** Where a larger meter is required because of material change in the size, character or extent of a Customer's equipment, operations, or water supply needs, the Customer shall obtain and install a larger meter at its own expense after District approval.

5.40 **Meter Readings.** District shall have the authority to enter Customer's property for purposes of reading the meter. Meters shall be read at a frequency established by the General Manager or his/her designated agent, or as specified in the Water Sale and Purchase Agreement between the District and the Customer to permit the computation, preparation and mailing of bills as soon thereafter as practicable.

5.45 **Meter Testing.** District shall have the authority to enter Customer's property for purpose

of testing accuracy of meters.

5.50 **Non-Registering Meters.** If a meter does not register, amounts of water sold and delivered will be estimated based on previous use.

5.55 **Violations.** The District may, at its option, either discontinue service or require installation of a District owned meter of appropriate size at Customer's cost.

5.60 **Damaging or Tampering with Meters.** Whenever the District has determined that a water meter has been damaged or tampered with in such a manner that the meter does not properly register the consumption of water, the meter shall be locked or removed and the water service terminated. The meter shall not be opened or reinstalled for service until all the following charges have been paid: (1) outstanding water bills for the property being served by the meter; (2) a charge for servicing or repairing the meter equal to the District's expense for time and materials; (3) a charge for estimated quantity of water consumed but not paid for since the last regular correct reading, which shall be determined on the basis of prior use with respect to the account of the Customer with the meter that has been damaged or tampered with.

ARTICLE 6 PRICING

Sections:

- 6.10 Price Schedule
- 6.15 Other Fees
- 6.20 Modification of Price Schedule

6.10 **Price Schedule.** The Board shall, by resolution, fix the price per unit at which water will be sold to each Customer of the District on an annual basis. Such price shall reflect all costs and out-of-pocket expenses directly incurred by the District in delivering water for sale to the Service Connection of each Customer. The District's costs shall include the actual cost per acre foot to (a) obtain water from its sources in California; (b) convey the water to each Customer Service Connection; (c) pay any required fees and costs for water supply and conveyance to each Customer Service Connection; (d) pay any costs of environmental review; (e) pay any conveyance cost of the water supplied to each Customer including costs of electrical power; (f) pay the principal and interest on any bonded debt for capital improvements and any bond redemption costs; (g) pay ordinary administration and maintenance expenses of the District; (h) pay the cost of construction of new capital improvements; (i) pay the cost of maintenance and operation of all capital improvements; (j) set aside funds for the funding of a prudent reserve.

6.15 **Other Fees.** By resolution the Board shall fix the amount of the following fees applicable to Customers who have entered into a Water Sale and Purchase Agreement with the District:

- A. Charge to reseal meter
- B. Charge to test or witness meter test
- C. Return check charges

- D. Late payment charge for failure to pay contract payments and other fees in a timely manner
- E. Charge for unauthorized meter use
- F. Application fee
- G. Deposit regarding execution of Water Sale and Purchase Agreement
- H. Reconnect fees
- I. Penalties and collection charges

6.20 **Modification of Price Schedule.** By resolution the Board may amend, alter, modify, increase, or decrease any fees provided for in Section 6.15 above. The price schedule applicable to any particular Water Sale and Purchase Agreement between the District and any Customer is subject to change during the term of the Agreement only by mutual agreement of the Parties. However, the District reserves the right to alter its pricing schedule on an annual basis so as to include all of the District's costs incurred in providing water supply to its Customers.

ARTICLE 7 BILLING

Sections:

- 7.10 Billing Period
- 7.15 Payment
- 7.20 Delinquency
- 7.25 Penalties and Collection Charges
- 7.30 Billing of Separate Meters

7.10 **Billing Period.** Billing arrangements are subject to negotiation between the District and the Customer prior to execution of a Water Sale and Purchase Agreement between the District and the Customer.

7.15 **Payment.** Bills for sale and delivery of water shall be mailed or delivered to the Customer no later than the tenth day of the month following meter reading, and all such bills are payable upon presentation.

7.20 **Delinquency.** Bills for sale and delivery of water not paid on or before the twenty-fifth day following the billing date shall be considered delinquent, at which time a notice will be sent from the District to the Customer advising the Customer that water supply and delivery will be discontinued if full payment is not received within five (5) days.

7.25 **Penalties and Collection Charges.** The District shall impose and collect such reasonable late payment penalties for delinquent accounts as the Board may fix by resolution pursuant to Section 6.15 of this Ordinance. Such charges include returned check charges, bank fees, rebilling costs, redeposit and accounting costs, and field collection fees.

7.30 **Billing of Separate Meters.** Separate bills will be rendered for each meter installation.

**ARTICLE 8
DISCONTINUATION OF WATER SUPPLY**

Sections:

- 8.10 Discontinuation of Water Supply
- 8.15 Deposits and Refunds
- 8.20 Resumption of Water Supply After Discontinuation
- 8.25 Noncompliance with Regulations

8.10 Discontinuation of Water Supply. District may discontinue water supply to a Customer Service Connection for nonpayment of bills no earlier than the thirty-fifth day following the end of the billing period for which the bill was sent. At least five (5) days prior to such discontinuance of water supply, the Customer will be sent a final notice that discontinuance of water supply will be enforced if payment is not made within the time specified in said notice. If a Customer receives water supply at more than one Service Connection and the bill for water supply at any one Service Connection is not paid within the time provided for payment, water supply may be discontinued at all Service Connections utilized by that Customer.

8.15 Deposits and Refunds. Upon discontinuation of water supply to a Customer for nonpayment, the District shall apply any deposit previously paid by the Customer to the District as credit towards the amount of the Customer's delinquent bill. If the deposit exceeds the amount of any unpaid bill or debt owed to the District, the District will promptly refund the balance of the deposit to the Customer.

8.20 Resumption of Water Supply After Discontinuation. If a Customer defaults in the performance of its Water Sale and Purchase Agreement with the District by reason of nonpayment or any other event of default, the District shall have the right to discontinue water supply to that Customer until all contract payments and other fees due and owing to the District have been paid by Customer. In order to resume water supply after any such discontinuance, the Customer will be required to execute a new Water Sale and Purchase Agreement in the form approved by the District's Board of Trustees and may be required to pay a deposit to the District, in an amount to be determined by the Board of Trustees, sufficient to prepay a significant portion of the bills to be incurred by the Customer for water sale and delivery pursuant to the new Water Sale and Purchase Agreement executed by the Customer and the District.

8.25 Noncompliance with Regulations. Water supply may be discontinued by the District for noncompliance by a Customer with this or any other ordinance or regulation adopted by the District's Board of Trustees with respect to the sale and delivery of water to Customers. In the event of violation of any terms of this Ordinance other than failure of a Customer to pay any water service charge prior to delinquency, District may discontinue water supply to the Customer by providing ten (10) days written notice prior to the proposed discontinuance of the District's intent to discontinue service and the grounds upon which the action is taken. Notice shall be mailed to the address of record for the Customer. Before discontinuance of the service, the Customer shall have the opportunity to discuss the reasons for the proposed discontinuance with the District's General Manager, or his/her designated agent, who shall be

empowered to review all letters and statements, rectify any errors, and settle any controversies pertaining to the discontinuance of service.

ARTICLE 9 DISTRICT WATER CONSERVATION PROGRAM

Sections:

- 9.10 Establishment of Conservation Program
- 9.15 Determination and Declaration by General Manager of Water Supply Conditions
- 9.20 Water Conservation Enforcement Measures

9.10 **Establishment of Conservation Program.** There is hereby established the District Water Conservation Program which shall be administered as provided in this section. This Program is adopted pursuant to the laws of the State of California. Any violation of the provisions in this section is a misdemeanor.

9.15 **Determination and Declaration by General Manager of Water Supply Conditions.** During any period of threatened or actual water shortage, the District has the right to apportion its available water supply among consumers in a manner that appears most equitable with due regard to public health and safety.

The General Manager of the District with Board concurrence, based upon all available data, shall determine and declare whether the District's water supply and/or distribution is in one of the five following conditions, and post a notice at the District Administration Building.

A. **Stage I - Normal Water Supply.** The District's supply or distribution system is able to meet all the water demands of its Customers in the immediate future.

B. **Stage II - Water Alert.** There is a probability that the District's supply or distribution system will not be able to meet all of the water demands of its Customers.

C. **Stage III - Water Warning.** The District's supply or distribution system is not able to meet all of the water demands of its Customers.

D. **Stage IV - Water Crisis.** The District's supply or distribution system is not able to meet all the water demands of its Customers under Stage III - Water Warning requirements.

E. **Stage V - Water Emergency.** The District is experiencing a major failure of a supply, storage, or distribution facility.

As soon as a particular condition is declared to exist, the water conservation measures provided for herein for that condition shall apply to the area designated for District water service until a different condition is declared (See Water Conservation Measures Appendix).

9.20 **Water Conservation Enforcement Measures.** Water conservation enforcement measures for persistent water wasters shall offer the following sequence of notification, discontinuance of service and progressive reconnect fees.

A. Notify Customer of water waste condition in writing on District information form with first letter offering service to help correct the situation and follow up with one-on-one contact over a two (2) week period.

B. Send a second letter giving a specific date for correction and notice that the District will, after that date, terminate service until a reconnect fee is paid. Said reconnect fees shall be established in a resolution by the Board of Trustees of the District.

The foregoing Ordinance was introduced and read once at a regular meeting of the Board of Trustees of the Mendocino County Russian River Flood Control and Water Conservation Improvement District held on April 24, 2000, and was passed and adopted at a regular meeting of said Board of Trustees held on _____, 2000, by the following vote:

Ayes:

Noes:

Absent:

ATTEST:

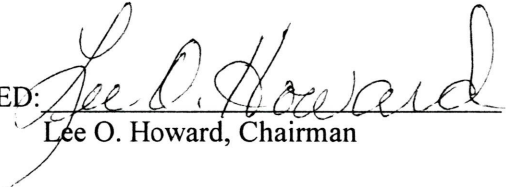
Published June 19, 2000
Barbara Spazek, District Secretary

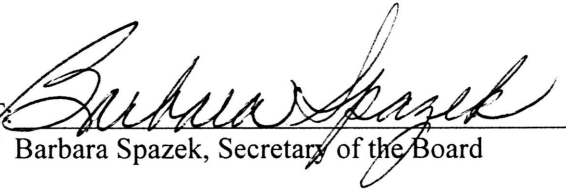
of the Mendocino County Russian River Flood Control and Water Conservation Improvement District held on April 24, 2000, and was passed and adopted at a regular meeting of said Board of Trustees held on June 26, 2000, by the following vote:

Ayes: Lee O. Howard
Bill Townsend
Dan Rogina

Noes: 0

Absent: 0

SIGNED: 
Lee O. Howard, Chairman

ATTEST 
Barbara Spazek, Secretary of the Board