

EXHIBIT D

ADMINISTRATIVE PROCEDURE FOR ADJUSTING WATER USES

1. Modifying Allocation. Downstream owners and (present or future) water uses including those identified in Exhibit E may be adjusted by the Board after due notice to the applicant, the Lessee and the affected owner, lessee or tenant (if the applicant is not the owner, Lessee or tenant) and a hearing, if required. Any applicant seeking to increase, decrease any quantity set forth in Exhibit E or establish a new use shall be responsible to present relevant, objective, and credible evidence to show the special circumstances applicable to the applicant's property or use that justifies the increase or decrease in or the establishment of the volumes of water allocated to the applicant's parcel. If an Owner's use of the water is seasonal, suspended, abandoned or permanently stopped, then the allocation of water to such owner shall cease during the off-season or suspension period, abandonment or stoppage.

2. Release of Water Downstream. Sufficient quantities of water shall be passed downstream to meet needs established in Exhibit E as measured at each user's point of diversion from the stream unless the Lessee reports that (1) there is sufficient water from springs or other streams between the Lessee's lowest diversion point and the affected

property; or (2) water is not available at the Lessee's lowest diversion point in such volume that will satisfy the above; required quantities for such stream; or (3) the condition of the stream channel between the Lessee's lowest diversion point and the downstream Owner's point of diversion from the stream, is such that a complete loss of the water will result from the transmission of the available water downstream. Any of the affected downstream owners or their lessee or tenant may request the Board to inspect or to allow the owner or their lessee or tenant to inspect the Lessee's lowest diversion point to confirm or challenge the Lessee's report. If a water emergency or drought has been declared, as defined in the lease, the water emergency or drought declaration shall control.

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3. Terms and Conditions. The quantities of water established in Exhibit E as measured at each user's point of diversion shall be made available to each landowner as a matter of priority as provided in the lease for those landowners identified in Exhibit E on the following additional terms and conditions:

a. Reports. Each Owner, tenant or lessee shall file with the Board a Certificate of Use setting forth, among other information, the property description, the type of tenancy, the type of use (agricultural/domestic/other), the basis of the applicant's claim to water, estimated area of actual agricultural use, including taro cultivation, and

estimated duration of water use. To obtain the benefits and remedies under this agreement a water user must file a certificate of use in the form and times set forth by the Board.

b. Conservation Practices and Inspection.

Each Owner, tenant or lessee shall agree as follows: 1) to observe and perform reasonable water conservation practices; 2) to agree that he/she shall not take more water from the stream or channel than shall be his/her allocated quantity; 3) to allow the Board or its agents periodically to enter his/her land or property in order to measure or inspect the water being taken or to inspect his/her land or property to determine the extent of agricultural cultivation or utilization of reasonable water conservation practices; 4) to cooperate and participate with Board and Lessee in the installation and implementation of water conservation measures approved by the Board after due notice to and opportunity to be heard by the affected Owner, tenant or lessee and the Lessee; 5) to notify the Board and Lessee of any temporary or permanent stoppage of agricultural operations on his/her land;

c. Clearing Requirements.

(1) Each owner, tenant, or lessee shall keep the channels, auwai, and intake into his/her/its property free and clear of any and all obstructions.

(2) If any affected owner, tenant, or lessee claims that his/her/its water use is affected because of obstruction in any stream bed, channels or auwais then that person may request mediation by DLNR to resolve the matter of stream clearing. It is understood by all parties that a downstream landowner/tenant has the primary and initiating responsibility to clear both his/her channel, auwai or intake and, if any, the stream adjacent to and above his/her diversion. This duty is shared with all others who use water from the stream with appropriate regard for each landowner's relative location along the stream.

(3) Each owner/tenant/lessee shall allow other downstream owners, their tenants or lessees to enter his/her property after reasonable advance notice and upon a mutually agreeable time in order to clear, clean or otherwise maintain the stream.

4. Penalties:

If the Board, after notice and hearing, shall find that an owner, tenant or lessee has breached any term of this Exhibit, then the Board may impose or assess such penalty or penalties as the Board determines is reasonable and appropriate, including the suspension or termination of any rights such owner, tenant or lessee may have under this procedure. No action by the Board shall prejudice any person

who may seek relief from the Water Commission pursuant to the State Water Code. " "

5. Complaint Procedure:

In the event that any Owner believes that the quantity delivered to his/her property is less than his/her allocation, such Owner shall:

a. First, conduct an investigation to ascertain that his/her internal water conveyancing system, whether it be open ditch, tunnels, tubes, or another system, is working properly.

b. Second, to determine, to the extent possible, whether the stream channel and water flow from the Lessee's lowest diversion point or water sources that may be located below the actual diversion to his/her parcel is working properly and is not blocked, in disrepair, or in some other condition that prevents the water from reaching his/her parcel.

c. Third, to determine to the extent possible, whether any upstream Owner is taking more water than that allotted to such Owner under Exhibit E.

d. Fourth, conduct, if possible, an investigation of the Lessee's lowest diversion point or water sources that may be located below the actual diversion to ascertain if there is sufficient water flowing at that point to accommodate the needs of the Lessee and the Owner.

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If the Owner conducts the investigations as required herein and still believes that the quantity of water is insufficient, then the Owner shall promptly notify the Lessee of his complaint. The Lessee shall maintain written records and logs of all complaints.

Within three business days after receiving a complaint, the Lessee shall respond to the Owner and arrange a joint investigation, at a mutually convenient time, to resolve such Owner's complaint. If the Owner does not have a reasonable means of transportation to the Lessee's lowest diversion point or water sources that may be located below the actual diversion, then the Lessee shall offer transportation to the Owner to such location. The Lessee and the Owner shall attempt to resolve the complaint as expeditiously as possible. If such Owner and the Lessee conclude that an upstream Owner is taking more than his/her allocated share, then the complaint shall be treated as a dispute between or among owners and either such Owner or the Lessee may submit a complaint to the Board which shall investigate the complaint. If the Lessee shall determine that the Owner's internal conveyancing system is not working properly or that the stream channel and water flow from the Lessee's lowest diversion point to the Owner's parcel is not working properly, is blocked or in some other condition that prevents water from reaching the Owner's parcel, the Lessee shall treat the

complaint as a dispute between or among owners and either the Owner or the Lessee may submit a complaint to the Board. If ^{after attempting to resolve the dispute,} the Lessee shall determine that there is insufficient water flowing at the lowest point of diversion to accommodate the needs of the Owner, no action need be taken on the part of the Lessee. If the Owner and Lessee have not resolved the complaint within 10 business days of the filing of the complaint, he/she shall have the right to appeal to the Board which shall resolve the complaint. However, the 10 day deadline may be extended by mutual consent, which consent shall not be unreasonably withheld. If the parties agree upon mediation, then the Board shall select a mediator unless the parties also agree upon a mediator. If mediation cannot be agreed upon or if no mediated agreement is reached within 30 days (or such additional time as the parties may agree), then the Board shall appoint a hearings officer to adjudicate the dispute.

This complaint procedure shall apply solely to complaints regarding the quantity of water allocated to each Owner. The Board, and not the Lessee, shall resolve disputes between or among Owners, unless the Water Commission has exclusive jurisdiction over the conflict.

In the event that any Owner shall file three complaints in one year with the Lessee regarding the same matter which complaints the Lessee shall consider groundless, the Lessee shall have the right not to respond to any further

complaint from such Owner on the same grounds. The Owner may appeal to the Board which shall conduct an investigation of the complaint and shall determine the appropriate remedy. If the Board confirms that the complaint is groundless, the Lessee shall thereafter have the right to demand the Owner to file all future complaints with the Board directly and shall have no further duty to respond to the Owner.

The Lessee shall submit its written records and logs of Owners' complaints to the Board on a quarterly basis. The Board shall make the records and logs so submitted available to the Owners for inspection or copying at Owner's expense. The Lessee shall make the records which have not yet been submitted to the Board available to the owners for inspection or copying at owner's expense.

Any Owner and Lessee can complain to the Board that another Owner(s) is or are not cooperating with other downstream Owners to maintain and clean the stream channel, or is taking more than his/her allocated quantity of water or has committed any other breach of this Exhibit.

The Lessee shall advise each Owner of the name and phone number of the person to contact regarding any complaint.

6. Access for Traditional Gathering and Hiking.
Pursuant paragraphs C(9) and F35 and F36 of the Lease, the Board shall establish guidelines permitting access for

traditional gathering rights and hiking in the leased area consistent with law and good conservation practices within thirty (30) days of the execution of the lease. Copies of the procedures to obtain access shall be made available to the public by the Department of Land and Natural Resources.