

EXHIBIT D

ORDINANCE O-07-2: AVEK WATER SHORTAGE CONTINGENCY PLAN

**ANTELOPE VALLEY-EAST KERN WATER AGENCY
ORDINANCE NO. O-07-2**

**AN ORDINANCE OF THE ANTELOPE VALLEY-EAST KERN WATER AGENCY
TO ADOPT A WATER SHORTAGE CONTINGENCY PLAN**

WHEREAS, the Board of Directors of the Antelope Valley-East Kern Water Agency ("AVEK") hereby finds:

**I.
RECITALS**

WHEREAS, the Antelope Valley-East Kern Water Agency was formed in 1959 by an act of the State Legislature. AVEK's powers, duties, authorities and other matters are set forth in its enabling act, which is codified at California Water Code, Uncodified Acts, Act 9095 (the "AVEK Enabling Act"); and

WHEREAS, AVEK's jurisdictional boundaries cover portions of three counties, Los Angeles, Ventura County and Kern County, and is more particularly described in Appendix E in the 2005 Urban Water Management Plan ("AVEK's Jurisdictional Boundaries"); and

WHEREAS, AVEK was formed for the purpose of providing water received from the State Water Project ("SWP") as a supplemental source of water to retail water purveyors and other water interests with AVEK's Jurisdictional Boundaries on a wholesale basis; and

WHEREAS, in order to effectuate the above-referenced purpose, AVEK, among other things, entered into a contract with the Department of Water Resources ("DWR"), which operates the SWP, in order for AVEK to receive water from the SWP ("SWP Water"); and

WHEREAS, AVEK has entered into contracts with various retail purveyors and other water interests in AVEK's Jurisdictional Boundaries that govern AVEK's delivery of SWP Water to those purveyors and other water interests (the "AVEK's Water Supply Contracts"). Article 19 in those contracts provides that "substantial uniformity" in those contracts is "desirable" and that AVEK will attempt to maintain such "uniformity" between such contracts; and

WHEREAS, AVEK does not provide SWP Water directly to any person or entity for domestic or municipal purposes; and

WHEREAS, AVEK does not own or operate any facilities that can produce reclaimed water or native groundwater from any area in AVEK's Jurisdictional Boundaries, and neither does AVEK possess any contractual right or matured water right to produce such waters; and

WHEREAS, the Urban Water Management Planning Act, California Water Code Section 10610 *et seq.* ("UWMP Act") provides that urban water management plans shall include a resolution or ordinance by the supplier that sets forth a water shortage contingency plan; and

WHEREAS, Section 61.1 of the AVEK Enabling Act sets forth guiding principles for AVEK's distribution of SWP Water, which principles can be drawn upon in allocating such water in times of shortage (the provisions of Section 61.1 of the AVEK Enabling Act are set forth in Exhibit A to this Ordinance); and

WHEREAS, real property related taxes have been paid to AVEK since 1959 by entities in AVEK's Jurisdictional Boundaries.

WHEREAS, AVEK has circulated drafts of its proposed 2005 UWMP and the water shortage contingency plan set forth in this Ordinance ("WSC Plan") to the public for review and comment; and

WHEREAS, AVEK's Board of Directors ("AVEK Board") held duly noticed public hearings on its proposed 2005 UWMP on November 15, 2005 and December 20, 2005, and a public meeting on the WSC Plan on December 20, 2005; and

WHEREAS, the AVEK Board received written and verbal testimony and evidence from the public and others concerning its proposed 2005 UWMP and WSC Plan.

II. FINDINGS

THEREFORE, AVEK finds as follows:

1. AVEK finds that there is a need to adopt a water shortage contingency plan given, among other things, the requirements of the UWMP Act and the potential that the amount of SWP Water made available to AVEK by DWR may not satisfy the demands for SWP Water by AVEK's customers (even though such demand for SWP water has only exceeded the available supply of SWP Water once since AVEK was formed).
2. The WSC Plan complies with all applicable laws and regulations, including but not limited to the UWMP Act, the AVEK Enabling Act, and the Guidebook to Assist Water Suppliers in the Preparation of a 2005 Urban Water Management Plan issued by

DWR and dated as of January 18, 2005.

3. AVEK finds that the WSC Plan is fair and equitable.
4. The WSC Plan is consistent with the intent and terms of the AVEK's Water Supply Agreement and the AVEK Enabling Act.
5. Each of the recitals contained in the Ordinance is approved as a finding of fact.

**III.
ADOPTION OF WATER SHORTAGE CONTINGENCY PLAN**

Therefore, be it resolved and ordained by the AVEK Board as follows:

1. AVEK adopts a WSC Plan that would be implemented when the aggregate amount of SWP Water reasonably ordered by AVEK's customers in any water year exceeds the amount of SWP Water that DWR makes available to AVEK on that same water year (a "SWP Water Shortage Year"). When that contingency occurs (which contingency will be deemed to occur under both stages listed in Appendix 1 hereto), AVEK plans to allocate that amount of available SWP Water as follows:

(a) The available SWP Water shall first be allocated per each county (the "County Allocation of SWP Water") in AVEK's Jurisdictional Boundaries based on a running historical average of the amount of taxes paid to AVEK by entities in each particular county since the formation of AVEK in 1959. (Attached as Exhibit B to this Ordinance is the historical amount of such taxes paid by county through June 30, 2005.) AVEK shall annually update and publish that running historical average of taxes paid to AVEK by county.

(b) Each County's Allocation of SWP Water shall be further allocated to each AVEK customer within that particular county based on its average annual percentage of SWP Water received in the two water years prior to the SWP Water Shortage Year relative to the amount of SWP Water received by all other AVEK customers in that particular county in those two prior water years. (For illustrative purposes, attached as Exhibit C to this Ordinance is a list of such relative percentages by AVEK customers by county for 2004.)

(c) In determining the amount of SWP Water that should be delivered by AVEK to any customer in any SWP Water Shortage Year, AVEK will fill orders for SWP Water that will be used by the AVEK customer(s) for consumptive or agricultural uses in

that same water year prior to filling any order for SWP Water that would be used by an AVEK customer for banking or storage purposes.


(d) AVEK reserves the right to allocate SWP Water that it receives from DWR in a SWP Water Shortage Year in a manner that differs from the provisions of this WSC Plan based on a finding by the AVEK Board of unique or unusual circumstances or needs.

This Ordinance shall be in full force and effect upon the date of adoption, and shall be published in full in a newspaper of general circulation within ten (10) days from the date of adoption.

Passed and adopted this 19th day of June, 2007, by the following vote:

AYES: 6 NOES: 0 ABSENT: 1 ABSTAIN: 0


Andy D. Rulled, President
Board of Directors
Antelope Valley-East Kern Water Agency

ATTEST: 
Agency Secretary