

APPOMATTOX RIVER WATER AUTHORITY

- RESOLUTION -

POLICY PERTAINING TO DIRECT IRRIGATION WITHDRAWALS FROM LAKE CHESDIN

November 20, 2008

WHEREAS, the Appomattox River Water Authority ("ARWA") is the owner and manager of Lake Chesdin, a 3,100-acre reservoir located on the Appomattox River on the Chesterfield County and Dinwiddie County line that provides a drinking water supply to the Cities of Colonial Heights and Petersburg and the Counties of Chesterfield, Dinwiddie, and Prince George (the "Participating Jurisdictions");

WHEREAS, ARWA faces significant increases in demand for drinking water for all purposes throughout ARWA's service area;

WHEREAS, the Lake Chesdin area experienced an extended drought between 2001 and 2002, which resulted in low lake levels and the imposition of mandatory water use restrictions for the first time in ARWA's history;

WHEREAS, in October, 2007, ARWA announced that Lake Chesdin held less than 200 days of water storage at current usage, which warranted mandatory water conservation by users of ARWA's water supply;

WHEREAS, on July 29, 2008, ARWA called for voluntary water conservation because Lake Chesdin's water level fell below the trigger level, which is 18 inches below the spillway of the dam;

WHEREAS, lawn and garden irrigation may use thousands of gallons of water each day on just one landowner's property;

WHEREAS, it has come to the attention of ARWA that a number of persons residing near Lake Chesdin have installed pumps, intake devices, and other equipment and taken other measures for the purpose of withdrawing water directly from Lake Chesdin for the purpose of lawn and garden irrigation ("Direct Irrigation Withdrawals"), and the potential exists for others to do the same as growth occurs around Lake Chesdin;

WHEREAS, none of the Direct Irrigation Withdrawals or pumps, intake devices, or other equipment for making Direct Irrigation Withdrawals ("Systems") have been approved previously by ARWA's Board of Directors (the "Board"), and, on November 2, 2007, the Board appointed a committee to review the issue of Direct Irrigation Withdrawals and to make recommendations pertaining to such activity (the "Committee");

WHEREAS, the Committee met and reported its recommendations to the Board at the Board's regular meeting on December 20, 2007, which the Board adopted by resolution on December 20, 2007;

WHEREAS, the Board authorized and directed the Committee to (1) draft an appropriate permit or license document in furtherance of its recommendations; (2) develop policies and procedures for application for, and issuance of, such documents and for the collection and administration of the recommended fees;

WHEREAS, ARWA held a public hearing on the adoption of a proposed policy pertaining to Direct Irrigation Withdrawals on August 11, 2008, after notice of the public hearing was published once in a newspaper of general circulation in ARWA's service area;

WHEREAS, as agreed during the public hearing, the Committee met with a self-selected group of interested citizens on September 15, 2008 (the "Committee-Citizen Meeting");

WHEREAS, during the Board's September 18, 2008 regular meeting, the Board discussed the public hearing and the Committee-Citizen Meeting;

WHEREAS, the Board determined to schedule a second public hearing on a proposed policy pertaining to Direct Irrigation Withdrawals and held such public hearing on November 20, 2008, after notice of the public hearing was published twice in several newspapers of general circulation in ARWA's service area; and

WHEREAS, after careful consideration of the recommendations of the Committee and ARWA's Executive Director and the public hearings, to further the public purposes for which ARWA was created, the Board adopts the following policy and guidance (this "Policy") for approval of Direct Irrigation Withdrawal licenses ("Licenses").

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE APPOMATTOX RIVER WATER AUTHORITY THAT:

1. Protection of Lake Chesdin for Public Drinking Water Supply. It is the purpose of this Policy to conserve, protect, and beneficially utilize the surface water in Lake Chesdin to ensure the public welfare, safety, and health, and the terms of this Policy are in all respects for the benefit of the inhabitants of the Participating Jurisdictions who rely upon Lake Chesdin as a source of drinking water. ARWA hereby determines and finds that the continued unrestricted Direct Irrigation Withdrawals from Lake Chesdin, now and in the future, would impact the safe yield of the reservoir and may impact the ability to obtain permitting of future water sources by federal and state authorities, thereby jeopardizing the public welfare, safety, and health.

2. License Required for Direct Irrigation Withdrawals. No Direct Irrigation Withdrawal shall occur except as authorized by the terms of a License Agreement, recommended by ARWA's Executive Director, approved by the Board, and executed by the Licensee (the "License Agreement"). The License Agreement shall be substantially in the form presented at this meeting, with such insertions, deletions, or other changes as may be approved by the Executive Director in his discretion and not inconsistent with this Policy.

3. **Applications for Licenses.** Persons desiring a License shall submit an application to the Executive Director (the "Application"). The Application shall be substantially in the form presented at this meeting, with such insertions, deletions, or other changes as may be approved by the Executive Director in his discretion and not inconsistent with this Policy. Applications must be received by the Executive Director by January 20, 2009. ARWA will consider applications only from those persons who can demonstrate that their Systems are existing and fully operational or substantially complete as of January 20, 2009, which shall include those Systems that, at a minimum, have received written conditional approval from ARWA for a dock, pier, or bulkhead on which System is to be constructed.

4. **Term of License.** Regardless of when an application for a License is received, a License, if granted, shall be for a term of five (5) years, commencing on January 1, 2009 and ending on December 31, 2013 (the "Initial Term"), unless sooner terminated in accordance with the License Agreement. On or prior to December 31, 2013, each licensee may exercise his option to renew the term of his License for one additional five (5) year term commencing on January 1, 2014 (the "Additional Term"), by prior written notice to ARWA. The Board may consider granting extensions of Licenses beyond the Additional Term, but the granting of any extension shall be at the Board's sole discretion. If the Board receives any request for a License extension beyond the Additional Term, the Board shall conduct a public hearing on this Policy before granting or denying any such request.

5. **License Fee.** The fees for a License shall be three hundred dollars (\$300) for the Initial Term and the sum of \$300 plus an inflation adjustment to be based on the All Items Consumer Price Index for All Urban Consumers for the U.S. City Average (Current Series) for the sixty months ended on the previous October 1 for the Additional Term, such inflation adjustment not to exceed seventy-five dollars (\$75). If the Board grants an extension of a License beyond the Additional Term, the fee for such License extension shall also be adjusted for inflation based on the All Items Consumer Price Index for All Urban Consumers for the U.S. City Average (Current Series). License fees are payable immediately upon the issuance of a License or its renewal, as applicable.

6. **Conservation.** Each Licensee must agree to abide by irrigation and other water use restrictions imposed by the Participating Jurisdiction in which they live.

7. **Health, Environmental, or Other Restrictions Required by Law or Governmental Entity.** Each Licensee must agree to abide by all local, state, and federal laws and regulations now or hereafter in effect and applicable to his Direct Irrigation Withdrawal or System and that ARWA may, as Licensor, impose upon him or her, as Licensee, any health, environmental, or other restrictions required under local, state, or federal law or as may be required by any local, state, or federal governmental entities that regulate or provide assistance to ARWA, including restrictions imposed as a requirement to obtaining permits to construct improvements or enlargements of ARWA's water treatment and/or storage capacity. Each Licensee shall agree to not cause or permit the use, generation, storage, release, or disposal in, on, or about Lake Chesdin of any substances, materials, or wastes in violation of local, state, or federal law.

8. Current Parcel Ownership Required; Limitation on Number and Transferability of Licenses. Licenses may be granted only to the current owners of the parcels of land fronting Lake Chesdin shown on the map attached as Exhibit A hereto and made a part hereof (each a "Parcel"). Licenses shall be limited to one per Parcel, regardless of whether a Parcel owner subdivides or intends to subdivide his Parcel. Each Licensee may, with the prior written consent of ARWA, transfer his License to a single successor owner of his Parcel, but may not transfer, assign, divide, allocate, or distribute duplicates of his License among the successor owners of any subdivided portions of his Parcel, and any attempt on the part of a Licensee to do so may result in the immediate termination of the License by the Board, acting in its sole discretion.

9. System Limitations. Each Licensee's System shall originate from a single withdrawal point from Lake Chesdin, which has been identified by Licensee as part of his Application, and use a single pump or other intake device. Systems shall not: (i) have a pump capacity greater than 20 gallons per minute, (ii) have pumps or other intake devices located beyond the end of the Licensee's dock, pier, or bulkhead, or, in the absence of a dock, pier, or bulkhead, thirty (30) feet from the normal pool limit, and (iii) be used to pump or intake water for storage (i.e., all water removed from Lake Chesdin by Systems must be immediately applied to irrigation). Each Licensee may replace failing equipment that is part of his System with functioning equipment that is the same or, if the same equipment is not available, the functional equivalent of the failing equipment, but may not extend, expand, or otherwise improve his System or increase its ability to make Direct Irrigation Withdrawals.

10. Right to Enter, Inspect, and Remediate. Each Licensee shall grant ARWA and any of its duly authorized agents or representatives the rights (i) to enter, at reasonable times and under reasonable circumstances, his Parcel for the purposes of obtaining information about or conducting a survey or inspection of his System and its operation to ensure compliance with any laws, regulations, rules, permits, standards, or policies of ARWA and any applicable local, state, or federal government or governmental entity and (ii) to the extent permitted by law, to remove, dismantle, or otherwise remediate a noncompliant System or portion thereof after written notice of noncompliance has been given by ARWA to the Licensee, unless the Licensee has caused the System to become compliant, as determined by ARWA, within thirty (30) days after the notice was given.

11. Indemnity. Each Licensee shall defend, indemnify, and save harmless ARWA and its agents, employees, contractors, representatives, affiliates, and other related entities (the "Indemnitees" or an "Indemnitee") from and against any loss, claims, expenses (including reasonable attorney's fees), or damage incurred or suffered by an Indemnitee, by reasons directly or indirectly arising out of, caused (in whole or in part) by, or in any way connected with the Licensee's Direct Irrigation Withdrawal. ARWA shall have no responsibility, liability, or obligation with respect to any property of the Licensee at, in, or on Lake Chesdin, it being acknowledged and understood by the Licensee that the safety, security, and effects of any such property are the sole responsibility and risk of the Licensee.

12. Licensee Shall Have No Other Privileges or Any Right or Interest in ARWA Property. Each Licensee must agree that (i) the License shall be only a license to make Direct Irrigation Withdrawals in accordance with this Policy and the terms of the License

Agreement, and shall not be construed as granting any other privileges or any right or interest in Lake Chesdin or other ARWA property, (ii) he does not have and shall not claim at any time any right or interest of any kind or nature whatsoever in Lake Chesdin or other ARWA property by virtue of the License Agreement or the License, and (iii) the License is personal to the Licensee, and except as may be provided pursuant to paragraph 8 of this Policy, the privileges appurtenant thereto shall not inure to the successors and/or assigns of the Licensee.

13. Amendment of Policy and Termination of License. Each Licensee shall agree that the Board may, in its sole discretion, at any time or from time to time, unilaterally amend this Policy and, as a result, the License, to the extent it is inconsistent with the amended Policy. The Board shall provide written notice of the amendment of this Policy and the License to each Licensee within thirty (30) days of its adoption by the Board.

Any License, License Agreement, and the privileges created and conferred thereby on a Licensee are terminable at will by either the Board or the Licensee. Termination of the License, License Agreement, and the privileges shall occur immediately upon providing written notice to the other party. Upon termination, the Licensee shall proceed with diligence to remove his System at his sole expense.

Notwithstanding the foregoing, before the Board amends this Policy or terminates any License, the Board shall make a finding that such amendment or termination furthers the public purposes for which ARWA was created, including without limitation the conservation, protection, and beneficial utilization of the surface water in Lake Chesdin to ensure the public welfare, safety, and health of the inhabitants of the Participating Jurisdictions who rely upon Lake Chesdin as a source of drinking water and enabling ARWA to obtain permits for additional water sources reasonably required to serve such inhabitants.

If an amendment of the Policy results in the termination of a License and the privileges granted thereby, or if a License is directly terminated by the Board, the Board shall cause a pro rata portion of the License fee based on the months remaining in the Initial Term or Additional Term, as the case may be, to be returned to the affected Licensee.

14. Future Direct Irrigation Withdrawals. The Board approved a moratorium on new Direct Irrigation Withdrawals, effective December 20, 2007. The moratorium shall be lifted until January 20, 2009, at which time the moratorium shall continue in full force and effect.

15. Unlicensed Direct Irrigation Withdrawals. All Direct Irrigation Withdrawals for which ARWA has not received a License application as of January 20, 2009, or for which a License has been terminated, shall cease, and all such Systems utilized for such purposes shall be removed from Lake Chesdin at the sole expense of the owner of such equipment by February 20, 2009.

16. Other Water Withdrawals Prohibited. Except as otherwise provided by this Policy, unless expressly approved by the Board, all other withdrawals from Lake Chesdin are prohibited.

17. Enforcement. The Executive Director is hereby authorized to engage counsel to undertake appropriate legal action on ARWA's behalf to enforce this Policy or the terms of any License approved by the Board.

18. Golf Course Irrigation. ARWA has previously approved Direct Irrigation Withdrawals from Lake Chesdin for golf course irrigation at Lake Chesdin Golf Club. The Executive Director shall review the agreement with Lake Chesdin Golfers' Club LLC and make recommendations to the Board for amending the conditions upon which that entity may continue to withdraw water from Lake Chesdin consistent with this Policy.

19. Conflict with Other Policies. This Policy supersedes all prior policies pertaining to Direct Irrigation Withdrawals, if any.

20. Reports of Unauthorized Withdrawals. Anyone observing unauthorized withdrawals from Lake Chesdin can report it to ARWA's Executive Director at:

Appomattox River Water Authority
Executive Director
21300 Chesdin Road
Petersburg, Virginia 23803
Phone: (804) 590-1145

21. Effective Date. This Policy shall take effect immediately.