

CASITAS MUNICIPAL WATER DISTRICT  
CONSERVATION PENALTY APPEALS PANEL

Special Meeting Agenda

Directors Kaiser, Brennan, Word

**May 3, 2019 - 9:30 A.M.**

District Office  
1055 Ventura Ave.  
Oak View, CA 93022

1. Roll Call
2. Public Comments
3. Board Comments
4. General Manager Comments
5. Receive and File a Primer on the Water Efficiency and Allocation Program (WEAP) Appeals Panel for Conservation Penalty Appeals and a Memorandum on Administrative Appeals Hearing Principles; and Review the recently revised Water Efficiency and Allocation Program provisions that address appeals of conservation penalty assessments and Discuss and Establish hearing protocols to be used during the hearings of the conservation penalty appeals.

Right to be heard: Members of the public have a right to address the Board directly on any item of interest to the public which is within the subject matter jurisdiction of the Board. The request to be heard should be made immediately before the Board's consideration of the item. No action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of ¶54954.2 of the Government Code. If you require special accommodations for attendance at or participation in this meeting, please notify our office in advance (805) 649-2251 ext. 113. (Govt. Code Section 65954.1 and 54954.2(a)). Please be advised that members of the Board of Directors of Casitas who are not members of this standing committee may attend the committee meeting referred to above only in the capacity of observers, and may not otherwise take part in the meeting. (Govt. Code Sections 54952.2(c)(6))



**MEMORANDUM**

TO: Casitas Municipal Water District  
Board of Directors Appeals Panel

FROM: Robert N. Kwong *RNK*  
Legal Counsel

DATE: April 30, 2019

SUBJECT: Basic Principles and Procedure for Administrative Appeal Hearings

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All administrative appeal hearings are governed by the following principles:

**Characteristics of the Hearing Body**

- Hearing board or appeals panel is a quasi-judicial body
- Performs a judicial function
- Board members sitting on the appeals hearing are administrative law judges
- Independent
- Impartial
- Fair

**Responsibilities of the Chair of the Administrative Appeals Panel or Hearing Body**

- Preside over hearing
- Conduct any prehearing conferences by and between the two sides
- Rule on evidentiary objections with the assistance of the Board's legal counsel; strict rules of evidence do not apply
- Assure fair, impartial hearing
- Assure due process
- Assure orderly process and proper decorum

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- Security
- Special consideration for *pro per* parties or parties who act as their own legal representative/advocate

### **The Hearing Process Rules**

- Elements of the Administrative Procedures Act (Gov. Code § 11370 et seq.)
- Brown Act Open Meetings Law applies
- Governing Board Rules or By-Laws, if any
- Specific appeals hearing rules

### **Hearing Procedure**

- Open Hearing
- Call Calendar or Call first case by name and type
- Ask who is appearing for each party so that the record will reflect parties and representatives
- Administer oath to witnesses, if any
- Opening Statements
  - *This is an outline of that party's case; what is to be proven, how it will be proven, and what relief is sought. This opening statement is NOT evidence!*
- Handle any preliminary matters regarding evidentiary exhibits, documents, etc.
- Governing Board may exclude from the hearing, during the examination of any witness, any or all other witnesses in the matter being investigated by the legislative body. Gov. Code § 54957(b)(4).
- Direct testimony and evidence from appellant
- Cross examination, if any, of appellant
- Direct testimony or presentation of GM recommendation

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- Cross examination, if any, of GM recommendation
- Closing statements
- Deliberation by Appeals Panel or Administrative Hearing Body members
- Appeals Panel or Administrative Hearing Body Decision with Findings

#### **Decorum**

- Chair should be patient, dignified and courteous to all
- Hearing should be businesslike and efficient
- Hearing room should promote confidence and respect for the process

#### **Security**

- Be alert to volatile petitioners, witnesses or public
- Ideally, hearing room with separate entrance / exit for board members
- Ability to summon security guard promptly and discretely

#### **Ethics**

- Various models of codes of judicial conduct (*see* Gov. Code §§ 11475-11475.70 referencing Code of Judicial Ethics adopted by the California Supreme Court)
- Uphold the integrity and independence of the appeals hearing panel
- Avoid impropriety and appearance of impropriety
- Conduct personal activities to minimize risk of conflict with appeals board obligations
- Refrain from inappropriate political activity
- Announce prior affiliation with appellant, if any
- Refrain from any *ex parte* contact or communication and disclose if there is any
- Recusal

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### **Final Objectives**

- All parties leave knowing that;
  - They were given a fair hearing
  - They were given full opportunity to state their case
  - The Appeals Panel considered all relevant evidence
  - A fair decision was rendered

**CASITAS MUNICIPAL WATER DISTRICT**

**APPEALS PANEL PRIMER<sup>1</sup>**

**FOR**

**WATER EFFICIENCY AND ALLOCATION PROGRAM**

**CONSERVATION PENALTY APPEALS**

*What is the source of the Conservation Penalty?*

A municipal water district may restrict the use of district water during any emergency caused by a drought, or other threatened or existing water shortage. To that end and given the periodic droughts affecting the Casitas jurisdiction, “[t]he Casitas Board of Directors shall annually set the Conservation Penalty for each classification that will be applied to each individual customer billing for each unit of water that is in excess of the customer’s allocation.”

See Water Code Section 71640; WEAP Section 5.6(b).

*Why is a Conservation Penalty assessed?*

“The Conservation Penalty is imposed to curtail the potential for adverse effects of excessive water consumption.”

See WEAP Section 5.6(b).

*Under what circumstances may the Conservation Penalty be modified?*

“[When Casitas staff] determin[es] [that] a change in the Demand Reduction Stage, or at such time the Board deems that the customer response does not appear to attain the desired demand reduction goals, the Board may consider the modification of the Conservation Penalty.”

See WEAP Section 5.6(c).

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<sup>1</sup> This document is intended to assist the Casitas Board Members appointed to the WEAP Appeals Panel in the conduct of Conservation Penalty appeal hearings. In the event of a conflict between the terms and conditions set forth herein and the terms and conditions of the Casitas Municipal Water District Water Efficiency and Allocation Program dated April 24, 2019 (CMWD Ordinance No.     ), the later shall take precedence over the former.

*What does Casitas use the Conservation Penalties for?*

“Revenues recovered from the Conservation Penalty will supplement Casitas’ water conservation costs, provide revenue for water shortage related projects, and cover costs associated with implementing changes to the WEAP as directed by the Board.”

See WEAP Section 5.6(d).

*How does a Casitas customer file an appeal for a Conservation Penalty assessment?*

“By submitting a written appeal, on a form provided by Casitas, directly to the General Manager or his/her designee” which will then be deemed as filed with the Appeals Panel.

See WEAP Section 5.7(a)

*What criteria shall the Appeals Panel use to determine whether to grant or deny a Conservation Penalty appeal? Or how shall the Appeals Panel decide each appeal?*

Criterion or Step No. 1: Timeliness (WEAP Section 5.7(e)(2))

Is the request for review and an evidentiary hearing made within thirty (30) days of date the Casitas bill with the Conservation Penalty was issued by the District? If yes, proceed to next criterion. If no, dismiss appeal.

Criterion or Step No. 2: Causation (WEAP Section 5.7(e)(1))

Is the appeal for relief of a Conservation Penalty based on a natural disaster such as a wildfire, earthquake, flood or landslide or other naturally occurring phenomenon which directly causes a leakage or leakage event? If yes, then proceed to next criterion. If no, deny appeal.

Criterion or Step No. 3: Explanation or Argument (WEAP Section 5.7(e)(3))

Does the appeal of a Conservation Penalty explain why the leakage or leakage event was caused by a naturally occurring event such as wildfire, earthquake, flood or landslide? If yes, proceed to next criterion. If no, deny appeal.

Criterion or Step No. 4: Evidentiary Support (WEAP Section 5.7(e)(4))

Does the customer/appellant support their reason for an appeal from a Conservation Penalty with supporting documentation or substantial evidence demonstrating the circumstances for the appeal? If yes, then consider merits of appeal, the General Manager’s recommendation on the Conservation Penalty appeal (WEAP Section 5.7(e)(5)) and possibility of granting appeal. If no, deny appeal.

*What role does Casitas staff play in the Conservation Penalty appeals process?*

- a) Upon receipt of a Conservation Penalty appeal on the form provided by the District, an appeal hearing will be placed on the next agenda of the Appeals Panel.
- b) The General Manager or his/her designee will review the appeal and the documentation or evidence provided by the customer supporting the appeal.
- c) The General Manager or his/her designee may request additional information from the customer.
- d) Following a review of the appeal, the General Manager shall make a recommendation to the Appeals Panel.
- e) A copy of the General Manager's recommendation to the Appeals Panel will be provided to the customer/appellant.

See WEAP Section 5.7(e)(6).

*What due process is afforded to customer/appellant in the Conservation Penalty appeal?*

- a) The customer/appellant shall have an opportunity to state their case and present evidence supporting their appeal before the Appeal Panel.
- b) The customer/appellant shall have an opportunity to review and refute, as applicable, the General Manager's recommendation on their Conservation Penalty appeal.
- c) The Appeals Panel shall read, review and consider the evidence properly presented before it.
- d) And the Appeals Panel shall determine whether to grant the appeal in full, apportion the penalty, or deny the appeal based on documentation and/or evidence provided and shall make appropriate findings in writing within 30 days of the appeals hearing.
- e) In addition, the Appeal Panel may consider additional circumstances it deems to be relevant during the appeals hearing.

*What is required of the Appeals Panel if it decides to grant a Conservation Penalty appeal?*

In order to approve an appeal of a Conservation Penalty, the Appeals Panel must make the following findings:

- a) The customer/appellant provided documentation or substantial evidence that the Conservation Penalty could not be avoided by circumstances within the customer's reasonable control;
- b) The General Manager's written recommendation is invalid because of the customer/appellant's documentation or evidence provided; and



c) The reason for the appeal is not to accommodate for leakage or a leakage event within the control of the customer/appellant.

See WEAP Section 5.7(e)(7)(A)-(C).

*Does the Appeals Panel have any flexibility in approving a Conservation Penalty appeal?*

Yes, the Appeals Panel has the flexibility of determining if the Conservation Penalty is denied in whole or in part.

See WEAP Section 5.7(e)(8).

*What recourse does the customer/appellant have if his or her Conservation Penalty appeal is denied by the Appeals Panel?*

Since, the Appeals Panel's determination is final and binding on the customer/appellant (WEAP Section 5.7(e)(9)), there is no further administrative appeal to the full Board of Directors. The customer/appellant is then free to seek legal recourse through the court system.