

Electronically Submitted on 06/24/24 1:12 PM

1 ROB BONTA
Attorney General of California
2 CHRISTIE VOSBURG
Supervising Deputy Attorney General
3 MARI MAYEDA (SBN 110947)
MONICA HEGER (SBN 345848)
4 Deputy Attorneys General
1300 I Street
5 Sacramento, CA 95814
Telephone: (916) 210-7824
6 E-mail: Monica.Heger@doj.ca.gov
Attorneys for the People of the State of California,
7 *ex rel. Rob Bonta, Attorney General of the State of*
California

EXEMPT FROM FILING FEES
GOVERNMENT CODE § 6103

8 TRACY L. WINSOR
9 Senior Assistant Attorney General
MICHAEL CAYABAN (SBN 179252)
10 Supervising Deputy Attorney General
600 W. Broadway, Ste. 1800
11 San Diego, CA 92101-3375
Telephone: 619-738-9000
12 E-mail: Mike.Cayaban@doj.ca.gov
Attorneys for the State Water Resources Control
13 *Board*

14
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF IMPERIAL

19 **THE PEOPLE OF THE STATE OF**
20 **CALIFORNIA, ex rel. ROB BONTA,**
21 **Attorney General of the State of California**
22 **and the STATE WATER RESOURCES**
CONTROL BOARD,

23 Plaintiffs,

24 v.

25 **CITY OF CALEXICO,**

26 Defendant.

CASE NO. ECU003547

27 **STIPULATION AND [PROPOSED]**
28 **CONSENT JUDGMENT**

(Code Civ. Proc., § 664.6)

Date: June 27, 2024

Time: 8:30 a.m.

Dept: 9

Judge: Honorable L. Brooks Anderholt

Action File: May 21, 2024

1 **1. INTRODUCTION**

2 1.1 This stipulation and proposed Consent Judgment (Consent Judgment) is entered
3 into between Plaintiff People of the State of California (People) by and through Attorney General
4 Rob Bonta (Attorney General), Plaintiff the State Water Resources Control Board (State Water
5 Board or Board) and Defendant the City of Calexico (City) (collectively, the Parties).

6 1.2 This Consent Judgment stems from a joint investigation by the People and the
7 State Water Board (collectively, STATE ENFORCEMENT AGENCIES). The Water Board has
8 separately executed a SETTLEMENT AGREEMENT, attached as Exhibit A, to resolve the
9 administrative penalty. Together, the SETTLEMENT AGREEMENT and Consent Judgment
10 constitute the GLOBAL SETTLEMENT of the STATE ENFORCEMENT AGENCIES' claims.

11 1.3 This Consent Judgment sets forth the agreement and obligation of the Parties, and
12 it is the Parties' mutual intent that this document constitutes a complete, final, and binding
13 settlement to resolve the allegations set forth in the COMPLAINT filed by the People.

14 **2. DEFINITIONS**

15 2.1 "BILLING STATEMENT" shall refer to the utility services bills that are mailed
16 monthly to the City's customers.

17 2.2 "COMPLAINT" shall refer to the complaint Plaintiffs filed on May 21, 2024.

18 2.3 "COURT" shall refer to the Imperial County Superior Court.

19 2.4 "DELINQUENT NOTICE" shall refer to the notices the City sends to customers
20 about past-due utility bills including, both the notices labeled "Urgent Notice", and "48 Hour
21 Notice."

22 2.5 "EFFECTIVE DATE" shall refer to the date on which the COURT enters the
23 Consent Judgment.

24 2.6 "GLOBAL SETTLEMENT" shall refer to this Consent Judgment and the
25 SETTLEMENT AGREEMENT entered into by the State Water Board and the City.

26 2.7 "PARTIES" refers collectively to the People, the State Water Board, and the City.

27 2.8 "SETTLEMENT AGREEMENT" shall refer to the agreement attached as Exhibit
28 A that resolves the State Water Board's administrative penalty claims.

1 2.9 “SHUTOFF POLICY” shall refer to the policy adopted pursuant to this Consent
2 Judgment and attached as Exhibit D that complies with the requirements of the Shutoff Act and
3 the terms of this Consent Judgment and will be posted on the City’s website.

4 2.10 “STATE ENFORCEMENT AGENCIES” refers collectively to the People and the
5 State Water Board.

6 2.11 “WATER ORDINANCE” shall refer to the ordinance adopted pursuant to this
7 Consent Judgment and attached as Exhibit E that complies with the Shutoff Act and the terms of
8 this Consent Judgment.

9 **3. BACKGROUND AND GENERAL ALLEGATIONS**

10 3.1 In 2019, the California Legislature adopted Senate Bill 998, the Water Shutoff
11 Protection Act, Health and Safety Code Sections 116900 et. seq., increasing protections for
12 residents facing termination of water service due to nonpayment. The Legislature recognized that
13 water debt and residential water shutoffs threaten human health and well-being and “have
14 disproportionate impacts on infants, children, the elderly, low-income families, communities of
15 color, people for whom English is a second language, physically disabled persons and persons
16 with life-threatening medical conditions.” (Sen. Bill 998 (2017-2018 Reg. Sess.) § 1, subd. (c).)
17 Covered water systems were required to comply with the Act beginning in 2020. (Health & Saf.
18 Code, § 116904, subd. (b).)

19 3.2 Due to the COVID-19 emergency, Governor Newsom issued Executive Order N-
20 42-20 on April 2, 2020, which temporarily prohibited the discontinuation of residential water
21 service for nonpayment. The moratorium on residential water shutoffs expired in January 2022.

22 3.3 The Water and Wastewater System Payments Under the American Rescue Plan
23 Act of 2021 (Stats. 2021, Ch. 115; Health & Saf. Code, § 116773 et. seq.) (the Water Arrearages
24 Act) took effect on July 22, 2021 for the purpose of assisting customers with past-due water bills.
25 (Health & Saf. Code, § 116773.4, subd. (b)(1).) The Water Arrearages Act established a program
26 (the Arrearages Payment Program) through which community water systems could apply for
27 funding for customer arrearages accrued during the COVID-19 pandemic. The Water Arrearages
28 Act also prohibited water systems from shutting of water service for nonpayment from July 22,

1 2021 through December 31, 2021. (*Id.*, § 116773.4, subd. (d)(2).) The State Water Board is
2 authorized to administer the program, including by adopting guidelines and reporting
3 requirements and allocating funding under the program. (*Id.*, § 116773.6, subds. (a), (c).)

4 3.4 The Attorney General, at the request of the Board or upon the Attorney General's
5 own motion, may bring an action to enforce the requirements of the Water Shutoff Protection Act
6 (the Shutoff Act) and to restore to any person in interest any money or property, real or personal,
7 that may have been acquired by any method, act, or practice declared by the Act to be unlawful.
8 (Cal. Const., art. V, § 13; Health & Saf. Code, § 116920.) The State Water Board is authorized to
9 issue a citation to a public water system for violations of the Shutoff Act and the Water
10 Arrearages Act and is authorized to seek an injunction in state court for violations of the Water
11 Arrearages Act. (Health & Saf. Code, §§ 116906, subd. (c); 116773.6, subd. (d); 116660, subds.
12 (b) & (c).) These statutes were enacted to reduce the number of Californians that lose access to
13 water service due to their inability to pay and to provide financial assistance to those in need. It is
14 the purpose of this Consent Judgment to effectuate the Legislature's purposes in passing these
15 Acts. The State Water Board has executed a SETTLEMENT AGREEMENT with the City to
16 resolve its administrative penalties under both the Shutoff Act and the Water Arrearages Act.
17 (Exh. A.) The Consent Judgment and SETTLEMENT AGREEMENT together constitute the
18 GLOBAL SETTLEMENT of the STATE ENFORCEMENT AGENCIES' claims under the
19 Shutoff Act and Water Arrearages Act with the City.

20 3.5 On October 26, 2022, the Attorney General's Office issued a Legal Alert¹
21 reminding covered water systems of their responsibilities under the Shutoff Act as well as a
22 Consumer Alert² to the public regarding the protections afforded by the Act. (Exhs. B, C.)

23 3.6 The City is classified as an urban water supplier and/or a community water system
24 under the Shutoff Act and the Water Arrearages Act and serves drinking water to over 40,000

25 _____
26 ¹ Office of the Attorney General, Legal Alert, Water Shutoff Protection Act, Oct. 26,
2022, *available at* <https://oag.ca.gov/housing/watershutoffs>.

27 ² Office of the Attorney General, Consumer Alert, Know Your Rights – Avoiding Water
28 and Utility Shutoffs, *available at* [https://oag.ca.gov/system/files/attachments/press-
docs/Consumer%20Alert%20Water%20and%20Utility%20Shutoffs%20%285%29.pdf](https://oag.ca.gov/system/files/attachments/press-docs/Consumer%20Alert%20Water%20and%20Utility%20Shutoffs%20%285%29.pdf).

1 Californians. United States Census Data indicates that the percentage of the City which is
2 Hispanic or Latino is 97.8%.³ The City is located in an area that faces challenging
3 sociodemographic conditions, lagging behind the state and nation on a number of indicators,
4 including Median Household Income poverty rates, and unemployment. The percentage of the
5 population living below the federal poverty level is high at 21 percent in 2021, compared to
6 approximately 12.5 percent for California and the United States. (U.S. Census Bureau, 2012-2021
7 ACS 5-Year Estimates. Table S1701: Poverty Status in the Past 12 Months.) The unemployment
8 rate in Calexico was 24 percent in 2022, compared to 15 percent in Imperial County and below 5
9 percent in California and the United States. (U.S. Bureau of Labor Statistics, 2012-2022
10 Unemployment Rates (Seasonally Unadjusted.) The City's population is also considered more
11 vulnerable than about 90 percent of the state due to poverty, unemployment, housing burden,
12 linguistic isolation, and health indicators such as rates of asthma, cardiovascular disease, and low-
13 birth weight infants.⁴

14 3.7 The population served by the City faces significant affordability challenges in
15 accessing safe, clean water. According to City data, as of December 31, 2022, 23 percent of its
16 customers were delinquent in paying their water bill. The City's Basic Financial Statements and
17 Independent Auditors' Reports document large account receivable balances in the City's water
18 enterprise fund. For example, for the fiscal year ending on June 30, 2022, the City reported
19 \$8,111,484 in annual water service revenue with a reported net accounts receivable of
20 \$2,864,650.⁵

21 3.8 The City's violations of the Shutoff Act and the Water Arrearages Act have
22 deprived many Californians of their human right to water. It is the purpose of the GLOBAL
23

24 ³ United States Census Bureau, Calexico City, California Quick Facts, available at:
25 <https://www.census.gov/quickfacts/fact/table/calexicocitycalifornia/PST045222>

26 ⁴ CalEnviroScreen 4.0 Data Dashboard, City of Calexico, available at
27 <https://experience.arcgis.com/experience/6b863505f9454cea802f4be0b4b49d62>.

28 ⁵ City of Calexico Basic Financial Statements and Independent Auditors' Report, State of
Net Position, Proprietary Funds, pp. 27-28, available at
[https://www.calexico.ca.gov/vertical/sites/%7B342ED706-1EBB-4FDE-BD1E-9543BAD44C09%7D/uploads/YE_2021-22_Calexico_FINAL_Audit_Report_04-26-2023\(1\).pdf](https://www.calexico.ca.gov/vertical/sites/%7B342ED706-1EBB-4FDE-BD1E-9543BAD44C09%7D/uploads/YE_2021-22_Calexico_FINAL_Audit_Report_04-26-2023(1).pdf).

1 SETTLEMENT, including this Consent Judgment, to resolve multiple violations of both Acts that
2 occurred between February 1, 2020, and April 17, 2024, including violations of:

3 3.8.1 Section 116904, subdivision (a) of the Health and Safety Code;

4 3.8.2 Section 116906 of the Health and Safety Code, subdivisions (a) and (b) and
5 Section 116922;

6 3.8.3 Section 116908 of the Health and Safety Code, subdivisions (a);

7 3.8.4 Section 116910 of the Health and Safety Code;

8 3.8.5 Section 116916 of the Health and Safety Code;

9 3.8.6 Section 116773.4 of the Health and Safety Code, subdivisions (b)(1) and
10 (b)(5);

11 3.8.7 Section 116773.4 of the Health and Safety Code, subdivision (c)(1);

12 3.8.8 Section 116773.4 of the Health and Safety Code, subdivision (d)(1);

13 3.8.9 Section 116773.4 of the Health and Safety Code, subdivision (d)(2);

14 3.8.10 Section B, p. 6 of the California Water And Wastewater Arrearage
15 Payment Program Guidelines: Water Arrearages Program;

16 3.8.11 Section F.1.3, p. 12 of the California Water And Wastewater Arrearage
17 Payment Program Guidelines: Water Arrearages Program; and

18 3.8.12 Section F.2.1, p. 12 of the California Water And Wastewater Arrearage
19 Payment Program Guidelines: Water Arrearages Program.

20 3.9 As set out more fully in Plaintiff's COMPLAINT, at all relevant times as alleged
21 herein and in the COMPLAINT, the City's policy on residential water discontinuation due to
22 nonpayment did not comply with the requirements of the Shutoff Act. Among other violations,
23 the City's policy allowed for shutoffs before accounts are 60 days delinquent, does not prohibit
24 shutoffs for customers who meet certain medical and financial conditions, and does not inform
25 customers of their right to enter into a payment plan to avoid shutoffs. In addition, the City
26 conducted 1,090 illegal shutoffs between February 2020 and December 2022, collecting more
27 than \$40,000 in fees associated with those shutoffs. The City also failed to submit accurate
28 information to the Water Arrearages Program and misallocated funding provided by the State

1 Water Board to assist customers with water debt. The parties have agreed to resolve this matter
2 through a GLOBAL SETTLEMENT that includes this Consent Judgment and the attached
3 SETTLEMENT AGREEMENT, without the time and expense of litigation and judicial
4 resolution, on the condition that each of the following commitments are implemented by the
5 deadlines described below.

6 3.10 This Consent Judgment sets forth the obligations of the City. The Consent
7 Judgment and the SETTLEMENT AGREEMENT together constitute the complete, final and
8 exclusive agreement between the PARTIES and supersedes any prior agreements between the
9 PARTIES except as specifically provided below.

10 4. AGREEMENT TO SETTLE DISPUTE

11 4.1 The PARTIES enter into this Consent Judgment to establish the requirements and
12 deadlines for revisions to the City's water shutoff policies, practices and website. It is the purpose
13 of this Consent Judgment to ensure that the City's water shutoff policies, practices and website
14 are updated to comply with the Act as set forth in the deadlines and timeframe below.

15 4.2 The PARTIES mutually consent to the entry by this COURT of the Consent
16 Judgment.

17 4.3 The PARTIES are each represented by counsel, and this Consent Judgment was
18 negotiated in good faith and at arms' length by the PARTIES to avoid expensive and protracted
19 litigation regarding the alleged violations contained in the COMPLAINT, and to further the
20 public interest.

21 4.4 The PARTIES agree that there has been no adjudication of any fact or law.

22 5. JURISDICTION AND VENUE

23 5.1 The PARTIES agree and stipulate that, for purposes of this Consent Judgment
24 only, that (i) the COURT has jurisdiction over the PARTIES to and the subject matter of this
25 action; (ii) venue is proper in this COURT; and (iii) the COURT has personal jurisdiction over
26 the City and the PARTIES request that the COURT retain jurisdiction over the PARTIES for the
27 purposes of enforcing the terms of the Consent Judgment until performance in full of the terms of
28 the Consent Judgment.

1 5.2 The PARTIES agree not to challenge this COURT’S jurisdiction to enforce the
2 terms of this Consent Judgment, and this COURT maintains jurisdiction over this Consent
3 Judgment for that purpose.

4 **6. WAIVER OF TRIAL AND ENTRY OF JUDGMENT**

5 6.1 By signing this Consent Judgment and consenting to its entry by the COURT, the
6 PARTIES waive their right to a hearing and a trial on the matters alleged in the COMPLAINT,
7 and also waive their right to appeal from the entry of the Consent Judgment.

8 6.2 The PARTIES agree to cooperate in good faith in supporting entry of this Consent
9 Judgment, with the Plaintiff responsible for preparing any necessary motion for entry.

10 **7. APPLICABILITY**

11 7.1 The provisions of this Consent Judgment shall apply to and be binding on the
12 STATE ENFORCEMENT AGENCIES, the City and its directors, officers, agents, employees,
13 representatives, successors, assigns, and any persons or entities acting under the City. The City
14 shall ensure that its directors, officers, agents, employees, representatives, successors, assigns,
15 and any other persons or entities acting under the City, for the City, or on the City’s behalf with
16 respect to the matters covered herein comply with the terms of this Consent Judgment.

17 **8. INJUNCTIVE RELIEF**

18 8.1 Compliance with Water Shutoff Protection Act. Nothing in this Consent Judgment
19 shall relieve the City from complying with all applicable requirements and standards set forth in
20 Health and Safety Code sections 116900 et seq:

21 8.1.1 Pursuant to the Health and Safety Code sections 116900 et seq., the
22 STATE ENFORCEMENT AGENCIES acknowledge that the City has
23 adopted the SHUTOFF POLICY (Exh. D), and that the SHUTOFF
24 POLICY complies with the Shutoff Act.

25 8.1.2 The STATE ENFORCEMENT AGENCIES acknowledge that the City has
26 adopted the WATER ORDINANCE (Exh. E) that amends Calexico
27 Municipal Code sections 13.01.010 through 13.01.720.

28 8.1.3 The City shall amend its DELINQUENT NOTICES to comply with the

1 Shutoff Act by removing the following: “Our records show that your
2 account is delinquent more than 30 days. Please make payment to avoid
3 disconnection of your water or possible civil action against you.”

4 8.1.4 The City shall amend its BILLING STATEMENT, by removing the
5 following language:

6 8.1.4.1 “City of Calexico reserves the right to disconnect service if an
7 account has reached an overdue balance of \$20.00 or is one month
8 past due. Past due accounts are subject to disconnection at any time
9 without prior written notice.”

10 8.1.4.2 **“PAST DUE ACCOUNTS AFTER 30 DAYS ARE SUBJECT**
11 **TO SHUT OFF’S ON THE MIDDLE OF EACH MONTH.”**

12 [Bold and underline in original.]

13 8.1.5 The City shall provide a notification to customers explaining the changes in
14 these policies, which shall include a copy of the Attorney General’s
15 October 26, 2022 Consumer Alert. (Exh. C.)

16 8.1.6 Failure to adopt and maintain a compliant SHUTOFF POLICY in
17 accordance with the Shutoff Act and/or the terms of this Consent Judgment
18 shall constitute a breach of the Consent Judgment entitling the People to
19 enforce the Consent Judgment in court without regard to the City’s
20 compliance with any other terms of this Consent Judgment.

21 8.2 Changes to Billing Practices to Reduce Shutoffs. The City shall make changes to
22 its utility billing practices, reflected in the adopted SHUTOFF POLICY (Exh. D) and WATER
23 ORDINANCE. (Exh. E.)

24 8.2.1 The City shall change its practice of billing its customers for water service
25 using a unified bill that combines charges for water, sewer and refuse
26 service increases the number of City residents who are at risk of losing
27 access to water due to their inability to pay all charges that appear in the
28 unified bill. Specifically, the City’s municipal ordinance mandates that

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

payments on the City’s unified bill are to be applied in the following order:
(1) fines, penalties, assessments or delinquencies; (2) deposit; (3) refuse;
(4) sewer; (5) fire line, (6) base rate or fixed component charge; and lastly
(7) water service billable units. (Calexico Ord. No. 1157, § 2, 10-21-14;
City of Calexico Mun. Code § 13.01.290. The customer’s failure to pay all
charges in arrears results in the discontinuance of water service. (Calexico
Ord. No. 1157, § 2, 10-21-14; City of Calexico Mun. Code § 13.01.320.)

8.2.2 The City has adopted the WATER ORDINANCE (Exh. E), which amends
Municipal Code section 13.01.300 to prohibit interest from being charged
on delinquencies.

8.2.3 The City has adopted the WATER ORDINANCE, which amends
Municipal Code section 13.01.290 to provide that customer payments be
applied in the following manner and order: (1) Proportionally to each
utility service (water, refuse, sewer); (2) Fire line; (3) Fines, penalties, fees,
charges, or assessments; (4) Deposit.

8.2.4 The City shall modify its water shutoff practices, as described in the
WATER ORDINANCE and SHUTOFF POLICY. The circumstances
under which the City will shut off a customer’s water for nonpayment
include the following:

8.2.4.1 For customers not enrolled in a payment plan, the City will not
discontinue residential water service unless: (1) there is a
delinquency in payments specifically related to water service, that
by itself, exceeds \$150; (2) the water-related delinquency is more
than 90 days delinquent; and (3) in compliance with the Shutoff
Act, the City has offered the customer a payment plan and the
customer declined to enroll.

8.2.4.2 For customers enrolled in a payment plan, the City will not
discontinue residential water service unless: (1) the customer has

1 failed to comply with the payment plan for at least 30 days, or (2)
2 the customer has failed to pay their current residential water service
3 bill for at least 90 days and the delinquency exceeds \$150.

4 8.2.5 The City shall restore residential water service that was disconnected due
5 to nonpayment if the customer enters into a payment plan, including a plan
6 that allows the customer to pay 1/12th the delinquent charges on their
7 account in order to restore service, and the remaining delinquency in equal
8 payments over the next 11 months or on a time schedule agreed to by the
9 customer and City. This type of plan shall only be available to customers
10 once every 12 months. The City shall comply with Health and Safety Code
11 section 116912 and provide customers with the information about how to
12 restore water service after a water shutoff.

13 8.3 Revisions to Late Fees.

14 8.3.1 The City has adopted the SHUTOFF POLICY, which revises the City's
15 late fee to be 5% of the delinquent utility bill balance. The late fee will be
16 charged only one time for each delinquent bill and not cumulatively to the
17 full delinquent balance. No late fee will be assessed or collected until the
18 bill is at least 30 days delinquent.

19 8.3.2 No late fee will be assessed if: (1) the customer makes a payment of \$10.00
20 or more on the delinquent bill balance; (2) the customer requests and enters
21 into a payment plan prior to being more than 30 days late on a payment; or
22 (3) the customer has an abnormally large bill of at least five times the
23 average bill during the previous 12 months due to a leak or other water
24 delivery issue on the premises that was identified and timely addressed as
25 shown by documentation provided to the City.

26 8.3.3 Disconnection and limitation on other charges: The only fees, interest or
27 charges of any kind that will be assessed in connection with water shutoffs
28 are the following three fees: (1) the applicable late fee; (2) the \$26.64

1 disconnection fee; and (3) the \$75 after-hours fee (if applicable). The City
2 agrees to provide notice of the specific dollar amounts of these fees on all
3 notices it provides the customer in advance of the water shutoff.

4 8.4 Amendments to SHUTOFF POLICY and/or WATER ORDINANCE. If, during
5 the term of this Consent Judgment, the City’s overall water fund delinquencies approach or
6 exceed 150 percent of recent historical average for water fund delinquencies, STATE
7 ENFORCEMENT AGENCIES agree to consider amendments to the SHUTOFF POLICY and/or
8 WATER ORDINANCE. Any changes made to the policies must comply with the Shutoff Act and
9 must be approved by STATE ENFORCEMENT AGENCIES. The City shall provide STATE
10 ENFORCEMENT AGENCIES a draft of the proposed changes for their approval at least 30 days
11 before the City will submit them to the City Council for adoption. Proposed changes shall be
12 provided to: Christie Vosburg at Christie.Vosburg@doj.ca.gov, Monica Heger at
13 Monica.Heger@doj.ca.gov, Mari Mayeda at Mari.Mayeda@doj.ca.gov, Laura Mooney at
14 Laura.Mooney@waterboards.ca.gov, Zach Miller at Zach.Miller@waterboards.ca.gov, and
15 Michael Cayaban at mike.cayaban@doj.ca.gov.

16 8.5 Changes in Administrative Policies and Practices.

17 8.5.1 The City shall retain a dedicated Utility Billing Staff Member by June 30,
18 2024. The person employed in this position shall have proficiency in or
19 immediately be trained to have proficiency in the use of the City’s utility
20 management software and shall have the ability to independently utilize
21 that software. The Utility Billing Staff Member’s job duties shall include
22 compliance with the Consent Judgment as well as skill and ability to use
23 Starnik (or other utility management software). The Utility Billing Staff
24 Member shall report at least annually to immediate supervisors regarding
25 tasks performed to assist residents in avoiding water shutoffs and to
26 comply with the Shutoff Act and the Consent Judgment. Within 30 days of
27 the retention of the Utility Billing Staff Member, that individual shall
28 attend a meeting with the People to discuss compliance with the Shutoff

1 Act, the Act's purposes, and the Consent Judgment.

2 8.5.2 Training: Within 30 days of the EFFECTIVE DATE of the Consent
3 Judgment and before restarting residential shutoffs for nonpayment, the
4 City will train employees about the City's updated policies and compliance
5 with the Shutoff Act. Employees receiving training shall include at a
6 minimum, employees in the Finance / Financial Services and Public Works
7 departments, the Human Resources/Risk Management Manager, and any
8 other employee who makes management and/or policy decisions that
9 involve the City's delivery of water service to residents. The City will
10 require new staff to review the training and/or training materials, and will
11 re-conduct the training on an annual basis. The required training will
12 include education and training on compliance with the Shutoff Act and the
13 City's required compliance with all terms of the Consent Judgment entered
14 in settlement of this matter. Members of the City Council will also be
15 briefed on the updated policies and compliance with the Shutoff Act.

16 8.6 Application to Extended Arrearage Payment Program. As a condition to this
17 Consent Judgment, the City has applied to the Extended Arrearages Payment Program available
18 under the Water Arrearages Act for the purpose of obtaining funding to issue bill credits to
19 customers with eligible COVID-19 period arrearages. The City will provide the STATE
20 ENFORCEMENT AGENCIES with documentation of the following: (1) the agreement it entered
21 into for the assistance of an independent consultant, accountant, or auditor to prepare the City's
22 applicable; and (2) the City's return of funds from the initial round of the Arrearages Payment
23 Program in connection with it re-applying for funding.

24 8.6.1 The City will comply with the Water Arrearages Act and all Program
25 guidelines in handling and disbursing any future funds received from the
26 Arrearages Payment Program.

27 8.6.2 The City acknowledges that the information provided in connection with
28 its initial application and follow up reporting to the Water and Wastewater

1 Arrearage Payment Program was inaccurate. The City represents and
2 warrants that the information provided in the City’s Extended Arrearage
3 Application submitted on January 31, 2024, and updated as of April 4,
4 2024, is true and correct and that the data provided accurately accounts for
5 eligible COVID-19 period water and waste water arrearages under the
6 original Water and Wastewater Arrearage Payment Program and the
7 Extended Water and Wastewater Arrearage Payment Program.

8 **9. RESTITUTION**

9 9.1 Return of Fees.

10 9.1.1 For each customer who was assessed a late fee for arrearages accrued
11 during the COVID-19 pandemic relief period (March 4, 2020 to June 21,
12 2021, inclusive), the City will return to each customer or credit to their
13 account all late fees assessed on the COVID-19 period arrearage, plus 3
14 years interest at 10 percent annually, calculated by multiplying the total by
15 1.35. The payment to each qualifying customer account shall be made by
16 July 1, 2024.

17 9.1.2 For each water shutoff conducted during the period February 1, 2020
18 through December 31, 2022, the City will return to each shutoff customer
19 or credit to their account all fees assessed in connection with the illegal
20 shutoff, which shall include: (1) the disconnection fee; (2) late fees
21 assessed by the City in connection with the water shutoff if not returned or
22 credited pursuant to Paragraph 28 subdivision (a); (3) the reconnection fee
23 in those instances where one was assessed; and (4) 3 years interest at 10
24 percent annually (calculated by multiplying the combined total of amounts
25 1-3 by 1.35). Customers that experienced multiple water shutoffs during
26 this time period will be refunded the illegally assessed fees for each water
27 shutoff. The payment to each qualifying customer account shall be made
28 by July 1, 2024.

1 9.1.3 For customers who qualify for either payment, but who are no longer active
2 customers, the City shall make a good faith effort to locate the customer
3 using the addresses and telephone numbers on file and pay the amount due.
4 The City will issue letters to addresses on file by July 1, 2024. If there is no
5 response from customers, the City will make a good faith effort to contact
6 the telephone numbers on file during the period of August 1, 2024 through
7 October 31, 2024. If contacted, the City will issue checks within 30 days of
8 eligible former customers confirming their identities and providing a
9 current address for check issuance.

10 9.1.4 If the City is unable to identify or locate the customers referenced in
11 paragraphs 9.1.1, 9.1.2 or 9.1.3 by October 31, 2024, the amount of the bill
12 credit owed that customer shall instead be paid to the Board for deposit in
13 the Safe Drinking Water Account by November 30, 2024. The City's check
14 for any such fees shall be made payable to "State Water Resources Control
15 Board" and shall bear on its face the above-entitled case name and civil
16 action number. Payment shall be delivered to the State Water Resources
17 Control Board, Attention: Accounting Office, P.O. Box 1888, Sacramento,
18 CA 95812-1888.

19 9.1.5 At the time the City issues the required bill credit or payment to the
20 customer, the City will provide a notice to the customer that the bill credit
21 or payment is provided in accordance with the Consent Judgment.

22 9.1.6 For those closed accounts that the City has furnished information to any
23 collection agency regarding an arrearage that is satisfied pursuant to the
24 Consent Judgment, the City agrees to reduce the full amount satisfied by
25 the Consent Judgment.

26 9.1.7 By December 31, 2024, the City shall send a verified report documenting
27 the amount of each bill credit issued or payment made and certify all
28 required bill credits and payments have been made by email to Christie

1 Vosburg at Christie.Vosburg@doj.ca.gov, Monica Heger at
2 Monica.Heger@doj.ca.gov, Mari Mayeda at Mari.Mayeda@doj.ca.gov,
3 Laura Mooney at Laura.Mooney@waterboards.ca.gov, Zach Miller at
4 Zach.Miller@waterboards.ca.gov, and Michael Cayaban at
5 mike.cayaban@doj.ca.gov.

6 9.2 Payment to Customers Illegally Shut Off.

7 9.2.1 Within 180 calendar days of the parties' execution of a stipulation for entry
8 of Consent Judgment, the City shall pay to or apply a bill credit of \$105.00
9 to each of the 484 unique customers that experienced a City water shutoff
10 during the period February 2020 through December 2022. This shall be in
11 addition to the payment and/or bill credit made pursuant to Paragraph 9.1.

12 9.2.2 For those customers who qualify for this payment but no longer have an
13 account with the City, the City shall follow the procedures in Paragraph
14 9.1.3 to locate those customers. If those customers cannot be located, the
15 City shall make payment to the Board per the procedures in Paragraph
16 9.1.4.

17 9.2.3 At the time the City issues the required bill credit or payment to the
18 customer, the City will include a notice to the customer that the bill credit
19 or payment is provided in accordance with the Consent Judgment.

20 9.2.4 By December 31, 2024, the City shall send a verified report documenting
21 the amount of each bill credit issued or payment made and certify all
22 required bill credits and payments have been made by email to Christie
23 Vosburg at Christie.Vosburg@doj.ca.gov, Monica Heger at
24 Monica.Heger@doj.ca.gov, Mari Mayeda at Mari.Mayeda@doj.ca.gov,
25 Laura Mooney at Laura.Mooney@waterboards.ca.gov, Zach Miller at
26 Zach.Miller@waterboards.ca.gov, and Michael Cayaban at
27 Mike.Cayaban@doj.ca.gov..
28

1 **10. COMPLIANCE VERIFICATION**

2 10.1 Within 60 days after adopting the WATER ORDINANCE, the City shall send the
3 STATE ENFORCEMENT AGENCIES examples of updated BILLING STATEMENTS and
4 DELINQUENT NOTICES that reflect the terms of this Consent Judgment for their comment and
5 approval.

6 10.2 The City shall provide a copy of the draft of the notifications described in
7 Paragraphs 9.1.5 and 9.2.3 to the STATE ENFORCEMENT AGENCIES for approval prior to its
8 distribution. The City shall distribute the notice within 30 days from the adoption the WATER
9 ORDINANCE.

10 10.3 The City shall report quarterly to the STATE ENFORCEMENT AGENCIES
11 regarding compliance with this Consent Judgment and the Shutoff Act. Such reports shall include,
12 without limitation, a report of each discontinuation of residential water service due to
13 nonpayment for five years from the EFFECTIVE DATE. For each discontinuation reported, the
14 City shall provide: customer number, payment due date, amount of bill delinquency, dates of any
15 notices sent to the customer, and whether customer was offered and enrolled in a payment plan.
16 The quarterly reports shall also include the number of delinquent accounts, the amount each
17 account is delinquent, and how the total water fund delinquency compares to the City's historical
18 average. Quarterly reports are due beginning 180 days from the EFFECTIVE DATE.

19 10.4 The City shall notify the STATE ENFORCEMENT AGENCIES within two
20 business days after hiring a Utility Billing Staff Member and within two business days following
21 the completion of the staff training described in Paragraph 8.5.2.

22 10.5 The City shall report annually to the STATE ENFORCEMENT AGENCIES
23 regarding any arrearages funding, including without limitation the City's applications for, grants
24 of and distribution of monies by date, customer account number and funding applied or credited
25 to each account, and the arrearage amount of each customer account.

26 10.6 The City shall verify compliance with Section 9 through the procedures described
27 in Paragraphs 9.1.7 and 9.2.4.
28

1 **11. ADDITIONAL TERMS**

2 11.1 Term. The City shall be permanently enjoined from violating the Shutoff Act. The
3 remaining provisions shall be in effect for five years from the EFFECTIVE DATE of this
4 Consent Judgment, except under the circumstances detailed in Paragraph 8.4.

5 11.2 Representation and Warranty. The City recognizes that information provided to the
6 STATE ENFORCEMENT AGENCIES during their investigation has been relied upon by the
7 STATE ENFORCEMENT AGENCIES in agreeing to this Consent Judgment. The City therefore,
8 hereby represents and warranties that: (1) its response to Responses to Investigative
9 Interrogatories (Set Two), Interrogatory No. 8, with supporting spreadsheet CALEXICO Chart
10 Responsive to Interrogatory 8.xlsx, is true and correct and that the data provided accurately
11 accounts for each water shutoff conducted between February 2020 through 2022; and (2) its
12 response to Request Nos. 6 and 7 in the City of Calexico’s Verified Responses to Information
13 Requests Nos. 1-10 is true and correct and that the responses accurately account for all late fees
14 charged by the City on COVID-19 period arrearages.

15 11.3 Claims Covered and Reserved. This Consent Judgment is a full, final, and binding
16 resolution between the STATE ENFORCEMENT AGENCIES, on the one hand, and the City and
17 its successors and assigns, on the other hand, of any violations of the Act that were asserted in the
18 COMPLAINT against the City prior to the EFFECTIVE DATE. All claims other than those
19 asserted in the COMPLAINT and covered in the GLOBAL SETTLEMENT are reserved. The
20 Parties affirm that nothing in this Consent Judgment in any way affects the STATE
21 ENFORCEMENT AGENCIES’ rights, claims, or defenses in any past, present, or future lawsuit
22 or dispute against the City related to the Shutoff Act.

23 11.4 Enforcement. Prior to enforcing the Consent Judgment, the STATE
24 ENFORCEMENT AGENCIES shall provide the City written notice identifying the terms with
25 which the City has failed to comply and 10 business days to cure its breach. In an action to
26 enforce any provision of this Consent Judgment, the STATE ENFORCEMENT AGENCIES,
27 individually or together, may seek whatever fines, costs, attorneys’ fees, penalties, or remedies
28 provided by law for failure to comply with any individual provision of this Consent Judgment.

1 The City agrees it will not contest its obligation to comply with the terms of this Consent
2 Judgment as set forth herein in any proceeding to enforce this Consent Judgment. Where a failure
3 to comply with the Consent Judgment also constitutes a violation of law independent of the
4 Consent Judgment, the STATE ENFORCEMENT AGENCIES, individually or together, are not
5 limited to enforcement of this Consent Judgment. Except as expressly provided herein, nothing in
6 this Consent Judgment is intended nor shall be construed to limit the STATE ENFORCEMENT
7 AGENCIES, or any other local, state, or federal agency from taking appropriate enforcement
8 actions or otherwise exercising their authority under any law.

9 11.5 Penalty for Non-Compliance. The STATE ENFORCEMENT AGENCIES,
10 individually or together, will provide written notice and the opportunity for the City to cure any
11 breach of this Consent Judgment. If the City fails to cure the breach within 10 business days, a
12 penalty of \$100 per day applies to each day the City is out of compliance with a term in the
13 Consent Judgment, which penalties are cumulative (i.e., each term violated gives rise to an
14 independent \$100 per day penalty) and continue until cured by the City, in addition to any other
15 remedy available or provided by this Consent Judgment. If there is a dispute as to whether the
16 City has violated any of the terms of the Consent Judgment, Plaintiff may move the COURT to
17 compel compliance for each and every violation and order the payment of any penalties that are
18 due. The STATE ENFORCEMENT AGENCIES may move the COURT for such compliance
19 individually or together. The moving STATE ENFORCEMENT AGENCY OR AGENCIES will
20 provide the City with written notification 14 days before any such motion is filed.

21 11.6 Modification. At any time, should any part of this Consent Judgment become
22 inoperative for any reason, all other parts of this Consent Judgment shall remain in effect unless
23 modified by the Court as provided for in this paragraph. This Consent Judgment may be modified
24 from time to time by written stipulation of the Parties and the COURT'S entry of such stipulation
25 and order. The Consent Judgment may also be modified upon entry of an order of this COURT in
26 accordance with law. Grounds for considering modification shall include any that are permitted
27 by law, including that any part of this Consent Judgment is or has become preempted by federal
28 law or regulation. Before filing an application with the COURT for a modification to the Consent

1 Judgment, the PARTIES shall meet and confer to determine whether they can agree on the
2 proposed modification. If a proposed modification is agreed upon, then the PARTIES will present
3 the modification to the COURT by means of a stipulated modification to the Consent Judgment as
4 set forth in the first sentence of this paragraph.

5 11.7 Joint Preparation. This Consent Judgment has been jointly drafted. No
6 presumptions or rules of interpretation based upon the identity of the party preparing or drafting
7 the Consent Judgment, or any part thereof, shall be applicable or invoked.

8 11.8 Execution in Counterparts. This Consent Judgment may be executed in
9 counterparts, which taken together shall be deemed to constitute one and the same document.

10 11.9 Severability. Even if a court holds one or more parts of this Consent Judgment
11 ineffective, invalid, or void, all remaining provisions shall remain valid.

12 11.10 Retention of Jurisdiction. The PARTIES agree that this COURT has continuing
13 jurisdiction to interpret and enforce the provisions of this Consent Judgment and to address any
14 other matters arising out of or regarding this Consent Judgment.

15 11.11 Validity of Consent Judgment. All PARTIES agree that this Consent Judgment is
16 valid and enforceable and waive any collateral attack on this Consent Judgment or other assertion
17 that this Consent Judgment is contrary to law.

18 11.12 PARTIES' Costs and Fees. The PARTIES shall each pay their own attorneys' fees
19 and costs in this matter. This provision shall not apply to any fees and costs incurred in
20 successfully enforcing this Consent Judgment as set forth in Paragraph 11.4, above.

21 11.13 Entry of Consent Judgment. This Consent Judgment shall be binding and effective
22 on the EFFECTIVE DATE, and the clerk is ordered to enter this Consent Judgment forthwith.

23 11.14 COURT Entry of Consent Judgment. This Consent Judgment shall be submitted to
24 the COURT for entry by the COURT. The PARTIES' submission of the Consent Judgment for
25 entry by the Court shall have no bearing or effect on the Board's authority to bring an
26 administrative civil liability or other administrative enforcement action against the City nor on the
27 Board's right to enter into a separate agreement to settle those administrative claims. If this
28 Consent Judgment is not entered by the COURT, it shall be of no force or effect, and may not be

1 used by the PARTIES, or any other person or entity, for any purpose whatsoever.

2 11.15 Governing Law. The terms of this Consent Judgment shall be governed by the
3 laws of the State of California.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

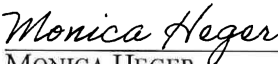
27

28


1 **IT IS SO STIPULATED.**

2
3 Dated: May 17, 2024

ROB BONTA
Attorney General of California
CHRISTIE VOSBURG
Supervising Deputy Attorney General

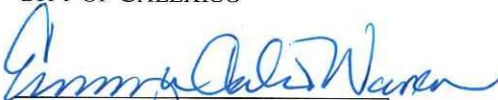
4
5
6 
7 MONICA HEGER
8 MARI MAYEDA
9 Deputy Attorneys General
10 *Attorneys for the People of the State*
11 *of California*

12 Dated: May 17, 2024, 2024

ROB BONTA
Attorney General of California
13 
14 MICHAEL CAYABAN
15 Supervising Deputy Attorney General
16 *Attorneys for Plaintiff State Water*
17 *Resources Control Board*


18 Dated: 05-17-, 2024

CITY OF CALEXICO

19 
20 ESPERANZA COLIO WARREN
21 City Manager

22 Dated: May 17, 2024

CITY OF CALEXICO

23 
24 NICHOLAUS NORVELL
25 WILLIAM SHEPHERD
26 Best Best & Krieger LLP
27 *Attorneys for Defendant City of Calexico*
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED AND ADJUDGED.

Dated: _____, 2024

JUDGE OF THE SUPERIOR COURT