

ORDINANCE NO. 65

ORDINANCE OF DESERT WATER AGENCY ESTABLISHING A WATER CONSERVATION PLAN AND RESTRICTING THE USE OF WATER DURING THREATENED OR EXISTING WATER SHORTAGE CONDITIONS

WHEREAS, Desert Water Agency (hereinafter “Agency”) is a public agency organized under the Desert Water Agency Law, California Water Code Appendix Section 100-1 et seq., to provide water service among other purposes to water users within the boundaries of the Agency; and

WHEREAS, the Agency is authorized by Water Code Appendix Section 100-15 (13) to restrict the use of Agency water during an emergency caused by a drought, or other threatened or existing water shortage, and during such periods to prohibit the waste or the use of Agency water for any purpose other than household uses or such other restricted uses as may be determined by the Agency to be necessary; and

WHEREAS, the Agency is further authorized by Water Code Sections 375-377 to adopt water conservation programs; and

WHEREAS, California is currently in the fourth year of a significant state-wide drought resulting in severe impacts to California’s water supplies and its ability to meet all of the demands for water within the state; and

WHEREAS, Governor Edmond G. Brown, Jr. declared a state-wide emergency on January 17, 2014, and due to continuing dry conditions, a continued state of emergency was declared on April 1, 2015; and

WHEREAS, Water Code Section 1058.5 grants the State Water Resources Control Board the authority to adopt emergency regulations in years when the Governor has declared an emergency based upon state-wide water shortage conditions; and

WHEREAS, on July 15, 2014, the State Water Resources Control Board formally adopted emergency rulemaking to adopt emergency regulations for urban water suppliers; and

WHEREAS, on March 17, 2015, and May 5, 2015, the State Water Resources Control Board formally adopted additional emergency regulations for urban water suppliers due to continuing water shortage conditions; and

WHEREAS, the three sets of emergency regulations adopted by the State Water Resources Control Board prohibit certain types of potable water use, orders all urban water suppliers to implement mandatory conservation measures, and orders water suppliers with 3,000 or more service connections to provide monthly data on water production; and

WHEREAS, the Agency wishes to adopt a water conservation program that implements the requirements set forth in the regulations adopted by the State Water Resources Control Board, and which will provide a framework that can be utilized by the Agency even after the current regulations adopted by the State Water Resources Control Board are no longer in effect if a local water shortage emergency were to arise; and

WHEREAS, the Agency finds and determines that the adoption of the water conservation program set forth herein is necessary to (1) comply with the mandates imposed by the State Water Resources Control Board, (2) protect the health, safety and welfare of the inhabitants of the Agency, (3) assure the maximum beneficial use of the water supplies within the Agency, and (4) ensure that there will be sufficient water supplies to meet the basic needs of human consumption, sanitation and fire protection;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of Desert Water Agency as follows:

Section 1: DEFINITIONS.

- 1.1 "Agency" means Desert Water Agency.
- 1.2 "Board" means the Board of Directors of Desert Water Agency.
- 1.3 "General Manager" means the General Manager of Desert Water Agency.
- 1.4 "Measurable rainfall" means rainfall of 1/4 inch or more during any 24-hour period.
- 1.5 "Waste" means any unreasonable or non-beneficial use of water, or any unreasonable method of use of water, including, but not limited to, the specific uses prohibited and restricted by this Ordinance as hereinafter set forth.
- 1.6 "Water user" means any person, firm, partnership, association, corporation or political entity using water obtained from the water system of Desert Water Agency.
- 1.7 "Water" means water supplied by Desert Water Agency.

Section 2: NOTICED PUBLIC HEARING PRIOR TO MANDATORY CONSERVATION, STAGES 2 THROUGH 5.

Except when an emergency is caused by the breakage or failure of a dam, pump, pipeline or conduit, a noticed public hearing shall be conducted prior to the adoption of Stages 2, 3, 4 or 5 of the Water Conservation Plan as set forth in Sections 3.2, 3.3, 3.4 and 3.5 below. Notice of the time and place of hearing shall be published at least seven days prior to the date of hearing in a newspaper printed, published, and circulated within the area in which the water supply is distributed, or if there is no such newspaper, in any newspaper printed, published and circulated in the County of Riverside.

Section 3: WATER CONSERVATION PLAN STAGES.

3.1 Stage No. 1: Voluntary Conservation and Prohibited Uses.

Stage 1 shall apply whenever normal conditions are in effect. Normal conditions shall be in effect when the Agency is able to meet all the water demands of its customers in the immediate future, and when the State Water Resources Control Board or other regulatory body has not imposed restrictions on the use of water within the Agency. During normal conditions, all water users must continue to use water wisely. The waste or unreasonable use of water is prohibited. Unreasonable use of water shall include, but not be limited to, a use that produces unnecessary runoff onto adjacent property and non-irrigated areas, private and public walkways, roadways, and parking lots or parking structures. It shall also be an unreasonable use of water to irrigate landscapes within 48 hours after measurable rainfall. In addition, the following mandatory restrictions shall apply at all times:

(1) Washing driveways, parking lots, building exteriors, or other exterior hard surfaced areas other than windows, solar panels and tennis courts, or as necessary to protect the public health, shall be prohibited; provided that the use of recycled water and the use of potable water from a bucket, use of a pressure washer, or use of a water broom for such purposes shall be permitted.

(2) Running water shall not be used for washing vehicles. A bucket may be used for the washing of vehicles, and hoses equipped with shutoff nozzles may be used for rinsing.

3.2 Stage 2 Alert: Mandatory Conservation Measures.

When the State Water Resources Control Board or other regulatory body has imposed restrictions on the use of water within the Agency that warrant the restrictions set forth herein, or in the event of a threatened or existing water supply shortage that could prevent the Agency from meeting the water demands of its water users, the Board shall conduct a public hearing to consider declaring a Stage 2 Alert, during which water users shall have the opportunity to present their protests and respective needs to the Board. Upon such declaration the following restrictions shall take effect immediately, in addition to those specified in Section 3.1:

(1) Outdoor irrigation shall be permitted only before 7:00 a.m. and after 7:00 p.m.

(2) Restaurants and other eating establishments shall not provide drinking water to patrons, except upon request.

3.3 Stage 3 Warning: Mandatory Conservation Measures.

When the State Water Resources Control Board or other regulatory body has imposed restrictions on the use of water within the Agency that warrant the restrictions set forth herein, or in the event that a water shortage condition in fact will prevent the Agency from meeting the demands of its water users, following a public hearing as set forth in Section 3.2, during which water users shall have the opportunity to present protests and their respective needs to the Board,

the Board may declare that a Stage 3 Warning condition exists. Upon such declaration, the following water conservation measures shall apply in addition to those set forth in Sections 3.1 and 3.2:

- (1) Outdoor irrigation shall be restricted to no more than four days per week, after 7:00 p.m. and before 7:00 a.m.
- (2) Commercial car washes shall be required to have recirculating water systems or shall drain used water into the sewer system where it can be recycled.
- (3) The use of water for outdoor decorative water features shall be prohibited, unless recirculating water systems are installed and in use.
- (4) Irrigation with potable water outside of newly constructed homes and buildings shall require drip irrigation or micro-irrigation systems as established by the California Building Standards Commission and the Department of Housing and Community Development.

3.4 Stage 4 Emergency: Mandatory Conservation Measures.

When the State Water Resources Control Board or other regulatory body has imposed restrictions on the use of water within the Agency that warrant the restrictions set forth herein, or in the event that a water shortage condition requires a significant reduction in water use, following a public hearing as set forth in Section 3.2, during which water users shall have the opportunity to present protests and their respective needs to the Board, the Board may declare that a Stage 4 Emergency condition exists. Upon such declaration, the following water conservation measures shall apply in addition to those set forth in Sections 3.1, 3.2 and 3.3:

- (1) Outdoor irrigation shall be restricted to Mondays, Wednesdays, and Fridays before 7:00 a.m. and after 7:00 p.m.
- (2) The use of potable water to irrigate ornamental turf within the street medians and within dedicated right of way on each side of a dedicated street shall be prohibited.

3.5 Stage No. 5. Water Allocations.

When the State Water Resources Control Board or other regulatory body has imposed restrictions on the use of water within the Agency that warrant the restrictions set forth herein, or in the event that a water shortage condition requires the Agency to allocate water supplies to water users or warrants a moratorium on new service connections, or both, following a public hearing as set forth in Water Code Sections 350 et seq., the Board may consider adoption of a resolution or ordinance that allocates water deliveries among the Agency's water users, and that imposes penalties for consumption in excess of the allocated amounts. The resolution or ordinance may also, or instead, impose a limit on new water service connections. Violation of the provisions of such resolution or ordinance shall be deemed a violation of this Ordinance, and shall be subject to the enforcement provisions set forth herein.

Section 4: MODIFICATION OF WATER CONSERVATION MEASURES.

The specific requirements of each mandatory conservation stage identified in this Ordinance shall be effective upon adoption by the Board following a public hearing; provided that the Board may modify or amend such requirements at the time of adoption upon a showing of the need for such modification or amendment.

Section 5: IMPLEMENTATION AND TERMINATION OF MANDATORY COMPLIANCE STAGES.

The General Manager of the Agency shall monitor the supply and demand for water on a regular basis to determine the level of conservation required by the implementation or termination of the Water Conservation Plan stages set forth in this Ordinance, and shall notify the Board of the necessity for the implementation or termination of each stage. Each declaration of the Board implementing or terminating a water conservation stage shall be published at least once in a newspaper of general circulation, and shall remain in effect until the Board otherwise declares, as provided herein.

Section 6: EXCEPTIONS.

The General Manager of the Agency is hereby authorized to allow exceptions from the application of any provision of this Ordinance, due to exceptional circumstances, if the General Manager determines that the application of a provision would either: (a) cause an unnecessary and undue hardship to the water user or to the public; or (b) jeopardize the health, sanitation, fire protection or safety of the water user or of the public. Such exceptions may be granted only upon application therefor. Upon granting any such exception, the General Manager may impose any conditions the General Manager determines to be appropriate in the circumstance.

Section 7: CRIMINAL PROCEEDINGS FOR VIOLATION.

The Board hereby determines that, pursuant to Water Code Section 377, it shall be a misdemeanor for any water user to use or apply water contrary to or in violation of any mandatory restriction or requirement established by this Ordinance and, upon conviction thereof, that water user shall be punished by imprisonment in the County jail for not more than 30 days or by a fine of not more than \$1,000, or by both such fine and imprisonment.

Section 8: CIVIL PENALTIES AND ENFORCEMENT.

In addition to criminal penalties, violators of the mandatory provisions of this Ordinance shall be subject to civil penalties and enforcement action by the Agency staff, as follows:

8.1 First Violation.

For a first violation, the Agency staff may serve a written complaint to impose civil penalties to the water user or account holder who is violating the provisions of this Ordinance or violating the water use restrictions imposed by the State Water Resources Control Board. Upon receipt of the complaint for civil penalty, the water user or account holder shall have seven days to request, in writing, a hearing. If no hearing is requested or at the hearing it is determined that

the water user or account holder has committed a violation, a civil penalty of \$50 for a first violation at a single family residence and \$100 for a first violation at a multi-family residential, commercial or institutional establishment may be levied.

8.2 Second Violation.

For a second violation of this Ordinance or water use restrictions imposed by the State Water Resources Control Board within any 12-month period, the Agency staff may serve a written complaint to impose civil penalties on the water user or account holder with written notice thereof, and the water user or account holder shall have the same period of time set forth in Section 8.1 to request a hearing. For a second violation within any 12-month period the civil penalty shall be \$100 at a single family residence and \$200 at a multi-family residential, commercial or institutional establishment.

8.3 Third Violation.

For a third violation of this Ordinance and for each subsequent violation within any 12-month period, the water user or account holder shall be subject to civil penalties and shall have the same opportunity to request a hearing in the manner set forth in Section 8.1. For a third and each subsequent violation within any 12-month period, the civil penalty shall be \$250 at a single family residence and \$500 at a multi-family residential, commercial or institutional establishment.

8.4 Collection of Civil Penalties.

Civil penalties may be billed to the violating water user by separate invoice, or may be added to the water user's invoice for water service as a separately itemized charge as determined by Agency staff. Civil penalties that are not paid may become a lien on the affected property in a manner provided by law to secure payment for water service. In addition, the Agency staff shall be authorized to discontinue water service for any violation of this Ordinance and for failure to pay a civil penalty within the period of time provided by the Agency staff for payment of invoices for water service. In the event that service is terminated, such service shall remain terminated for a period of at least 48 hours, unless such period is extended by action of the Board of Directors. A charge shall be imposed for reconnection and restoration of service in the amount normally charged by the Agency for restoration of service. Such restoration of service shall not be made until the General Manager has determined that the water user has provided adequate assurances that future violations of this Ordinance by such water user will not occur.

8.5 Service of Complaint.

The complaint for civil penalties may be served personally, by certified mail or by affixing a copy of the complaint to the front entry of the property. The complaint shall contain, in addition to the facts of the violation, a statement of the possible civil penalties for the violation and a statement informing the water user of his or her right to a hearing.

8.6 Hearing and Appeal.

Within seven days of receipt of a complaint for civil penalties, the water user may request a hearing to present evidence that a violation did not occur. Within seven days after receipt of a written request for a hearing, the Agency will schedule a hearing for the water user to present evidence that a violation did not occur. The hearing shall take place no sooner than 30 days after the complaint has been issued to the violator, unless requested at an earlier date by the violator. If the hearing is held by the Board of Directors, the decision issued at the time of the hearing shall be final. If the hearing is held by the General Manager or his designee, within seven days after issuance of a decision, the water user or account holder may file a request with the Agency to appeal the decision to the Board. Upon receipt of such request, the Board shall schedule the matter for consideration at a regular or special meeting of the Board within thirty days after receiving the request, and at that time, or thereafter, shall render its decision which shall be communicated to the water user in writing, and shall be final.

Section 9: CUMULATIVE REMEDIES.

The remedies for violations set forth in this Ordinance shall be cumulative to any other remedies available to the Agency according to law.

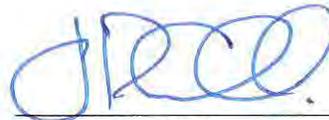
Section 10: SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such determination shall not affect the validity of the remaining provisions of this Ordinance.

Section 11: PUBLICATION.

The Secretary of the Board of Directors of the Agency shall attest to the adoption of this Ordinance and shall cause the same to be published in a newspaper of general circulation which is printed, published and circulated in the Agency within ten days after its adoption.

ADOPTED this first day of March, 2016.



James Cioffi, President

ATTEST:



Kristin Bloomer, Secretary-Treasurer

I, Sylvia Baca, Assistant Board Secretary of the Desert Water Agency DO HEREBY CERTIFY that the foregoing Ordinance No. 65 was duly adopted at a regular meeting of the Board of Directors of the Desert Water Agency on March 1, 2016 by the following roll call vote:

AYES: DIRECTORS: OYGAR, BLOOMER, STUART, CIOFFI
NOES: DIRECTORS: NONE
ABSENT: DIRECTORS: EWING
ABSTAIN: DIRECTORS: NONE

Dated: March 1, 2016



Sylvia Baca
Assistant Board Secretary