

ORDINANCE NO. 72

AN ORDINANCE OF DESERT WATER AGENCY ESTABLISHING A WATER SHORTAGE CONTINGENCY PLAN INCLUDING REGULATIONS 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, after the historic 2012-2016 drought, the California Legislature enacted several laws in 2018 to advance long-term water use efficiency as a way to demonstrate conservation as a way of life; and

WHEREAS, urban water suppliers are required to prepare, adopt and submit to the California Department of Water Resources a Water Shortage Contingency Plan and conduct a Drought Risk Assessment every five years; and

WHEREAS, the Agency wishes to adopt a Water Shortage Contingency Plan that meets requirements set forth in the regulations adopted by the Department of Water Resources and State Water Resources Control Board in implementation of long-term water-use efficiency, and which will provide a framework for managing supplies in shortage conditions; and

WHEREAS, the Agency finds and determines that the adoption of the Water Shortage Contingency Plan set forth herein is necessary to (1) comply with State mandates, (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 1/10 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, LEVELS 2 THROUGH 6.

Except when an emergency is caused by the breakage or failure of Agency infrastructure or by a malevolent act, a noticed public hearing shall be conducted prior to the adoption of Level 2, 3, 4, 5 or 6 of the Water Shortage Contingency 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 LEVELS.

3.1 Level No. 1: Normal Conditions

Level 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.

(1) Water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or parking structures is prohibited.

(2) Using any water in a fountain or other decorative water feature is prohibited, unless the water recirculates.

(3) Applying water to driveways, sidewalks, concrete or asphalt is prohibited unless to address immediate health and safety needs. Reasonable pressure washer or water broom use is permitted.

(4) Spray irrigation of outdoor landscapes during and within 48 hours after rainfall of 0.10 inches is prohibited.

(5) Using a hose to wash a vehicle, windows, or solar panels is prohibited unless an automatic shut-off nozzle or pressure washer is used.

(6) Broken sprinklers shall be repaired within five business days of notification by the Agency, and leaks shall be repaired as soon as practical.

(7) Hotels will provide guests the option of choosing not to have towels and linens laundered daily.

(8) Draining and refilling of private swimming pools is discouraged, unless necessary for health and safety or repairs.

(9) The Agency will discourage overseeding.

(10) The Agency will provide rebates for landscape efficiency.

(11) The Agency will provide rebates on indoor water use efficiency.

(12) The Agency will offer water use surveys/audits.

3.2 Level 2: Alert

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 Level 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 water use is prohibited during daylight hours for spray irrigation except for leak checks or with an Agency-approved conservation alternative plan.
- (2) Restaurants and other eating establishments shall not provide drinking water to patrons, except upon request.
- (3) The Agency will discourage overseeding.
- (4) The Agency will expand its public information campaign.
- (5) The Agency will increase water waste patrols.
- (6) The Agency will reduce hydrant and dead-end line flushing.

3.3 Level 3: Warning

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 Level 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 water use is allowed only three days a week for spray irrigation (Monday, Wednesday and Friday).
- (2) Drip or subterranean irrigation is allowed seven days a week, during non-daylight hours.
- (3) Commercial nurseries are to use water only on alternate days during non-daylight hours for outside operations.
- (4) Decorative ponds, non-irrigation system golf course water hazards, fountains, and other waterscape features are not to be filled or replenished.
- (5) No filling of swimming pools or landscaping ponds unless necessary for health and safety or leak repair.
- (6) Commercial car washes must use recycled water or a recirculating water systems.
- (7) Spray irrigation of medians and parkways is prohibited.
- (8) The Agency will encourage counties, cities, Homeowners Associations (HOAs) and other entities to suspend code enforcement and fines for brown turfgrass areas.
- (9) The Agency will strengthen customer billing messages with the use of comparisons.
- (10) The Agency will implement water use audits targeted to key customers to ensure compliance with directives.
- (11) The Agency will expand rebate programs.

3.4 Level 4: Critical

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 Level 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) Turfgrass landscapes may not be watered except with subterranean irrigation or recycled water.
- (2) No new turfgrass landscaping shall be installed.

- (3) The Agency shall consider implementing its drought rate surcharge.
- (4) The agency will expand its public information campaign.

3.5 Level No. 5: Urgent

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 Level 5 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, 3.3 and 3.4:

- (1) Watering turfgrass is prohibited.
- (2) The use of misting systems is prohibited.
- (3) Turfgrass at parks and school grounds may water with recycled water or not at all.
- (4) Golf course greens and tees may be watered no more than two times per week during non-daylight hours with recycled water or not at all.
- (5) Trees, desert plants and shrubs may be watered only with drip, subterranean or non-adjustable bubbler irrigation systems during non-daylight hours.
- (6) Outdoor water use for grading or development is prohibited.
- (7) The Agency will impose a moratorium or net zero demand on new connections.
- (8) The Agency will not issue new construction meters, and service through construction meters will not be available.

3.6 Level No. 6 – Emergency Rationing

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 Level 6 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, 3.3, 3.4 and 3.5:

- (1) The Agency will implement mandatory rationing.
- (2) Outdoor water use is prohibited.
- (3) Restaurants must use disposable cups, plates, and utensils.
- (4) Commercial nurseries shall discontinue all watering and irrigation.
- (5) Watering of livestock is permitted as necessary.

In addition, 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 Level 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 LEVELS.

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 Shortage Contingency Plan Levels set forth in this Ordinance, and shall notify the Board of the necessity for the implementation or termination

of each Level. Each declaration of the Board implementing a Water Shortage Contingency Plan Level 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 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 Executive Committee of the Board 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. The decision of the Executive Committee following the hearing 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.


Section 12: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption and shall supersede the provisions of Ordinance No. 65.

ADOPTED this 15th day of June, 2021.


Kristin Bloomer, President

ATTEST:


Joseph K. Stuart, Secretary-Treasurer