

ORDINANCE NO. 1422.5

AN ORDINANCE OF THE COACHELLA VALLEY WATER DISTRICT IMPOSING REVISED RESTRICTIONS ON WATER USE TO COMPLY WITH STATEWIDE DROUGHT REGULATIONS

WHEREAS, in April 2015, Governor Edmund G. Brown Jr. issued Executive Order B-29-15, effective immediately and in addition to other requirements, mandating a 25% statewide reduction in urban water use. The Governor directed the State Water Resources Control Board (“SWRCB”) to adopt regulations to achieve the statewide 25% reduction; and

WHEREAS, in May of 2015, the SWRCB adopted an Emergency Regulation (the “Regulation”) to implement the Executive Order which mandated that urban water suppliers, such as the Coachella Valley Water District (“CVWD”), reduce their total potable water production by defined percentages. The Regulation imposes certain requirements on “urban water suppliers” that have water shortage contingency plans in place. “Urban water suppliers” are defined as suppliers providing water to over 3,000 municipal customers or providing over 3,000 acre-feet per year to municipal customers. CVWD meets the definition of an “urban water supplier” since it provides water to approximately 100,000 customers. Under the Regulation, the conservation savings for all urban water suppliers was allocated across nine tiers of increasing levels of residential water use (R-GPCD) to reach the statewide 25% reduction mandate. Agencies in Tier 9, including CVWD, having residential water use above 215 R-GPCD, were required to reduce water use by 36% compared to its 2013 water use; and

WHEREAS, CVWD has a Water Supply Reliability and Water Shortage Contingency Planning document (“Plan”) in place as part of its 2010 Urban Water Management Plan. CVWD adopted Stage 2 of its Plan by way of Ordinance No. 1414 on August 12, 2014. On May 12, 2015, CVWD adopted Ordinance No. 1419 by which CVWD moved from Stage 2 of its Plan to Stage 3 in order to adopt a conservation standard of 36% and also to adopt additional mandatory water use restrictions. On November 10, 2015, CVWD adopted Ordinance No. 1422 in order to implement revised and additional restrictions for Stage 3. On February 23, 2016, CVWD adopted Ordinance No. 1426 in order to implement revised and additional restrictions for Stage 3.; and

WHEREAS, on May 9, 2016 Governor Brown issued a new Executive Order (B-37-16) that is focused on long-term water use efficiency. The order directs the California Department of Water Resources (DWR) to work with the SWRCB to develop new water use targets as part of a permanent framework for urban water agencies. Additionally, the order directs the SWRCB to extend the Regulation through the end of January 2017; and

WHEREAS, on May 18, 2016, the SWRCB adopted revisions to the Regulation which transitions the mandates away from demand-based regulations. Under the new Regulation, individual districts will self-certify the level of available water supplies assuming three additional dry years and the level of conservation necessary to assure adequate supply over that time; and

WHEREAS, on May 24, 2016, CVWD adopted Ordinance 1422.3 to adopt revised and additional restrictions, moving from Stage 3 to Stage 2 and lifting the Drought Budgets and Penalties; and

WHEREAS, it is anticipated that the new self-certification process will result in a reduction in the emergency mandatory reduction target imposed on CVWD by the SWRCB. As a result, it is anticipated that it will not be necessary to continue to impose the Drought Budgets and Drought Penalties unless or until the emergency mandatory target imposed on CVWD by the SWRCB exceeds 25% at some time in the future. Such 25% target is not anticipated as of the date of this Ordinance; and

WHEREAS, the SWRCB has reinforced the regulation related to penalties for homeowners' associations or community service organizations that block, stifle, or threaten homeowners from reducing or eliminating the watering of vegetation or lawns during a declared drought emergency in violation of existing law. This Ordinance includes such restrictions; and

WHEREAS, the purpose of this Ordinance is to continue to impose restrictions and fines and penalties, which were originally adopted in Ordinances 1414, 1419, 1422, and 1426 and to impose revised, reduced, and additional water use restrictions in order to meet the State's mandate; and

WHEREAS, Water Code Section 31026 provides that CVWD has the power to restrict the use of water during any emergency caused by drought, or other threatened or existing water shortage, and to prohibit the wastage of water or the use of water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by CVWD and may prohibit use of such water during such periods for specific uses which CVWD may from time to time find to be nonessential. CVWD has the authority to impose monetary fines and penalties and take other applicable actions pursuant to Water Code Sections 350-358, 375-378, and 31029; and

BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE COACHELLA VALLEY WATER DISTRICT AS FOLLOWS:

1. Incorporation of Recitals. All of the foregoing Recitals are true and correct and the Board so finds and determines. The Recitals set forth above are incorporated herein and made an operative part of this Ordinance.

2. Public Hearing. The Board conducted a public hearing on November 8, 2016, at 9 a.m., or as soon thereafter as practicable, at the Steve Robbins Administration Building, 75-515 Hovley Lane East, Palm Desert.

3. Stage 2. The Board hereby modifies the provisions of Stage 2 which is the first mandatory level of water use reduction in the Plan, as revised and implemented by this Ordinance. CVWD shall notify the public of this determination by public proclamations. Upon such proclamation, due and proper notice shall be deemed to have been given to each and every person supplied water within CVWD.

4. Comprehensive List of Restrictions In order to set forth in one document all of the requirements for this current Stage 2, this Ordinance shall encompass all of the restrictions which shall be in effect until such time as the SWRCB rescinds said Emergency Regulation. Therefore, as of the effective date of this Ordinance, this Ordinance shall supersede Ordinances Noes. 1414, 1419, 1422 and 1426 and Ordinances Noes. 1414, 1419, 1422 and 1426 shall be of no further force or effect.

5. Mandatory Restrictions. Effective immediately upon adoption of this Ordinance, the following mandatory prohibitions shall be in effect for Stage 2, except where necessary to address an immediate health, safety and sanitation need or to comply with a term or condition in a permit issued by a state or federal agency:

- (a) Application of any water supply to outdoor landscapes during and within 48 hours after measurable rainfall is prohibited.
- (b) Irrigation with any water of ornamental turf on public street medians is prohibited.
- (c) Irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established in the California Building Standards Commission and the Department of Housing and Community Development is prohibited.
- (d) Broken sprinklers shall be repaired within 24 hours of notification by CVWD, and leaks shall be repaired as soon as practicable.
- (e) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased is prohibited.
- (f) Hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. Hotels and motels shall prominently display notice of this option in each guestroom using clear and easily understood language.
- (g) Applying any water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures is prohibited.
- (h) Using a hose to wash an automobile, windows, solar panels, and tennis courts, except where the hose is equipped with a shut-off nozzle, is prohibited.
- (i) Applying any water to any hard surface including, but not limited to, driveways, sidewalks, and asphalt is prohibited.
- (j) Prohibit outdoor irrigation on Mondays and Thursdays from December 1 to March 31.
- (k) Homeowner's Associations, community service organizations or similar entities are prohibited from enforcing provisions of their rules and regulations that prohibit reducing or eliminating the watering of vegetation or lawns during a declared drought emergency.

6. Recommended Activities.

- (a) The irrigation and preservation of trees and shrubs is strongly encouraged.

- (b) CVWD strongly encourages counties, cities, Homeowners' Associations ("HOA's") and other enforcement agencies to suspend code enforcement and fines for brown turf areas and to otherwise comply with new State laws regarding limitations on such enforcement.
- (c) CVWD will work with private pumpers, canal water and non-potable water users to reduce water use.
- (d) Use of pool covers when not in use, especially during summer months, is strongly encouraged.
- (e) Draining and refilling of private swimming pools is discouraged, unless necessary for health and safety or leak repair.
- (f) HOA's are strongly encouraged to adopt and enforce water use restrictions in their rules and regulations.
- (g) Over-seeding is strongly discouraged.
- (h) Planting of spray irrigated annual flower beds is strongly discouraged.
- (i) Installation of irrigation smart controllers is strongly encouraged.

7. Fines for Noncompliance. The following fines will be imposed when a customer violates the Mandatory Restrictions set forth in Section 5 of this Ordinance.

- (a) First Violation – Written notice.

Any notice required under this Ordinance may include, for example and not by way of limitation, the following information: (i) the water conservation stage and restrictions that are in effect; (ii) actions required for compliance in order to prevent future violations; and (iii) penalties and enforcement actions which may be imposed for future violations.

- (b) Second Violation within a twelve-month period– A fine will be imposed in the amount of \$50.00 which will be added to the customer's water service bill.

Any customer receiving a Second Violation, may at his or her option successfully complete CVWD Water School, in lieu of paying the \$50.00 fine.

- (c) Third Violation within a twelve-month period – A fine will be imposed in the amount of \$100.00 which will be added to the customer's water service bill.

- (d) Fourth Violation and any subsequent violation within a twelve –month period – A fine will be imposed in the amount of \$200.00 which will be added to the customer's water service bill.

- (e) Fifth Violation and any subsequent violation within a twelve –month period – A fine will be imposed in the amount of \$500.00 which will be added to the customer's water service bill.

(f) Sixth Violation and any subsequent violation within a twelve –month period – A fine will be imposed in the amount of \$1000.00 which will be added to the customer’s water service bill.

(d) Seventh Violation and any subsequent violation within a twelve –month period – A fine will be imposed in the amount of \$2000.00 which will be added to the customer’s water service bill.

In the event of any violation after the seventh violation within a twelve-month period, the General Manager, or his/her designee, may determine, in his/her reasonable discretion, that the continued violation of the restrictions set forth in this Ordinance warrant the initiation of procedures for the termination of water service pursuant to CVWD’s Regulations Governing Domestic Water Service (“Regulations”), as they may be amended from time to time. In addition to any other remedies provided in this Ordinance or available under applicable law, CVWD may alternatively seek injunctive relief in the Superior Court or take enforcement action, including discontinuing or appropriately limiting water service by the installation of a flow restricting device to any customer, for violations of this Ordinance. All remedies provided herein shall be cumulative and not exclusive.

8. Drought Volumetric Penalties. Effective June 1, 2016, volumetric penalties are no longer in effect. However, they can be reinstated if CVWD is required by the SWRCB to reduce water usage by an amount greater than 25%. In such a case, CVWD will require customers to reduce their usage by the percentage number which is the difference between the SWRCB target percentage and the percentage of 25%. For example, if CVWD is required in the future to reduce usage by 30%, CVWD will then implement volumetric drought penalties to encourage that additional 5% reduction. If a customer fails to limit outdoor water usage by said percentage, then penalties will be imposed in addition to normal Budget Based Tiered Rates. Any drought volumetric penalty imposed pursuant to this Ordinance may be collected on a customer’s water bill. Any drought volumetric penalty shall be applicable to water used by a customer in violation of this Ordinance during the customer’s first complete billing cycle after the adoption of this Ordinance.

The following table describes the drought volumetric penalties:

Tier 1: Excellent	Indoor budget of 8 Ccf	No Penalty
Tier 2: Efficient	With Assigned percentage less water use	No Penalty
	Without Assigned percentage less water use	\$ 2.51 per Ccf above reduction goal
Tier 3: Inefficient	100 – 175% of budget	\$ 5.00 per Ccf or portion thereof
Tier 4: Excessive	175 – 300% of budget	\$10.00 per Ccf or portion thereof
Tier 5: Wasteful	Over 300% of budget	\$20.00 per Ccf or portion thereof

9. CVWD Rules and Regulations. The procedures for written notice, imposition of fines or penalties, termination of service, and appeal rights shall be the same such procedures as set forth in CVWD’s rules and regulations including, but not necessarily limited to, Part 6 – Credit and Billing and Part 7 – Termination and Restoration of Service.

10. Purpose of Restrictions and Fines. The regulatory purposes of imposing the requirements and financial penalties, as set forth in this Ordinance, are to conserve water, deter waste and unreasonable use of water, encourage efficiency, and to help cover the costs incident to the investigation, inspection, and administration of the enforcement of this Ordinance.

11. Future Stage(s). In accordance with Section 5.3.2 of the Plan, the General Manager hereby determines that it is necessary to further implement Stage 2 of the Plan. The Board hereby authorizes the General Manager, or his/her designee, to make a determination as to when it may be necessary to move to a further Stage, or a lesser Stage, in the Plan. Following said determination by the General Manager, the Board will consider an ordinance, or any other applicable action, to determine whether, and to what extent, to adopt the determination of the General Manager. Said determinations by the General Manager, and then the Board, may also include a determination that certain prohibitions in this Ordinance are best practices which should stay in effect regardless of what Stage, or any Stage, that may be in effect.

12. CEQA. The Board finds that adopting and enforcing mandatory restrictions on water use in order to comply with SWRCB requirements is exempt from the California Environmental Quality Act (“CEQA”) pursuant to State CEQA Guidelines Section 15268 and Public Resources Code Section 21080(b)(1) as a ministerial action. The Regulations mandate that each urban water supplier implement all requirements and actions of the stage of its water shortage contingency plan that imposes mandatory restrictions on outdoor irrigation. Therefore, an action to implement a particular phase of a water shortage contingency plan is not a discretionary action and as such it is statutorily exempt from CEQA.

13. Publication Following Adoption. The President of the Board of Directors shall sign this Ordinance and the Secretary of the Board of Directors shall attest thereto, and this Ordinance shall be in full force and effect immediately upon adoption. Within 15 days after adoption of this Ordinance, a summary of this Ordinance shall be published with the names of the Directors voting for and against this Ordinance and a certified copy of the full text of this Ordinance, along with the names of those Directors voting for and against this Ordinance, shall be posted in the CVWD offices.

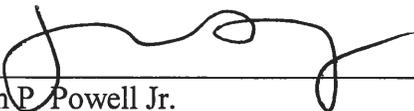
14. Severability. If any section, subsection, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of this Ordinance shall not be affected thereby. The Board hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof be held invalid.

ADOPTED this day of March 28, 2017, by the Board of Directors of the Coachella Valley Water District by the following vote:

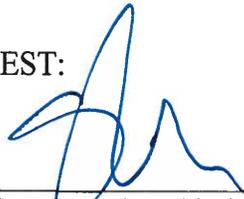
AYES: Powell, Nelson, O’Dowd, Estrada

NOES: Bianco

ABSENT: None



John P. Powell Jr.
President of the Board of Directors

ATTEST:


Sylvia Bermudez, Clerk of the Board
Coachella Valley Water District

