

ORDINANCE NO. 2016-01

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY ALLOCATING WATER PURSUANT TO THE WATER AUTHORITY'S DROUGHT MANAGEMENT PLAN AND ESTABLISHING PENALTIES FOR VIOLATIONS OF ALLOCATIONS

Whereas, paragraph (11) of section 5 of the County Water Authority Act, in part, states:

“The board of directors, as far as practicable, shall provide each of its member agencies with adequate supplies to meet their increasing and expanding needs. If available supplies become inadequate to fully meet the needs of its member agencies, the board shall adopt reasonable rules, regulations, and restrictions so that the available supplies are allocated among its member agencies for the greatest public interest and benefit.”

Whereas, on May 25, 2006, the Water Authority Board of Directors adopted Resolution No. 2006-16, approving and adopting the Water Authority's Drought Management Plan (currently referred to as the Water Shortage and Drought Response Plan), which includes a supply allocation methodology to be applied when, due to drought, supplies available to the Water Authority are or may become insufficient to permit the Water Authority to fully meet the needs of its member agencies. On April 26, 2012, the Board of Directors revised the Supply Allocation Methodology in section 5 of the Water Shortage and Drought Response Plan.

Whereas, on March 27, 2008, the Water Authority Board of Directors approved for release a Model Drought Response Conservation Program Ordinance (“Model Ordinance”) for use by its member agencies. The Model Ordinance was intended to assist member agencies in updating local conservation and drought response ordinances and provide some regional consistency of conservation measures and drought response. Since then, all the Water Authority member agencies have adopted regulations governing the conservation of water and establishing drought response actions that are substantially consistent with the Model Ordinance. The regulations adopted by the Water Authority's member agencies establish water management requirements necessary to conserve water, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, prevent unreasonable use of water, and prevent unreasonable method of use of water within their respective territories.

Whereas, on July 28, 2008, the Water Authority Board of Directors adopted Resolution No. 2008-11 establishing procedures and policies for administration of the Drought Management Plan Supply Allocation Methodology. After adoption of Resolution No. 2008-11, the Metropolitan Water District of Southern California terminated its Interim Agricultural Water Program, pursuant to which certain agricultural water users were subject to different reductions than full service municipal and industrial customers. In response, the Water Authority established a Transitional Special Agricultural Water Rate program (TSAWR program) by the adoption of Ordinance No. 2008-08. The TSAWR program was subsequently amended by Ordinance No. 2009-07, Ordinance No. 2011-05, and Ordinance No. 2014-02. On March 26, 2015, the Water Authority Board of Directors directed that the TSAWR be extended for an additional five years, through December 31, 2020. Under the TSWAR program, agricultural

water users pay lower rates and during times of shortage receive greater supply cutbacks than municipal and industrial users. Municipal and industrial users receive a water supply benefit, including the benefit of placing Water Authority water not used by member agencies into carryover storage.

Whereas, on June 23, 2011, the Water Authority Board of Directors adopted Resolution No. 2011-16, approving and adopting the Water Authority's 2010 Urban Water Management Plan, which, among other things, included a shortage contingency analysis that referenced the Drought Management Plan and Model Ordinance, and indicated that penalties for excessive water use may be implemented by the Water Authority Board of Directors to encourage conservation and deter violation of allocations or other restrictions.

Whereas, article X, section 2 of the California Constitution declares that waters of the State are to be put to beneficial use, that waste, unreasonable use, or unreasonable method of use of water be prevented, and that water be conserved for the public welfare. Conservation of current water supplies and minimization of the effects of water supply shortages that are the result of drought are essential to the public health, safety, and welfare. Regulation of the time of certain water use, manner of certain water use, design of rates, method of application of water for certain uses, and installation and use of water-saving devices provide an effective and immediately available means of conserving water. Therefore California Water Code sections 375 et seq. authorize water suppliers to adopt and enforce regulations intended to conserve water and manage water supplies.

Whereas, since 1991 the Water Authority and its member agencies have successfully implemented numerous programs to diversify and enhance regional water supplies, including the Emergency Storage Project, additional carry-over storage at San Vicente Reservoir, the Quantification Settlement Agreement that includes the historic agreement for transfer of conserved water from the Imperial Irrigation District and from the lining of the All American and Coachella Canals, increased regional conservation, and the water purchase agreement for desalinated product water from the Carlsbad Desalination Project.

Whereas, on January 17, 2014, the Governor proclaimed a state of emergency to exist throughout California because of severe drought conditions. On April 25, 2014, the Governor issued a second proclamation declaring that the drought emergency continued. In July 2014, the State Water Resources Control Board adopted emergency regulations as authorized by Water Code section 1058.5, which had been amended effective March 1, 2014 because of the ongoing drought. On April 1, 2015, the Governor issued Executive Order B-29-15 instituting emergency actions and mandatory water use restrictions for California because of the ongoing drought. On May 5, 2015 the State Water Resources Control Board, pursuant to Water Code section 1058.8 and Executive Order B-29-15, issued additional emergency regulations, including mandatory water use restrictions.

Whereas, on November 13, 2015, the Governor issued Executive Order B-36-15 calling for an extension of urban water use restrictions until October 31, 2016, should drought conditions persist through January 2016. Executive Order B-36-15 also directs the State Water Resources Control Board to consider modifying the restrictions to address uses of potable and non-potable water, as well as to incorporate insights gained from the existing restrictions. On February 2, 2016 the State Water Resources Control Board, pursuant to Water Code section

1058.8 and Executive Order B-36-15, extended the emergency regulation and maintained the mandatory water use restrictions, but also provided urban water suppliers with the ability to receive credit for significant investments in new, local, drought-resilient sources of potable water supply. On March 10, 2016, the State Water Resources Control Board posted adjusted member agency conservation standards that were reduced due to the certification of the Claude “Bud” Lewis Carlsbad Desalination Project as a drought-resilient supply and obtaining credit under the emergency regulation.

Whereas, this ordinance is not intended to impose restrictions on use of non-potable water or on the use of potable water for non-discretionary purposes, such as industrial process water.

Whereas, on April 14, 2015, the Metropolitan Water District of Southern California adopted a resolution implementing its Water Supply Allocation Plan, establishing a regional shortage level, and establishing an allocation surcharge as a water conservation program pursuant to Water Code section 375. The resolution declared that a regional water shortage within Metropolitan’s service area continues, and further declared a Water Supply Condition 3, with allocations set at Regional Shortage Level 3 to be effective July 1, 2015 through June 30, 2016.

Whereas, on May 14, 2015, the Water Authority adopted Ordinance 2015-02, AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY ALLOCATING WATER PURSUANT TO THE WATER AUTHORITY’S DROUGHT MANAGEMENT PLAN, IMPOSING ADDITIONAL REQUIREMENTS UPON WATER AUTHORITY MEMBER AGENCIES RELATING TO THE USE AND CONSERVATION OF WATER, AND ESTABLISHING PENALTIES FOR VIOLATIONS OF ALLOCATIONS AND REQUIREMENTS.

Whereas, intervening modifications to the State Water Control Board emergency regulations require rescission of Ordinance 2015-02, and its replacement by this ordinance.

Whereas, current circumstances necessitate rescission of the declaration of a Regional Drought Response Level 2 Drought Alert and continuation of the Mandatory Supply Cutback Stage of the Water Authority’s Water Shortage and Drought Response Plan.

Whereas, the Water Authority previously determined that adoption of the Drought Management Plan was exempt from the California Environmental Quality Act. This ordinance is similarly exempt from the California Environmental Quality Act as an action to implement the Drought Management Plan in response to the Governor’s declaration of a drought emergency and imposition by the State Water Resources Control Board of mandatory water use restrictions. Public Resources Code Section 21080.b.4 and CEQA Guidelines Section 15269.c.

Therefore, the Board of Directors of the San Diego County Water Authority does ordain as follows:

1. Ordinance 2015-02 is hereby rescinded.

2. The July 2014 declaration of a Regional Drought Response Level 2 Drought Alert is hereby rescinded.
3. The Mandatory Supply Cutback Stage of the Water Authority's Water Shortage and Drought Response Plan remains in place.

4. Due to drought conditions existing in California, the allocation of water by the Metropolitan Water District of Southern California, the current and reasonably anticipated potential for further allocation reductions by Metropolitan, and the need to preserve water in storage in accordance with the Water Authority's Emergency and Carryover Storage Program, the Water Authority Board of Directors declares that it is necessary to allocate water as provided in this ordinance.

5. The Municipal and Industrial Supply Allocation as shown on Exhibit A to this ordinance is approved for the period of July 1, 2015 through June 30, 2016. The General Manager is directed to implement a Municipal and Industrial Water Supply Allocation in accordance with the Supply Allocation Methodology of the Water Shortage and Drought Response Plan as amended on April 26, 2012, except as otherwise provided in this ordinance, including making adjustments in response to changed circumstances.

6. The TSAWR program as adopted by Ordinance No. 2008-08 and amended by Ordinance No. 2009-07, Ordinance No. 2011-05, and Ordinance No. 2014-02 is extended and continued to December 31, 2020. The TSAWR as shown on Exhibit A to this ordinance is approved for the period of July 1, 2015 through June 30, 2016. The General Manager is directed to implement allocations of water for participants in the TSAWR program in accordance with the requirements of that program, except as otherwise provided in this ordinance, including making adjustments in response to changed circumstances.

7. (a) Any member agency that has ordered water from the Water Authority in an amount that exceeds its annual allocation, but is less than or equal to 115 percent of its annual allocation, as of June 30 of any year in which this ordinance is in effect shall pay a penalty in the amount of \$1,480 for each acre foot of excess delivery. In addition, any member agency that has ordered water in an amount that exceeds 115 percent of its annual allocation as of June 30 of any year in which this ordinance is in effect shall pay a penalty in the amount of \$2,960 per acre foot of excess delivery. The penalties under this section are separate, distinct, and additional to any amounts imposed under any Water Authority ordinance setting rates and charges for the delivery and supply of water, use of facilities, and provision of services. The penalties under this section apply to allocation amounts established under section 2 or section 3 of this ordinance.

(b) The General Manager is authorized to determine and assess the penalties established by subdivision (a).

(c) The General Manager shall give written notice of a penalty by any of the following methods:

(i) Personal service on the general manager or clerk of the member agency;

(ii) Certified or first class mail, postage prepaid, addressed to the general manager or clerk of the member agency;

(iii) Inclusion in any transmission of an invoice sent to the member agency for water or services provided to the member agency by the Water Authority.

(d) The written notice shall include a statement of the amount of the penalty, a brief description of the basis for the determination and assessment, the date upon which payment of the penalty is due (which shall not be less than 30 or more than 60 days from the date of the notice), and the date by which the member agency may file a request for hearing pursuant to subdivision (e) of this section (which date shall not be less than 10 or more than 15 days from the date of the notice).

(e) A member agency may protest the assessment of a penalty by filing a request for hearing. The request for hearing must be in writing, specify in detail the grounds for the protest, and be accompanied by payment of the penalty. The request for hearing must be received by the Clerk of the Board by the date specified in the written notice described in subdivision (d). If a member agency fails to file a request for a hearing in accordance with the provisions of this subdivision, the determination of the General Manager as stated in the written notice shall be deemed the final order of the Water Authority.

(f) A hearing on a protest will be conducted according to the following procedures.

(i) As soon as practicable after receiving the written request for a hearing, the Water Authority will set a date, time, and place for hearing before a hearing officer. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the hearing date notice must be made at least 10 days prior to the date of the hearing. The failure of a member agency to receive such properly addressed notice of the hearing shall not affect the validity of any proceedings under this subdivision. Service by first class mail, postage prepaid, shall be effective on the date of mailing.

(ii) The hearing will be conducted by a hearing officer designated by the General Manager. The hearing officer may be a Water Authority employee, employee of a member agency other than the member agency filing the protest, or an independent contractor. The hearing officer is vested with discretionary authority to make independent decisions on protests. The hearing officer shall not have been involved in the determination or assessment of the penalty that is the subject of the protest. The protesting member agency may request the General Manager disqualify a hearing officer for reasons of actual bias, prejudice or financial conflict of interest.

(iii) The hearing officer shall conduct an orderly fair hearing and accept evidence on which persons would commonly rely in the conduct of their ordinary business affairs, however, the formal rules of evidence and procedure applicable to judicial proceedings shall not apply. Cross-examination of witnesses is not required, but may be permitted as deemed appropriate by the hearing officer. The written notice given pursuant to subdivision (d) shall be prima facie evidence of the grounds for and amount of the penalty. The hearing officer may

accept testimony by declaration under penalty of perjury. At the request of the protesting member agency, the hearing officer shall permit the hearing to be conducted by submission of written declaration and authenticated documents alone.

(iv) The hearing officer may reduce or waive the penalty only upon a finding that the member agency ordered water in excess of its allocation amount despite good faith, reasonable efforts to comply with this ordinance, or there was a miscalculation of the amount of the penalty. The hearing officer shall make findings based on the record of the hearing and make a written decision based on the findings. The hearing officer shall preserve all exhibits submitted by the parties and shall serve the decision by first class mail on the Water Authority and the protesting member agency within 10 working days after the hearing. The decision of the hearing officer is final and conclusive, subject only to judicial review. The notice of the decision shall inform the parties that the decision is subject to judicial review as provided in paragraph (v) of this subdivision and that an action or proceeding must be commenced not later than 90 days of the date of the notice of decision.

(v) The decision of the hearing officer is subject to judicial review pursuant to Code of Civil Procedure section 1095.4. Any action or proceeding for review of a hearing officer decision must be filed within the time period specified in Code of Civil Procedure section 1094.6.

(vi) This section supersedes the provisions of section 5 of Resolution 2008-11.

8. Any amounts collected under section 5 will be expended for water conservation or payment of penalties imposed by Metropolitan.

9. This ordinance is adopted pursuant to the authority of the County Water Authority Act and Water Authority Administrative Code section 5.00.040, and as a conservation program pursuant to California Water Code sections 375 – 378.

10. The restrictions established by this ordinance shall remain in effect until June 30, 2016, unless earlier terminated or extended to a later date by action of the board of directors. Termination of restrictions does not affect liability for penalties for violations that occurred before the date of termination.

11. This ordinance is effective upon adoption.

12. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, independent and severable provision and such holding shall not affect the validity of the remaining portions hereof.

13. The Clerk of the Board is directed to publish this ordinance or a summary prepared by the General Counsel pursuant to Section 1.00.040 of the Administrative Code.

PASSED, APPROVED AND ADOPTED, this 24th day of March, 2016.

AYES: Unless noted below all Directors voted aye.

NOES: None.

ABSTAIN: None.

ABSENT: Arant, Boyle, Brady, Evans (P), Hilliker, Morrison,
Simpson, Watton




Mark Weston, Chair

ATTEST:



Jim Madaffer, Secretary

I, Melinda Cogle, Clerk of the Board of the San Diego County Water Authority, certify that the vote shown above is correct and this Ordinance No. 2016-01 was duly adopted at the meeting of the Board of Directors on the date stated above.



Melinda Cogle, Clerk of the Board

San Diego County Water Authority
Initial FY 2016 Member Agency Supply Allocations
(in acre-feet)

Member Agency	Municipal and Industrial Supply Allocation ^{1,2}	Transitional Special Agricultural Water Rate Supply Allocation ³
Carlsbad M.W.D.	19,501	0
Del Mar, City of	1,116	0
Escondido, City of	20,828	2,750
Fallbrook P.U.D.	8,588	4,089
Helix W.D.	32,559	0
Lakeside W.D.	3,628	0
Oceanside, City of	28,017	432
Olivenhain M.W.D.	21,792	111
Otay W.D.	33,499	0
Padre Dam M.W.D.	13,288	390
Camp Pendleton M.C.B.	602	0
Poway, City of	12,106	40
Rainbow M.W.D.	11,801	9,701
Ramona M.W.D.	4,833	1,246
Rincon Del Diablo M.W.D.	7,352	168
San Diego, City of	196,199	79
San Dieguito W.D.	6,693	0
Santa Fe I.D.	10,970	0
South Coast WD	342	0
Sweetwater Authority	17,198	0
Vallecitos W.D.	13,651	1,107
Valley Center M.W.D.	9,495	17,124
Vista I.D.	17,789	85
Yuima M.W.D.	854	3,429
Total	492,701	40,751

Footnote

1) Developed using Water Authority Board adopted Water Shortage and Drought Response Plan allocation methodology and calculated using two-year (FY 2013 and FY 2014) based period demand

2) Available Water Authority supplies include; initial MWD allocation, IID transfer, canal lining transfers, and Carlsbad Desalination Project production starting Fall-2015

3) Based on TSAWR program guidelines, allocation linked to MWD supply cutback (Level 3- 15%) and calculated using single-year (FY 2014) base period demand