

OLIVEHURST PUBLIC UTILITY DISTRICT

RESOLUTION NO. 2292

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE OLIVEHURST PUBLIC UTILITY DISTRICT
DECLARING A DROUGHT EMERGENCY AND AUTHORIZING PENALTIES FOR
EXCESSIVE POTABLE WATER CONSUMPTION WITH A MANDATORY 36%
OVERALL WATER USAGE REDUCTION**

WHEREAS, California is facing one of the most severe droughts on record with record low snowpack in the Sierra Nevada mountains, decreased water levels in most of California's reservoirs, reduced flows in the state's rivers and shrinking groundwater supplies; and

WHEREAS, on January 17, 2014, the Governor of the State of California proclaimed a State of Emergency to exist throughout California due to severe drought conditions; and

WHEREAS, the Governor's proclamation acknowledged the State of California is experiencing extremely dry conditions that have persisted since 2012; and

WHEREAS, the Governor's proclamation also noted the snowpack in California's mountains is approximately 20 percent of the normal average for this date; and

WHEREAS, it is highly unlikely California will accrue adequate precipitation to improve the water supply conditions before the 2015-2016 precipitation season; and

WHEREAS, the Governor's proclamation called upon all Californians to reduce their water usage by 20 percent; and

WHEREAS, the Governor's proclamation called upon local urban water suppliers and municipalities to implement any local water shortage contingency plans immediately in order to avoid or forestall outright restrictions that could become necessary later in the drought season; and

WHEREAS, pursuant to Executive Order B-29-15 issued on April 1, 2015, the Governor of the State of California has ordered the State Water Resource Control Board (SWRCB) to impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016; and

WHEREAS, the SWRCB has issued regulations requiring Olivehurst Public Utility District (OPUD or District) to achieve a 36% reduction in water usage as compared to 2013 monthly consumption, and these regulations require compliance starting the month of June 2015; and

WHEREAS, OPUD retail customers have been targeted for a 36% reduction based on the high per capita/per person water usage for the summer months of July through September 2014; and

WHEREAS, existing and projected conditions may result in a reduction of available water supplies to OPUD in an amount significant enough that the District must mandate water use restrictions on its retail customers; and

WHEREAS, OPUD reduced water usage between June 2014 and April 2015 by 16% as compared to the base year (2013) and needs to increase this reduction by an additional 20% beginning June 2015 in order to meet the SWRCB requirements; and

WHEREAS, customers with average use below the targeted reduction will not be expected to reduce their usage as much as customers with average use above the targeted reduction; and

WHEREAS, OPUD will require water users with above average use to achieve greater water use reductions than the 36% overall requirement;

WHEREAS, the SWRCB has declared fines of up to \$10,000 per day for violations of reporting and/or compliance in water savings; and

WHEREAS, OPUD is a Public Utility District organized under the Public Utility District Act, (Pub. Util. Code, § 15500 *et seq.*); and

WHEREAS, Public Utilities Code Section 16461 authorizes a public utility district to acquire, construct, own, operate, and control works for supplying its inhabitants with light, water, power, heat, transportation, telephone service, or other means of communication, or means for the disposition of garbage, sewage, or refuse matter; and

WHEREAS, California Water Code Sections 375 *et seq.* authorize special districts that supply water to adopt and enforce a comprehensive water conservation program; and

WHEREAS, the OPUD Board of Directors has declared the existence or threat of a drought emergency or other threatened or existing water shortage, and that finding is prima facie evidence of the fact or matter so found, and such fact or matter shall be presumed to continue unchanged unless and until a contrary finding is made by the Board by resolution or ordinance; and

WHEREAS, the OPUD Urban Water Management Plan provides that during a threatened or actual water shortage, the Board may declare a water conservation stage and impose measures to address the shortage, including apportioning available water supply among OPUD customers in an equitable manner with regard to public health and safety; and

WHEREAS, pursuant to Public Utilities Code Section 16461 and Water Code Sections 375, *et seq.*, OPUD may restrict the use of District water during the drought emergency or other water shortage condition and may prohibit the wastage of District water or the use of District water during such periods for any purpose other than household uses or other restricted uses as the District determines to be necessary; and

WHEREAS, pursuant to Water Code section 376 and Government Code section 6061, OPUD must publish in a newspaper of general circulation any ordinance setting forth the restrictions, prohibitions, and exclusions determined to be necessary under Water Code section 375 within 10 days after its adoption.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Olivehurst Public Utility District as follows:

Section 1. Declaration of Drought Emergency

- A. Pursuant to Water Code sections 375, et seq. and OPUD's 2010 Urban Water Management Plan, and for the reasons set forth herein, the District hereby declares the existence of a Drought Emergency within the boundaries of the Olivehurst Public Utility District; and
- B. Pursuant to Water Code sections 375, et seq. and OPUD's 2010 Urban Water Management Plan and Public Utilities Code section 16461, the Board may therefore adopt mandatory restrictions and prohibitions on the delivery and consumption of water within the service area so that the water supply can be conserved for the greater public benefit.

Section 2. Imposition of Drought Emergency Restrictions and Penalties

- A. To ensure that all District retail customers receive the maximum reasonable and equitable water supply possible under current conditions, the Board is imposing the water use restrictions and penalties set forth in Exhibit A.
- B. The water use restrictions and penalties provided in Exhibit A are in addition to those prohibited uses previously adopted by the State of California, as well as those restrictions previously adopted by the OPUD Board of Directors and set forth in OPUD's Urban Water Management Plan.
- C. The water use restrictions and penalties set forth in Exhibit A shall also apply to any new retail customer or any new retail connection to District water service that occurs while the Drought Emergency remains in effect.

Section 3. Board Authority to Change Drought Emergency Restrictions and Penalties

- A. At any time during this Drought Emergency and after approval at a noticed public meeting or hearing unless otherwise required or permitted by law, the Board may change or eliminate one or more of the water use restrictions set forth in Exhibit A to this Resolution.

Section 4. Prohibition on Water Waste; Penalties

- A. The District may impose the penalties set forth in Exhibit A to this Resolution on any customer who violates the water use restrictions provided in Exhibit A.
- B. The Board of Directors directs staff to monitor and evaluate the reduction of water usage and if (a) compliance with the 36% mandated conservation has not been achieved, or (b) the District observes greater levels of conservation than required, the District will consider amending the penalties and correlated consumption levels.
- C. Nothing in this Resolution prohibits or limits OPUD's authority to impose any other penalty for violation of this Resolution that is authorized by federal, state or local laws, regulations and ordinances.

Section 5. Propositions 218/26/13 Compliance to Impose Restrictions and Penalties

- A. The Board finds that Drought Emergency restrictions and penalties will both send an appropriate signal to customers to conserve water and assist OPUD in paying any fines levied by the State Water Resources Control Board for failure to achieve mandated conservation. Additionally, the funding provided by the penalties set forth in Exhibit A may be used to fund other water conservation efforts and enforcement. The restrictions and penalties described in Exhibit A are not rates and are therefore not subject to the requirements of Proposition 218. Furthermore, the restrictions and penalties in Exhibit A are consistent with the requirements of Proposition 26. Lastly, the restrictions and penalties in Exhibit A are not property-related charges and are therefore not subject to Proposition 13.

Section 6. Delegation of Authority

- A. The General Manager and his designees are directed to take all actions necessary to carry out the purpose and intent of this Resolution, and to continue to monitor water shortage conditions and report to the Board on the status and changes of those conditions.
- B. The General Manager is also directed to monitor water use and water supply conditions for the purpose of recommending to the Board whether the water shortage stage can be terminated or if conditions have worsened and require the imposition of additional water use restrictions.

Section 7. Posting and Publication.

- A. The District Secretary is directed to post a copy of this Resolution on the OPUD bulletin board and on OPUD’s website within 3-business days after its enactment.
- B. The District Secretary is directed to publish a copy of this Resolution in a newspaper of general circulation within 10 days after its adoption.

PASSED AND ADOPTED this 21st day of May 2015.

OLIVEHURST PUBLIC UTILITY DISTRICT

President, Board of Directors

ATTEST:

District Clerk & ex-officio Secretary

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**

Legal Counsel

EXHIBIT A

Residential Penalties for Excess Water Consumption in Drought Emergency	
Monthly Consumption CCF (1 CCF = 748 gallons)	Penalty for Excess
0-26	\$0
27-45	\$25
46 and above	\$60

Commercial Industrial Institutional Penalties for Excess Water Consumption in Drought Emergency (Includes Parks, Schools, Streetscape, Apartments, Trailer Parks, Public Facilities etc.)	
Monthly Consumption Percent of Account's 2013 Consumption	Penalty for Excess
0-75%	\$0
76% to 90%	10% of the monthly bill or \$25, whichever is greater.
91% and above	30% of the monthly bill or \$60, whichever is greater

Note 1: Commercial/industrial accounts without landscaping are not subject to excess water consumption penalties. These accounts are encouraged to continue to use water efficiently, but OPUD does not wish to create a negative economic impact on the local economy by requiring a reduction in process water.

Note 2: Commercial/industrial accounts with less than or equal to the minimum consumption correlated to the admin charge on the account will not be subject to excess water consumption penalties. Generally, OPUD will not require those accounts already substantially conserving to conserve even more.

Example: Acme Public School used 1000 CCF of water in July 2013 to irrigate their 10-acre school site. In July of 2015, Acme Public School used 800 CCF of water. The charge to Acme Public school is $\$1.20 \times 800 \text{ CCF} (\$960) + 10\% \text{ of } \$960 (\$96)$ for excess water consumption in a Drought Emergency. The total bill in June 2015 would be approximately \$1056.

If Acme Public School had used 1000 CCF in July 2015 (no conservation compared to 2013), then the water charge would be \$1560 or \$1200 for water plus a \$360 penalty for excess consumption in a Drought Emergency.