

ORDINANCE NO. 2016-01

**ORDINANCE OF THE PHELAN PIÑON HILLS
COMMUNITY SERVICES DISTRICT,
COUNTY OF SAN BERNARDINO, CALIFORNIA,
ESTABLISHING CONSERVATION MEASURES**

WHEREAS, the Board of Directors of Phelan Piñon Hills Community Services District ("District") does not dispute findings of the State of California that there is a critical water situation in the State caused by continued overdraft of groundwater resources; and

WHEREAS, District's the Board of Directors has determined that it is essential to conserve water in order to continue to meet the health and safety of the properties and residents of the District.

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of Phelan Piñon Hills Community District as follows:

SECTION 1. PURPOSE, INTENT AND FINDINGS.

1.1 The District is a public agency created under the Community Services District Law, California Government Code Section 61000 et seq., to, among other purposes, provide water service to the water users within the boundaries of the District.

1.2 Article X, Section 2, of the California Constitution declares that the general welfare requires that water resources be put to beneficial use; waste or unreasonable use, or unreasonable method of use, of water be prevented; and conservation of water be fully exercised with a view to the reasonable and beneficial use thereof.

1.3 The District is authorized by Government Code Section 61100(a) and Water Code Sections 375-377, 1009, and 71610.5 to restrict the use of District water during any emergency caused by overdraft, drought or other threatened or existing water shortage, and to prohibit the waste of District water or the use of District water during such periods, for any purpose other than household uses or such other restricted uses as may be determined to be necessary by the District and may prohibit use of such water during such periods for specific uses which the District may from time to time find to be nonessential.

1.4 The District is further authorized by Government Code Sections 61100(a), 61045(b), 61060(a)-(b), and 25120 et seq., and Water Code Sections 375-377, 1009, and 71276-71281 to prescribe and define by ordinance those restrictions, prohibitions and exclusions it may determine to be necessary to restrict the use of District water during threatened or existing water shortages, and is authorized by Government Code Sections 61064(a) and 25132 and Water Code Section 377 to declare violations of this Ordinance to be a misdemeanor.

1.5 The District's Board of Directors, at a duly-noticed public hearing, considered the following evidence regarding water supplies in the District:

- a. The water production records and consumption of water;
- b. The Water Master Plan for the District;
- c. The stipulated judgment, statement of decision and judgment in City of Barstow v. City of Adelanto (Riverside Superior Court Case No. 208568), in which it has been determined that there is an overdraft of the Mojave River Basin Area and each of its respective Subareas, including but not limited to the Subarea of which Phelan Piñon Hills Community Services District is a part;
- d. Current problems existing with respect to the overuse and waste of water provided by the District to certain customers in connection with various uses thereof, including but not limited to irrigation of landscaping and other outdoor vegetation, lawns, and other growth; and
- e. Other relevant evidence.

1.6 It is in the best interest of the public and the customers and users of District water services, for the Board of Directors to exercise its rights in the operation and use of its water system and providing of water, and to find that the prohibitions in this Ordinance are necessary to restrict the use and misuse of water and to prohibit waste of water, until and subject to further action by the District.

1.7 It is therefore the intent of the District's Board of Directors to establish by the Ordinance those procedures required to maximize the beneficial use of its available water resources to the extent to which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented and the conservation of such water is to be extended with a view to the reasonable and beneficial use thereof in the interests of the people of the community served by the District.

1.8 The purpose of the Ordinance is to provide the District with additional tools to control the amount of water utilized within the District's service area, particularly to control potential wasteful uses of scarce water resources when water supplies are limited. The Board of Directors hereby finds that the Ordinance will have a beneficial effect by ensuring that there will be adequate water supplies for all District customers while protecting the public health and safety. Based on the foregoing, the Board of Directors has determined that there is no possibility that the Ordinance have any potential to cause significant effects on the environment, and that, pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000, et seq.) ("CEQA"), the Ordinance does not constitute a "project" under Sections 15061 and 15378 of the State CEQA Guidelines, and is therefore exempt from environmental review.

SECTION 2. DEFINITIONS.

2.1 "District" shall mean the Phelan Piñon Hills Community Services District.

2.2 "Board" shall mean the Board of Directors of the District.

2.3 "General Manager" shall mean that person appointed by the Board pursuant to California Government Code Sections 61050-61051 to manage the activities of the District or his or her designee.

2.4 "Water" shall mean that water supplied by the District.

2.5 "Overdraft" shall mean that wherein the current total annual consumptive use of water in the Mojave Basin Area exceeds the long-term average annual natural water supply to the Basin Area or Subarea.

2.6 "Consumption" or "Consumptive Use" shall mean the total quantity of water used by a water user.

2.7 "Water User" shall mean any person, firm, partnership, association, corporation or political entity using water obtained from the water system of the District.

2.8 "May" shall mean an action which is discretionary.

2.9 "Shall" or "Must" shall mean an action which is mandatory.

2.10 "Water Supply Shortage" shall mean any water shortage caused by drought or any other threatened or existing water shortage, disaster or facility failure, earthquake, extended loss of electrical power, pipeline failure or other condition which results in or threatens to result in the District's inability to meet the water demands of its customers.

2.11 "Waste of Water" shall mean any unreasonable or non-beneficial use of water or any unreasonable method or use of water, including but expressly not limited to, the specific uses, conditions, actions or omissions prohibited or restricted by this Ordinance, as hereinafter set forth.

SECTION 3. WATER SUPPLY PLAN CREATED.

3.1 Stage No. 1. Normal Conditions: Conservation Measures. Normal conditions shall be in effect when the District is able to meet all the water demands of its customers in the immediate future. During normal conditions, all water users shall continue to use water wisely, to prevent the waste or unreasonable use of water, and to reduce water consumption to that necessary for ordinary domestic and commercial purposes. No water user shall allow water to be wasted or misused. All of the following conservation measures

are hereby imposed by the Board and any violation thereof is hereby determined to be a waste of water and is hereby prohibited, and any violation thereof may be enforced by the District pursuant to Section 6 through 12 of this Ordinance.

a. The watering of lawns, grass, shrubbery, ground cover or other landscaping shall not occur at any time between the hours of 9:00 A.M. and 6:00 p.m. during the months of June through October; and shall not occur at any time between 3:00 P. M. and 9:00 A.M. during the remaining months of November through May.

b. The use of water for any purpose which allows flooding or runoff, including but not limited to the flow of water onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures is prohibited.

c. The application of water to driveways, sidewalks, parking lots, or other hard and/or impervious surfaces is prohibited.

d. Allowing the waste of water through leaks or breaks in the users' water system or devices is prohibited. All leaks or breaks shall be repaired immediately upon discovery.

e. The use of a hose that dispenses potable water to wash a motor vehicle is prohibited, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use.

f. Water shall not be used in a fountain or other decorative water feature, unless such water is part of a recirculating system.

g. 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.

h. All new construction, including residential, commercial and industrial, shall install water conserving devices as required by law.

i. Water used for cooling systems must be recycled to the extent possible.

j. Evaporation resistant covers and water recirculation systems are required for all swimming pools and hot tubs of at least 600 gallons capacity.

k. Operators of hotels and motels shall post notices urging guests to conserve water and shall provide guests with the option of choosing not to have towels and linens laundered daily. Notice of this option shall be prominently displayed in each guestroom using clear and easily understood language.

l. All current water customers are encouraged to install low flush toilets, shower heads, flow reducers, and faucet aerators.

m. The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall is prohibited.

n. The irrigation with potable water of ornamental turf on public street medians is prohibited.

o. The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development is prohibited.

p. Exterior landscape plans for all new multi-family, commercial and industrial development shall provide for timed irrigation systems and shall require the use of drought resistant varieties of plants, shrubs, and turf. Such plans shall be presented to and approved by the District prior to issuance of a water service letter. Areas required for turf shall be restricted to no more than 20% of the total landscaped area.

3.2 Stage No. 2. Threatened Water Supply Shortage. In the event of an Executive Order from the Governor's Office, or the adoption of emergency regulations from the State Water Resources Control Board, or a threatened water supply shortage which could affect the District's ability to provide water for ordinary domestic and commercial uses, the Board shall hold a noticed public hearing after giving at least ten days notice by publication in a newspaper of general circulation. At said public hearing, consumers of the water supply shall have the opportunity to testify concerning the threatened water supply shortage and for the District to determine required conservation measures to include restrictions of use and/or requirements for state of art irrigation systems, automatic controllers, use of drought resistant plants, shrubs, and drought resistant turf. The Board may, by Resolution, declare a threatened water supply shortage condition to exist, and may impose any or all of the following additional conservation measures, the violation of which may be enforced by the District pursuant to Sections 6 through 12 of this Ordinance:

a. Agricultural Irrigation. Persons receiving water from the District who are engaged in agricultural practices, whether for the purpose of crop production, growing of commercial ornamental plants or maintaining existing nursery stock shall provide, maintain and use irrigation equipment and practices which are the most efficient possible. The General Manager may require the owner or operators of these systems to prepare a plan describing their irrigation practices and equipment, including but not limited to, an estimate of the efficiency or the use of water on their properties. After review and approval by the General Manager, the agricultural irrigation plan shall be considered subject to inspection and enforcement by the District.

b. **Commercial Facilities.** Commercial and industrial facilities shall, upon request of the General Manager, provide the District with their plan to insure conservation of water at their facilities. The District will provide these facilities with information regarding the average monthly water use by the facility for the last two year period. The facility shall provide the District with a plan to conserve or reduce the amount of water used by that percentage deemed by the Board of Directors to be necessary under the circumstances. After review and approval by the General Manager, the water conservation plan shall be considered subject to inspection and enforcement by the District.

c. No customer of the District, or other person acting on behalf of or under the direction of a customer, shall cause or permit the use of water for irrigation of landscaping or other outdoor vegetation, plantings, lawns, or other growth, to exceed the amount required to provide reasonable irrigation of same, and shall not cause or permit any unreasonable or excessive waste of water from said irrigation activities or from watering devices or systems. The free flow of water away from an irrigated site shall be presumptively considered excessive irrigation and a waste of water.

d. Public and private parks, golf courses, swimming pools, and school grounds which use water provided by the District shall only use water for pool filling between the hours of 10:00 p.m. and 6:00 a.m.

e. All residential, public, and recreational swimming pools, of all size, shall use evaporation resistant covers and shall recirculate water. Any swimming pool which does not have a cover installed during periods of non-use shall be considered a waste of water.

f. The irrigation of exterior vegetation shall be conducted no more than two (2) days per week. The irrigation of exterior vegetation on properties with an even-numbered physical address shall only be permitted on Tuesdays and Saturdays of each week; the irrigation of exterior vegetation on properties with an odd-numbered physical address shall only be permitted on Wednesdays and Sundays of each week. The irrigation of exterior vegetation at other than the above days and times shall be considered a waste of water.

g. The water consumption practices of water users who have not achieved their individual conservation requirement (as established by the Board by separate Resolution adopted pursuant to Section 3.2 above) may be reviewed, restricted, penalized, and enforced by the District.

3.3 Stage No. 3. Water Supply Shortage. In the event of foreseeable water supply shortage, the Board shall hold a public hearing after giving public notice as deemed reasonable by the General Manager under the circumstances. At any public hearing held under this Section, customers of the District shall have the opportunity to protest and to present their respective needs to the Board. Public notice will follow enactment of the water supply shortage by publishing notice of said action in a newspaper of general

circulation. After declaration of any water supply shortage under this Section, the Board may impose the following additional conservation measures, and any other rules and regulations deemed necessary by the Board and/or General Manager, and their violation may be enforced by the District pursuant to Sections 6 through 12 of this Ordinance:

- a. Watering of parks, school grounds and golf courses is prohibited.
- b. Lawn watering and landscape irrigation is prohibited.
- c. Washing of vehicles is prohibited, except when done by commercial vehicle wash equipment using recycled or reclaimed water.
- d. Filling or adding water to swimming pools, wading pools, spas, ornamental ponds, fountains and artificial lakes is prohibited.
- e. No new construction meter permits shall be issued by the District
- f. All existing construction meters shall be removed and/or locked.
- g. Watering of livestock shall only be permitted as necessary.

3.4 Stage No. 4. Water Supply Shortage Emergency. Conservation measures under this stage are mandatory and are meant to result in an approximate 50% reduction in District-wide average water use. In the event of an unforeseeable water supply shortage, the General Manager is authorized to declare a water shortage emergency, subject to the ratification by the Board of Directors at a public hearing held within 72 hours of such declaration, or within such additional time as may be reasonable and necessary under the circumstances. Under this stage, all water use shall be limited to human and animal consumption only until the water shortage emergency is alleviated. The Board and/or General Manager may enforce a violation thereof pursuant to Sections 6 through 12 of this Ordinance.

SECTION 4. IMPLEMENTATION AND TERMINATION OF MANDATORY COMPLIANCE STAGES. The General Manager shall monitor the supply and demand for water on a daily basis to determine the level of conservation required by the water supply shortage or to recommend termination of the water conservation stages, 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 5. EXCEPTIONS.

5.1 Application for Exception Permit. The General Manager may grant permits for uses of water otherwise prohibited under the provisions of this Ordinance if he finds and

determines that special circumstances make compliance impossible, or that restrictions herein would:

a. Emergency - Cause an emergency condition affecting the health, sanitation, fire protection or safety of the water user or of the public.

b. Hardship - Cause an unnecessary and undue hardship to the water user or the public.

Such exceptions may be granted only upon written application therefor. Upon granting such exception permit, the General Manager may impose any conditions he determines to be just and proper.

5.2 Appeal to Board.

a. Deadline - Any person whose application for an exception permit is denied by the General Manager may appeal the denial to the Board. The applicant shall file a written appeal not later than ten (10) days following issuance of the General Manager's decision.

b. Hearing - The appeal shall be scheduled for the next regular meeting of the Board; provided that, the Board may continue the appeal hearing in order to carry out an investigation of the dispute and/or to receive additional information relating to the dispute.

c. Decision of the Board - The Board may affirm or deny any appeal, and may impose any and all conditions that the Board determines to be reasonable and necessary under the circumstances. The decision of the Board shall be final. Should the Board not render a decision within thirty (30) days of submittal of the appeal to the Board, this failure to act shall be deemed to be a denial of the appeal unless both parties have agreed to extend the resolution period.

SECTION 6. INSPECTION. Authorized employees of the District may, after proper identification and notice, during reasonable hours, inspect any facility having a water conservation plan, and may enter onto private property for the purpose of observing the operation of any water conservation device, irrigation equipment or water facility, and to investigate possible violations of this Ordinance. The investigation shall be made with consent of the owner or tenant of the property. If consent is refused, the District may apply to the Superior Court for a warrant pursuant to California Code of Civil Procedure Section 1822.50, et seq.

SECTION 7. NOTICE.

7.1 First Violation. For a first violation, written notice shall be given to the customer and/or property owner personally or by regular mail.

7.2 Subsequent Violations. If the penalty assessed is a surcharge for a second or third violation, notice may be given by regular mail.

7.3 Violations Involving Installation of Flow-Restrictors or Discontinuance of Water Service. If the penalty assessed is, or includes, the installation of a flow restrictor or the discontinuance of water service to the customer for any period of time, notice of the violation shall be given in the following manner:

a. By giving written notice thereof to the occupant and/or property owner personally; or

b. If the occupant and/or property owner is absent from his/her place of residence and from his/her assumed place of business, by leaving a copy with some person of suitable age and discretion at either place, and sending a copy through the United States mail addressed to the occupant and/or owner at his/her place of business or residence; or

c. If such place of residence and business cannot be ascertained, or a person of suitable age or discretion cannot be located, then by affixing a copy in a conspicuous place on the property where the failure to comply is occurring and also by delivering a copy to a person there residing, if such person can be found, and also sending a copy through the United States mail addressed to the occupant at the place where the property is situated and to the owner, if different.

d. Form of Notice. All notices provided for in this Section shall contain, in addition to the facts of the violation, a statement of the possible penalties for each violation and a statement informing the occupant/owner of his/her right to a hearing on the violation.

SECTION 8. HEARING.

8.1 General Manager Hearing. Any customer or property owner, against whom a penalty is levied pursuant to this Ordinance, shall have a right to a hearing. A written request for a hearing before the General Manager shall be filed with the General Manager within ten (10) business days after notification by the District of the alleged violation.

8.2 Appeal. The customer or property owner may appeal the General Manager's decision to the Board. Such appeal shall be filed within ten (10) business days of issuance of the General Manager's decision. The appeal shall be scheduled at the next regularly scheduled meeting of the Board; provided that, the Board may continue the appeal hearing in order to carry out an investigation of the dispute and/or to receive additional information relating to the dispute. The customer or property owner may appear and present any evidence in support of his/her position to the Board.

8.3 Decision of the Board. The Board may affirm, reverse or modify the decision of the General Manager, in its discretion. The decision of the Board shall be final. Should the Board not render a decision within thirty (30) days of submittal of the appeal to the Board, this failure to act shall be deemed to be a denial of the appeal unless both parties have agreed to extend the resolution period.

SECTION 9. ENFORCEMENT. Violators of the mandatory provisions of this Ordinance shall be subject to surcharge and other enforcement rights of the District, as follows:

9.1 First Violation: For a first violation, the District shall issue a written notice of violation to the water user violating the provisions of this Ordinance. The notice shall be given pursuant to the requirements of Section 7 herein.

9.2 Second Violation: \$250.00 Surcharge. For a second violation of this Ordinance within a 6-month period, or for failure to comply with the notice of violation within the period stated, a surcharge of up to \$250.00 is hereby imposed for the meter through which the wasted water was supplied.

9.3 Third Violation: \$500.00 Surcharge and/or Installation of Flow Restrictor. For a third violation of this Ordinance within a 12-month period, or for continued failure to comply within 30 days after notice and imposition of second violation sanctions, a monthly penalty surcharge in the maximum amount of \$500.00 is hereby imposed for the meter through which the wasted water was supplied and will continue until the violation is corrected to the satisfaction of the District. In addition to the surcharge, the District may, at its discretion, install a flow-restricting device at such meter with a one-eighth inch orifice for services up to one and one-half inch size, and comparatively sized restrictors for larger services, on the service of the customer at the premises in which the violation occurred for a period of not less than 48 hours. The charge to the customer for installing a flow-restricting device shall be based upon the size of the meter and the actual cost of installation but shall not be less than that provided in the District's Rules and Regulations. The charge for removal of the flow-restricting device and restoration of normal service shall be as provided in the District's Rules and Regulations.

9.4 Subsequent Violations: Discontinuance of service. For any fourth and/or subsequent violation of this Ordinance within 24 calendar months after the first violation as provided in Section 9.1. hereof, the penalty surcharge provided in Section 9.3. hereof shall be imposed and the District may discontinue water service to that customer at the premises or to the meter where the violation occurred. The charge for reconnection and restoration of normal service shall be as provided in the Rules and Regulations of the District. Such restoration of service shall not be made until the General Manager of the District has determined that the water user has provided reasonable assurances that future violations of this Ordinance by such user will not occur.

SECTION 10. INJUNCTION. In addition to the remedies set forth in this Ordinance, the District may file a civil action to compel compliance with this Ordinance, including but expressly not limited to, an action to enjoin any pending or future violations of the Ordinance, or for the issuance of an order stopping or disconnecting a service if the charges for that service are unpaid at the time specified in the Ordinance.

SECTION 11. ENFORCEMENT OFFICER. The General Manager is hereby declared and appointed as the enforcement officer of this Ordinance, and shall be empowered to take such other actions as authorized herein, or as may otherwise be authorized by the Board or be reasonably necessary, for enforcement of the Ordinance.


SECTION 12. RESERVATION OF RIGHTS. All remedies set forth in this Ordinance are herein declared to be cumulative and non-exclusive, and shall not preclude the District from enforcing any other rights or remedies to discontinue service and/or otherwise enforce this Ordinance or any other rules and regulations of the District.

SECTION 13. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decisions shall not affect the validity of the remaining portions of this Ordinance.

SECTION 14. PUBLICATION AND POSTING. The Secretary of the Board is hereby directed to cause a summary of this Ordinance to be published at least five (5) days prior to the date of adoption hereof in a newspaper of general circulation printed and a copy of the full text must be posted at the District office at least five (5) days prior to the meeting. The full text of this Ordinance must be published within ten (10) days after adoption with the names of the directors voting for and against the adoption, and must likewise be posted at the District office.

SECTION 15. EFFECTIVE DATE. This Ordinance supersedes Ordinance No. 2015-02 adopted by the Board on July 1, 2015, and shall become effective immediately upon its adoption.

APPROVED AND ADOPTED this 16th day of March, 2016.



President of the Phelan Piñon Hills
Community Services District and
of the Board of Directors thereof.

STATE OF CALIFORNIA)
)
COUNTY OF SAN BERNARDINO)


I, Kimberly Ward, Secretary of the Board of Directors of the Phelan Piñon Hills Community Services District, do hereby certify that the foregoing Ordinance, being Ordinance No. 2016-01, was duly adopted by the Board of Directors of said District at a regular meeting of said Board held on March 16, 2016, and that it was so adopted by the following vote:

AYES: Brandon, Morrissette, Roberts, Whalen

NOES: Pace

ABSENT:

ATTEST:



Secretary of the Phelan Piñon Hills
Community Services District and
of the Board of Directors thereof.

SEAL