

## **RESOLUTION NO. 2016-02**

### **RESOLUTION OF THE BOARD OF DIRECTORS OF THE PHELAN PINON HILLS COMMUNITY SERVICES DISTRICT IMPOSING STAGE TWO MANDATORY RESTRICTIONS ON WATER USE IN ORDER TO COMPLY WITH STATEWIDE DROUGHT REGULATIONS**

WHEREAS, on January 17, 2014, Governor Jerry Brown issued a proclamation declaring a State of Emergency due to drought conditions. On April 25, 2014, the Governor issued an Executive Order calling for a redoubling of efforts to conserve water and directed the State Water Resources Control Board ("SWRCB") to adopt emergency regulations.

WHEREAS, on July 15, 2014, the SWRCB adopted Resolution No. 2014-0038 which adopted Emergency Regulations For Statewide Urban Water Conservation ("Regulations") which became effective July 28, 2014.

WHEREAS, in response to the Regulations, the District's Board of Directors ("Board") adopted Ordinance No. 2015-01, effective February 18, 2015, which moved the District to Stage 1 of the District's Water Shortage Contingency Planning document ("Plan"). The Plan was put in place as part of the District's revised 2010 Urban Water Management Plan.

WHEREAS on March 17, 2015, the SWRCB adopted Resolution No. 2015-0013 which expanded the Regulations and which became effective on March 27, 2015.

WHEREAS, On April 1, 2015, the Governor issued Executive Order B-29-15 which mandates a 25% statewide reduction in urban water use and directed the SWRCB to impose restrictions to achieve the statewide 25% reduction.

WHEREAS, on April 7, 2015, the SWRCB proposed a mandatory Regulatory Framework that apportions water reductions according to consumption. The SWRCB revised the apportionment of water reductions on April 18 and April 28th. The conservation savings for all urban water suppliers were allocated across nine tiers of increasing levels of residential gallons per capita per day water use (R-GPCD) to reach the statewide 25 % reduction mandate. Since the District's average July-September 2014 Gallons Per Capita Day ("GPCD") is reported as 182, the District is considered a Tier 8 agency and must reduce its total potable water production by 32% for each month as compared to the amount used in the same month in 2013.

WHEREAS, on May 5, 2015, the SWRCB adopted new and additional Regulations which implement the 25% conservation standard and orders urban water suppliers to reduce their total potable water production by the defined percentages as explained above and which imposes the 32% reduction on the District.

WHEREAS, the Regulations require the District to move from Stage 1 in its Plan to Stage 2 in order to comply with the conservation standard of 32% and also to adopt additional mandatory restrictions and penalties.

WHEREAS, on July 1, 2015, the Board adopted Ordinance No. 2015-02 which, among other things, modified the District's standard Stage 1 conservation measures to address the new Regulations and established the District's Stage 2 conditions in the event of a threatened water supply shortage.

WHEREAS, on July 1, 2015, the Board adopted Resolution No. 2015-17 which declared that a threatened water supply shortage condition exists and thereby implemented Stage 2 of Ordinance No. 2015-02.

WHEREAS, effective July 1, 2015, Water Code Section 377 was amended to permit public agencies to enforce water use limitations by a volumetric penalty established by ordinance or resolution.

WHEREAS, on March 16, 2016, the Board adopted Ordinance No. 2016-01 which, among other things, further modified the District's standard Stage 1 conservation measures in a continuing effort to achieve compliance with the Regulations and established new conservation measures as part of the District's Stage 2 conditions.

WHEREAS, the purpose of this Resolution is to move to the mandatory level of water use reduction as mandated in Stage 2 by the SWRCB and to implement the corresponding conservation measures set forth in Ordinance No. 2016-01.

WHEREAS, 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 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. The District has the authority to impose monetary fines and penalties and take other applicable actions pursuant to Government Code Sections 61100(a), 61045(b), 61060(a)-(b), and 25120 et seq., and Water Code Sections 350-358, 375-377, 1009, and 71276-71281.

WHEREAS, in accordance with the Plan and the above statutory provisions, a Notice of Public Hearing was published in the Mountaineer Progress, a newspaper of general circulation, at least ten (10) days before consideration of this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Phelan Pinon Hills Community Services 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 Resolution.

2. Public Hearing. The Board conducted a public hearing on March 16, 2016, at 6:00 p.m., or as soon thereafter as practicable, at the Phelan Community Center located at 4128 Warbler Road, Unit B, Phelan, California, as part of the Regular Meeting of the Board.

3. Stage 2. The Board hereby declares that a threatened water supply shortage condition exists and thereby implements Stage 2 of Ordinance No. 2016-01 which is a mandatory level of water use reduction in the Plan, as revised and implemented by this Resolution. The District shall notify the public of this determination by public proclamations. For example, and not by way of limitation, such proclamations may be made by way of press releases, brochures, mail-outs, and/or water bills. Upon such proclamation, due and proper notice shall be deemed to have been given to each and every person supplied water within the District. The Board is adopting such revised Stage 2 restrictions pursuant to its legal authority as set forth herein and the mandate imposed on the District by the SWRCB.

4. Mandatory Restrictions and Prohibitions. Effective immediately upon adoption of this Resolution, the mandatory Stage 2 restrictions set forth in Ordinance No. 2016-01 (which are incorporated in full herein by this reference) shall be in effect in order to promote conservation, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency.

5. Water Use Limitations and Penalties. Pursuant to Section 3.2.g. of Ordinance No. 2016-01, the water use limitations and conservation requirements set forth in Exhibit A (attached hereto and incorporated herein by this reference) are hereby established and shall be enforced by the monetary and volumetric penalties set forth therein. In the event that the SWRCB approves any changes to the conservation requirements of the Regulations following the date of the Board's adoption of this Resolution, the District's General Manager is hereby authorized to schedule a public hearing to reconsider the Conservation Violation Penalties set forth in Exhibit A at the next regularly-scheduled Board meeting.

6. Enforcement. The enforcement of this Resolution and the procedures for written notice, imposition of fines and/or penalties, termination of service, and appeal rights shall be the same such procedures as set forth in Ordinance No. 2016-01. The regulatory purposes of imposing the requirements and financial penalties, as set forth in this Resolution, 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 Resolution.

7. Environmental Review. 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.

8. Severability. If any section, subsection, clause or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The Board hereby declares that it would have passed this Resolution 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.

9. Effective Date. This Resolution supersedes Resolution No. 2015-17 adopted by the Board on July 1, 2015, and shall become effective immediately upon its adoption.

**PASSED, APPROVED, AND ADOPTED** this 16<sup>th</sup> day of March, 2016, by the following vote:

Ayes: Brandon, Morrissette, Roberts, Whalen  
Noes: Pace  
Abstain: None  
Absent: None

  
\_\_\_\_\_  
President, Board of Directors

ATTEST:

  
\_\_\_\_\_  
Secretary, Board of Directors

**EXHIBIT A**  
**Conservation Violation Penalties**

**Description of Impacted and Exempt Customers**

Any customer using 15 units of water or less per meter during a monthly billing cycle is exempt from conservation violation penalties. Any customer who has conserved a minimum of the percentage reduction applicable to the District as mandated by the SWRCB as compared to the corresponding baseline period established by the SWRCB in the Regulations is exempt from conservation violation penalties. Customers with zero water consumption for said corresponding baseline period will be assigned a base amount of 15 units of water per meter per monthly billing cycle to use for comparison purposes. Upon request by a customer who did not occupy the subject property during said corresponding baseline period, the District will assign to the customer a base amount of water per meter per monthly billing cycle to use for comparison purposes.

**Penalty Structure**

Percentage variance from conservation reduction goal	Base Penalty	Per Unit Penalty
0%	0	0
>0% up to 5%	\$10	\$0.50
5% up to 10%	\$10	\$1.00
10% up to 15%	\$10	\$1.50
15% up to 20%	\$10	\$2.00
20% up to 25%	\$10	\$2.50
25% up to 30%	\$10	\$3.00
30% up to 35%	\$10	\$3.50
35% up to 40%	\$10	\$4.00
40% up to 45%	\$10	\$4.50
>45%	\$10	\$5.00

**Examples of Fines (Utilizing 32%)**

A	B	C	D	E	F	G	H	I	J
Jul & Aug 2013 Usage (in Units)	2013 Aug Base (in Units)	Target Usage (32% Reduction from 2013)	Actual Usage Aug 2015	Variance from Target (Subject to Fine)	% Conserved	Billing Bracket	Base Fine	Per Unit Fine	Total Fine
	$A / 2$	$B - (B * 32\%)$		$D - C$	$(B - D) / B$	$32\% - F$	\$10	$(E * \text{rate})$	$H + I$
185.94	92.97	63.22	84.00	20.78	10%	22%	\$ 10.00	\$ 51.95	\$ 61.95
205.62	102.81	69.91	80.21	10.30	22%	10%	\$ 10.00	\$ 15.45	\$ 25.45
190.59	95.295	64.80	71.61	6.81	25%	7%	\$ 10.00	\$ 6.81	\$ 16.81
88.87	44.435	30.22	44.47	14.25	0%	32%	\$ 10.00	\$ 49.89	\$ 59.89
77.31	38.655	26.29	43.76	17.47	-13%	45%	\$ 10.00	\$ 87.37	\$ 97.37
324.61	162.305	110.37	372.49	262.12	-130%	162%	\$ 10.00	\$ 1,310.61	\$ 1,320.61

**Definitions**

Unit – a quantity of water used for measuring consumption. One unit of water is equivalent to 748 gallons, or one CCF (centum cubic feet or hundred cubic feet).