

PARADISE IRRIGATION DISTRICT
ORDINANCE NO. 2015-01

AN ORDINANCE ADOPTING ENFORCEMENT PROCEDURES AND FINES AND PENALTIES
FOR WATER CONSERVATION MEASURES

WHEREAS, Governor Brown on April 1, 2015, issued Executive Order B-29-15 which includes in paragraph 2 a mandate that the State Water Resources Control Board impose a reduction in potable water usage through February 28, 2016, to achieve a statewide 25% water savings; and

WHEREAS, the State Water Resources Control Board on May 5, 2015, adopted emergency regulations setting forth, among other items, mandatory end-user conservation measures and a requirement that the Paradise Irrigation District ("District") reduce its total potable water production by 36% beginning June 1, 2015, through February 2016 as compared to the same months in 2013; and

WHEREAS, in order to implement these mandates, the District adopted Resolution No. 2015-04 Amending and Readopting a Water Conservation Program ("Water Conservation Program") on May 20, 2015, a true and correct copy of which is attached as Exhibit A and incorporated herein by this reference; and

WHEREAS, the District maintains policies and rules and regulations concerning water use within the District and incorporates the current versions of the District's policies and rules and regulations herein by this reference; and

WHEREAS, pursuant to Water Code §§ 375 et seq. and Government Code § 53069.4, the District is empowered to implement conservation measures, to conduct enforcement proceedings, and to impose fines and penalties for violations; and

WHEREAS, the District finds that sanctions, including fines and penalties for excessive water use, are reasonable and are necessary to deter customers from taking excess water from District supplies or engaging in wasteful or prohibited water use practices; and

WHEREAS, the Board of Directors of Paradise Irrigation District finds and determines, as set forth in detail below, that this Ordinance is necessary to comply with state conservation mandates and to strengthen enforcement of the District's Water Conservation Program, the District's policies, and its rules and regulations.

NOW, THEREFORE, the Board of Directors of Paradise Irrigation District does hereby ordain as follows:

1. Applicability.

- a. This ordinance provides for administrative citations which are in addition to all other legal remedies, criminal or civil, which may be pursued by the District.
- b. The administrative citation process set forth in this ordinance applies to all violations of:
 - i. The Water Conservation Program;
 - ii. The District's policies as currently written or hereafter duly adopted or revised by the Board of Directors; and/or

iii. The District's rules and regulations as currently written or hereafter duly adopted or revised by the Board of Directors.

c. The use of this Ordinance shall be at the sole discretion of the District.

2. Definitions. For purposes of this Ordinance:

- a. "Compliance Officer" shall mean any District employee or agent of the District with the authority delegated by the General Manager to enforce any provision of this Ordinance; and
- b. "Hearing Officer" shall mean the Chief Financial Officer, or persons appointed by the District's General Manager, including the General Manager himself, that presides over an administrative hearing provided for in this Ordinance.

3. Administrative Citation.

- a. Whenever a Compliance Officer determines that a violation of this Ordinance has occurred, the Compliance Officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- b. Each administrative citation shall contain the following information:
 - i. The date of the violation(s);
 - ii. The address or a specific description of the location where the violation(s) occurred;
 - iii. The section(s), as applicable, of the Water Conservation Program, policies, and rules and regulations violated and a description of the violation(s);
 - iv. The amount of the fine for the violation(s);
 - v. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
 - vi. An order prohibiting the continuation or repeated occurrence of the violation(s) described in the administrative citation;
 - vii. A description of the administrative citation review process, including the time within which the administrative citation may be contested by submitting a request for a hearing form;
 - viii. The name and signature of the citing Compliance Officer; and
 - ix. A statement that a failure to appeal shall constitute a failure to exhaust administrative remedies and result in the citation becoming a final administrative enforcement order.

4. Administrative Citation Fines.

- a. Except in cases where the violation or violations, in the judgment of the Compliance Officer, pose an immediate threat to health and safety, the District will utilize the

following progressively more stringent enforcement procedure in issuing administrative citations:

- i. First administrative citation: written warning. Whenever a Compliance Officer determines that a violation has occurred, the Compliance Officer may issue a warning of administrative citation to any person responsible for the violation. Service of a written warning shall be a prerequisite to the issuance of further administrative citations with attendant financial penalties. In addition to the information set forth in Section 3.b., and if applicable, the warning shall specify a time and date by which the violation shall be corrected, after which a second administrative citation may be issued if the violation is not fully corrected. The Compliance Officer shall provide for a reasonable amount of time to correct the violation after considering the circumstances of the case, except that at least 24 hours shall be allowed for from the time and date of the warning. A warning shall not be required before the issuance of a second or any subsequent administrative citation for a continuing or repeated violation.
 - ii. Second administrative citation within any twelve (12) month period: one hundred dollars (\$100.00) for each violation cited.
 - iii. Third administrative citation within any twelve (12) month period: two hundred dollars (\$200.00) for each violation cited.
 - iv. Fourth administrative citation within any twelve (12) month period: five hundred dollars (\$500.00) for each violation cited.
 - v. Fifth and succeeding administrative citation within any twelve (12) month period: the District may resort to any and all available legal remedies, including without limitation, suspending or reducing deliveries to the property and referring the matter to the Butte County District Attorney's office.
- b. Each day or portion thereof during which a violation is committed, continued, or permitted, is a separate and distinct violation for which an administrative citation may be issued. Each violation constitutes a separate offense for which a separate penalty may be imposed. The fine amounts shall be cumulative where multiple citations are issued and the aggregate amount will be set forth in the administrative citation.
 - c. Payment of the fine(s) shall not excuse the failure to correct the violation(s), nor shall it bar further enforcement action by the District.
 - d. Fines imposed on any person under the second administrative citation stage will be reimbursed by the District if the person receiving the citation attends a one (1) hour water conservation course offered by the District. Attendance and receipt of a refund will not relieve the person from any additional administrative citations and fines for subsequent violation(s) of this Ordinance.

5. Payment of the Fine(s).

- a. All fine(s) assessed shall be payable to the District unless otherwise directed on the citation. Payment must be made within thirty (30) days from the date of the administrative citation.
- b. Any fine paid shall be refunded in accordance with Section 7.g.ii., if it is determined after a hearing or appeal, the person charged with the administrative citation was not responsible for the violation, or that there was no violation as charged in the administrative citation.
- c. Payment of fines under this Ordinance shall not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the administrative citation.
- d. Any person who fails to pay the District any fine imposed pursuant to this Ordinance on or before the date that fine is due, shall also be liable for the payment of a late payment charge of 10% of administrative citation fine quantity. .

6. Hearing Request.

- a. Any recipient of an administrative citation in which fines are imposed may contest that there was a violation of this Ordinance or that the recipient is the responsible party, by completing a request for hearing form and returning it to the District office within thirty (30) days from the date of the administrative citation, together with an advance deposit of the fine(s).
- b. A request for hearing form may be obtained from the District's office, 6332 Clark Road, Paradise CA.
- c. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.
- d. If the Compliance Officer submits an additional written report concerning the administrative citations to the Hearing Officer for consideration at the hearing, then a copy of this report shall also be served on the person requesting the hearing at least five (5) days prior to the date of the hearing.

7. Hearing Procedure.

- a. No hearing to contest an administrative citation before a Hearing Officer shall be held unless the fine(s) has been deposited with the District in advance.
- b. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Ordinance.
- c. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.


- d. The failure of any party contesting the administrative citation to appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies.
- e. The administrative citation and any additional report submitted by the Compliance Officer, if compliant with Section 3.b., shall constitute prima facie evidence of a violation of this Ordinance.
- f. The Hearing Officer shall be a disinterested employee, agent or consultant of the District. The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the Hearing Officer.
- g. Decision of the Hearing Officer:
 - i. After considering all the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision, the reasons for that decision.
 - ii. If the Hearing Officer decides to cancel the administrative citation, the District shall promptly refund the amount of the deposited fine.
 - iii. The person receiving the administrative citation shall be served with a copy of the Hearing Officer's written decision.
 - iv. For purposes of the Ordinance, service is accomplished by either personal delivery or deposit in the United States Mail in a sealed envelope sent first class, postage prepaid, addressed to the person to be notified at the mailing address for the person as set forth in the District's files, or such other address as provided by the person receiving notice.
- h. Appeal of Hearing Officer's Decision to Board of Directors:
 - i. If the Hearing Officer upholds the imposition of the administrative citation, the person aggrieved by the administrative citation may appeal the Hearing Officer's decision to the Board of Directors of the District.
 - ii. A request for appeal to the Board of Directors must be made in writing to the District within ten (10) days of service of the Hearing Officer's decision. If an appeal to the Board of Directors is not timely received, the decision of the Hearing Officer shall be final. Timely appeal to the Board of Directors is a prerequisite to seeking judicial review under Section 8; failure to timely appeal to the Board of Directors constitutes a failure to exhaust administrative remedies.
 - iii. Timely appeal requests will be considered by the Board at its next regularly scheduled board meeting.
 - iv. The failure of any party appealing the Hearing Officer's decision to appear at the appeal shall constitute a denial of the appeal, forfeiture of the fine, and a failure to exhaust administrative remedies.

- v. After considering the Hearing Officer's decision, evidence, testimony of the appealing party, and any public comments, the Board of Directors will make a decision, by motion and majority vote, to grant or deny the appeal.
8. Right to Judicial Review. Any person aggrieved by the Board of Directors' decision to uphold the administrative decision of a Hearing Officer on an administrative citation, may obtain review of the decision by filing a petition for review within the Butte County Superior Court in accordance with the timeliness and provisions set forth in Government Code section 53069.4.
9. Recovery of Administrative Citations Fines and Costs. The District may collect any past due administrative citation fines or late payment charges by any or all available legal means.

PASSED AND ADOPTED this 17th day of June, 2015 by the following vote at a regular meeting of the Board of Directors.

AYES: Directors Sep Carola, Larry Duncan, Doug Flesher and Ken Hunt
NOES: Director Bill Kellogg
ABSTAINED: None
ABSENT: None

PARADISE IRRIGATION DISTRICT


Kenneth G. Hunt, President

ATTEST:


Georgeanna Borrayo, Secretary