

ORDINANCE NO. 94

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTECITO WATER DISTRICT REVISING ALLOCATION OF WATER DURING WATER SHORTAGE EMERGENCY AND PROVIDING PENALTY RATES AND RESTRICTIONS FOR CONSUMPTION IN EXCESS OF ALLOCATION

WHEREAS, the Montecito Water District (“District”) is a County Water District organized and existing under the laws of the State of California, situated and serving an area entirely within the County of Santa Barbara; and

WHEREAS, the District’s dependence on surface water supplies and the adverse effects of unpredictable and unreliable rain have been the primary reasons for historical water shortages. Santa Barbara County is currently designated in an exceptional, D4, drought condition by the United State Department of Agriculture for a second year in a row. The exceptional drought has registered rainfall at the District’s Jameson Lake station for the last four consecutive years at 53% in 2011/12, 36% in 2012/13, 43% in 2013/14 and 37% to date for 2014/15. These four consecutive years of below average rainfall exceed the previous Santa Ynez River critical drought period of 1947-1951 resulting in no recharge to the District’s local Jameson Lake, Lake Cachuma and the groundwater basin and a significant reduction of the normal available local water supply; and

WHEREAS, local water supplies continue to decline with Jameson Lake currently at 21% of capacity and Lake Cachuma at 28% of capacity. Lake Cachuma water deliveries for the 2014/15 water year are restricted to 45% of normal with a projected 0% allocation in 2015/16 water year for the first time in the Cachuma Project history. MWD’s owned and operated Jameson Lake will provide less than 20% of its normal water supplies for this and the following water year; and

WHEREAS, with drought conditions affecting the entire State of California and the second year of a declared water shortage emergency statewide, the Department of Water Resources has provided a State Water Project supply allocation of 20% for 2015; and

WHEREAS, due to the severity of the drought and water supply reductions, the District declared an emergency water shortage and adopted Ordinance 92 on February 11, 2014, restricting the use of water and suspending the issuance of new water service connections within the District’s service boundaries; and

WHEREAS, to manage remaining water supplies and reduce customer water usage due to below average rainfall and documented water well failures, the District adopted Ordinance 93 on February 21, 2014, providing monthly water allocations to all customer classifications and monetary penalties for excessive water use; and

WHEREAS, the District and other local water agencies are participating in an aggressive program to locate and purchase supplemental water supplies throughout the State as a short term measure to improve immediately available water supplies while work continues on the long term objective of creating new, locally managed and reliable water supplies; and

WHEREAS, the District has located and purchased significant supplemental water supplies that will temporarily and partially offset the loss of local and State Water Project supplies and provide the District with greater flexibility in allocating water to its customers, resulting in an ability to increase customer monthly water allocations. Adjustments to the customer monthly water allocations are a direct result of the available water supply, and until normalization of water supplies occurs either through recharge of State and local surface water reservoirs or the providing and delivering new locally controlled and reliable water supplies, such adjustments to customer monthly allocations will be reviewed on a periodic basis; and

WHEREAS, pursuant to Resolution No. 2107, adopted by the Board on August 29, 2013, current rates are based upon a policy of allocating a 13% share of State Water Project costs to Agricultural customers for non-domestic uses, who in turn are limited to 13% of the State Water Project supply that they would otherwise be entitled to for those uses during drought conditions, if they had contributed at the 100% level. The allocation limits established under Ordinance 93, and the availability of carryover from the previous State Water Project supply therefore reflect that policy; and

WHEREAS, the District Board of Directors has the discretionary authority to allocate supplemental water supplies to its customers that are not subject to the percentage allocations as defined under Resolution 2107. The allocation of supplemental water supplies will be in accordance with the available water supply and will apply to all customer water use classifications and increase or decrease depending on available and projected water supplies and in accordance with this Ordinance.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE BOARD OF DIRECTORS OF THE MONTECITO WATER DISTRICT AS FOLLOWS:

Section 1. Repeal of Ordinance 93. Ordinance 93 is hereby repealed in its entirety and replaced with this Ordinance 94.

Section 2. Prohibition Against Waste of Water. It shall be unlawful for any water user obtaining any water from and through the distribution facilities of the District to waste any of that water.

Section 3. Definitions. As used in this Ordinance, the following words or terms shall have the meanings set forth in this section.

3.1. An Account is a District record that identifies the meters through which water is served to a particular property, the name of the person requesting the service, the location of the property and the person responsible for payment. Each such Account is identified by an account number.

3.2. Account Classifications.

3.2.1. The Agricultural classification applies to the exclusive use of at least two contiguous acres of land, under one ownership, to grow crops for human consumption or as floriculture. This classification applies only to properties for which the District has granted an agricultural use classification permit as of the effective date of Ordinance No. 90, and for which the customer provides satisfactory evidence as may be required by the District from time to time to confirm that the property is used principally and predominantly for the cultivation and harvest of crops suitable for human consumption or for use as floriculture. Specifically excluded from this classification are the cultivation of any other crops, ornamental plants grown in containers for onsite retail sale, livestock grazing, polo fields, and the breeding, raising, training or stabling of horses.

3.2.2. The Commercial classification applies to all properties where water is used for purposes of business, industry, trade or commerce. It includes businesses and industries that produce or sell goods or services, whether such sales are wholesale or retail. Commercial uses shall include, but are not limited to, offices, retail stores and complexes, banks, restaurants, hotels, grocery stores, specialty markets, and manufacturing and processing facilities. A mixed use Commercial property with Single Family Residential or Multi Family Residential use shall be classified as Commercial and billed at Commercial rates unless one or more separate meters is installed to serve the residential use of the property.

3.2.3. The Institutional classification includes properties, owned privately or publicly, that are used primarily as public offices, schools, churches, cemeteries, philanthropic organizations, membership associations, country clubs, sports clubs, recreational facilities, golf courses and tennis clubs. This classification also includes historic sites that are not in residential use and that are open to the public on a regular schedule. It also includes public entities providing essential services to the community such as Montecito Fire Protection District, Summerland-Carpinteria Fire Protection District,

Montecito Sanitary District, Summerland Sanitary District, and the Montecito Community Hall and Library.

3.2.4. The Multi-family Residential classification includes all properties with two or more residential units where at least two units are served by a single “master” meter. The multiple units may be constructed in any combination and configuration, including but not limited to apartment buildings, trailer parks and residential condominiums existing as of the effective date of this Ordinance and served by a single “master” meter. A mixed use property that has both Multi-family Residential and Commercial uses will be billed at the rate applicable to Commercial uses unless a separate meter is installed to serve residential use.

3.2.5. The Single Family Residential classification includes all properties with a primary single family residential unit. The classification also applies to properties with uses and structures customarily incidental and accessory to single family residential use, such as a guesthouse, cabana, private recreational facilities, livestock grazing, polo fields, and the breeding, raising, training or stabling of horses. The Single Family Residential classification also includes all properties with any number of residential condominium units, each of which is served by a separate meter. Home occupations within a residence that are permitted by the County of Santa Barbara, or that are exempt from such permit requirements, are included in this definition. A mixed use property that has both Single Family Residential and Commercial uses will be billed at the rate applicable to Commercial uses unless a separate meter is installed to serve residential use.

3.3. Base Allotment means the calculated average amount of water actually delivered to the property per month during the three-year fiscal period 2003/04 – 2005/06. A Base Allotment will be calculated for properties classified as Commercial or Institutional. If the property does not have three years of use history, or if the use changes materially, the District will determine the Base Allotment by taking into account other relevant factors such as the established historical use of the property, or the water usage of properties of comparable sizes or with comparable uses during the Base Allotment period.

3.4. The Monthly Allocation Factor (MAF) is a Monthly Billing Cycle allocation adjustment that will be applied to the Single Family Residential, Commercial, Institutional and Agricultural classifications that distributes the annual allocation of water to an account over a twelve month period. The calculated MAF reflects the distinct way water is used by each classification over a five dry year monthly averaging period.

3.4.1 The Single Family Residential MAF is defined as follows:

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
.115	.113	.107	.095	.067	.048	.055	.046	.068	.081	.102	.103

3.4.2 The Commercial MAF is defined as follows:

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
.1	.103	.092	.090	.072	.067	.068	.067	.075	.085	.092	.092

3.4.3 The Institutional MAF is defined as follows:

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
.13	.126	.114	.092	.059	.034	.039	.038	.061	.089	.107	.11

3.4.4 The Agricultural MAF is defined as follows:

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
.117	.114	.121	.112	.063	.035	.051	.034	.06	.074	.104	.114

3.5. A Monthly Billing Cycle is a period of approximately 30 consecutive days between meter readings by the District. There are 12 billing cycles in each Water Year. Meter reading is for the purpose of ascertaining actual flow through the meter for the period since the last meter reading for that Account.

3.6 A Revised Allocation Period is the period of time during which revised allocations pursuant to any amendment of this Ordinance are effective.

3.7. A Water Year begins on October 1 each year and ends on September 30 of the following year.

Section 4. Allocation by Customer Class.

4.1. Agricultural Accounts shall receive an annual allocation of 1.0 AF per cultivated acre of land, with monthly allocation determined by the Agricultural MAF, as defined in Section 3.4.4 of this Ordinance. For example, the Agricultural MAF for January is 0.051, which means that the January allocation for two cultivated acres of Agricultural land is 0.102 AF, determined as follows: $2 \times 1.0 \times 0.051 = 0.102$. Included in the monthly water allocation is the domestic component of 20 HCF per dwelling unit.

4.2 Commercial Accounts shall receive an annual allocation that is 26% higher than the Ordinance 93 Base Allotment allocation (or the adjusted Base Allotment allocation for properties that do not have use history during the three-year fiscal period 2003/04 – 2005/06, or if use has changed materially) as identified under Section 3.3 with the monthly allocation determined by the Commercial MAF, as defined in Section 3.4.2 of this Ordinance.

4.3 Institutional Accounts shall receive an annual allocation that is 26% higher than the Ordinance 93 allocation of 70% of Base Allotment (or the adjusted Base Allotment allocation for properties that do not have use history during the three-year fiscal period 2003/04 – 2005/06, or if use has changed materially) as identified under Section 3.3 with the monthly allocation determined by the Institutional MAF, as defined in Section 3.4.3 of this Ordinance.

4.4 Multi-Family Residential Accounts shall be allocated 7 HCF per dwelling unit per month. This allocation is not subject to adjustment by a Monthly Allocation Factor.

4.5 Single Family Residential Accounts shall be allocated 25 HCF per month for essential health and sanitation uses, including a landscape buffer (“Essential Use Allocation”). The Essential Use Allocation is not subject to adjustment by the Monthly Allocation Factor. In addition to the Essential Use Allocation, Single Family Residential Accounts shall receive a 26% increase to the annual acreage-based allocation for non-essential use provided under Ordinance 93, with an adjusted annual total of 140 HCF per acre per year for other uses (“Non-essential Use Allocation”), with monthly allocation determined by the Single Family Residential MAF, as defined in section 3.4.1 of this Ordinance. For example, a 1.3 acre Single Family Residential Account shall receive a total allocation, including both the Essential Use and Non-essential Use Allocations, of 33 HCF for the month of January, determined as follows: $25 \text{ HCF} + (140 \text{ HCF})(0.055)(1.3) = 35 \text{ HCF}$.

Section 5. Use of Allocated Water. Subject to the prohibition against the waste of water and to the penalties provided under Section 7 for the violation of this Ordinance, it shall be the sole responsibility of each water user to manage his or her water needs in such a manner as not to exceed the amount of water allocated to that Account.

Section 6. Place of and Class of Use of Rationed Water. Water allocated to an Account may be used only on and for the property served by that Account and on no other property, and only for that class of use or uses served by that Account and for no other use.

Section 7. Billing Cycles, Notice of Amount Allocated and Carry-Forward.

7.1. Notice of Amount of Allocation. Thirty days before the first day of each Water Year, the District shall notify each Account in writing of the date of the commencement of the Water Year. The notice shall set forth the amount of water allocated to the Account for each Monthly Billing Cycle during the Water Year.

7.2. Notice for Allocation Decrease. Thirty days before the first day of each Revised Allocation Period for which allocations will be decreased for any customer class, the District shall notify each Account in writing of the date of the commencement of the Revised Allocation Period, and the applicable Monthly Billing Cycles for that Account remaining in the Water Year (“Remaining Monthly Billing Cycles”). The notice shall set forth the amount of water allocated to the Account for each Remaining Monthly Billing Cycle.

7.3. Notice for Allocation Increase. Prior to the first day of each Revised Allocation Period for which allocations will not be decreased for any customer class, the District shall notify each Account in writing of the date of commencement of the Revised Allocation Period, and the applicable Monthly Billing Cycles for that Account remaining in the Water Year (“Remaining Monthly Billing Cycles”). The notice shall set forth the amount of water allocated to the Account for each Remaining Monthly Billing Cycle.

7.4. Billing Statement. Each Monthly Billing Cycle statement shall set forth the allocation for that Monthly Billing Cycle, the amount of water consumed during that Monthly Billing Cycle, the amount consumed in excess of the Account’s allocation for that Monthly Billing Cycle, if any, and the applicable penalty rates and total amount billed under those penalty rates.

7.5. **a** Water Year Carry-Forward Adjustment. The allocation for each Account represents the maximum amount available for consumption on a monthly basis, and any unused allocation during a Monthly Billing Cycle shall not carry forward for use during subsequent Monthly Billing Cycles. However, any consumption in excess of the amount allocated during any Monthly Billing Cycle in any Water Year shall reduce the annual allocation for the subsequent Water Year. This reduction shall not be offset by unused allocation during any Monthly Billing Cycle. For example, if an Account exceeds its allocation by 5 HCF during one Monthly Billing Cycle of a Water Year, but consumes less than its monthly allocation during each of the other Monthly Billing Cycles of that Water Year, its annual allocation for the subsequent Water Year will be reduced by 5 HCF.

Section 8. **b** Excessive Consumption. If an Account uses more water during any Monthly Billing Cycle than has been allocated to that Account, such excess use shall constitute a violation of this Ordinance, and the penalty rates for excessive consumption and restrictions set forth in this section shall apply.

8.1 Consumption will be subject to all currently applicable rates and surcharges; in addition consumption in excess of the monthly allocation will be subject to a penalty premium of \$30 per HCF.

8.2. In addition to Section 8.1, consumption that is 25% in excess of allocation shall result in the installation of a flow restriction device on the service lines for the Account, subject to the discretion of the General Manager, which shall be exercised on the basis of the criteria set forth in Section 10.3 of this Ordinance. Once installed, a flow restriction device will be removed only after the person responsible for the Account demonstrates to the satisfaction of the General Manager that a water management plan is in place to ensure that future consumption will not exceed monthly allocation.

8.3. In addition to Sections 8.1 and 8.2, if a violation of this Ordinance occurs during at least two Monthly Billing Cycles of any Water Year, the rate premium set forth in Section 8.1 shall be increased to \$45 per HCF for both the second and any subsequent violation of this Ordinance during that Water Year. The repeat violation shall result in the installation of a flow restriction device on the service lines for the Account, subject to the discretion of the General Manager, which shall be exercised on the basis of the criteria set forth in Section 10.3 of this Ordinance.

8.4. In addition to Sections 8.1, 8.2 and 8.3, any Account that currently has a flow restriction device installed on a service line pursuant to Sections 8.2 or 8.3 that subsequently exceeds allocated consumption during any Monthly Billing Cycle in which the flow restriction device is installed shall be subject to discontinuation of water service, subject to the discretion of the General Manager, which shall be exercised on the basis of the criteria set forth in Section 10.3 of this Ordinance. Once discontinued, water service will not be restored until the person responsible for the Account demonstrates to the satisfaction of the General Manager that a water management plan is in place to ensure that future consumption will not exceed the Account's monthly allocation.

8.5 Tampering with Flow Restriction Device. Any person who tampers with a flow restriction device that is installed on an Account line pursuant to this Ordinance shall be guilty of a misdemeanor and subject to prosecution under section 377 of the Water Code. In the event of such tampering, the Account will also be subject to discontinuation of water service.

Section 9. Changes In Acreage of Land Used for Agricultural Account. An Agricultural Account holder shall not be allowed to add additional land to be served by the Agricultural Account.

Section 10. Appeals and Exceptions.

10.1. Appeals. Any water user may appeal penalty rates and restrictions applicable to excessive consumption under Section 8 of this Ordinance to the Board of Directors, by filing a written appeal with District within 30 days of written notice of the penalty rates or restrictions appealed from. Such an appeal shall be accompanied by an appeal fee in an amount established from time to time by resolution of the Board of Directors. If a person appeals any penalty rate under this Ordinance, all amounts due must be paid before the Appeals Committee will hear the appeal, subject to the discretion of the General Manager to allow an appeal to proceed prior to payment of the disputed penalty rate. If the General Manager determines that payment is a prerequisite to appeal, the Appeals Committee may dismiss an appeal for nonpayment, making the action appealed from final as to the District.

10.2. Appeals Committee Recommendation. The Appeals Committee will hear the appellant and make a recommendation to the Board of Directors within 30 days of the filing of the appeal based on the criteria stated in Section 10.3. The Board of Directors shall consider the recommendations of the Appeals Committee. The District shall give the appellant written notice of the meetings at which the appeal will be considered by the Appeals Committee and the Board.

10.3. Board Action. Subject to the meeting schedule of the Board, an appeal shall be heard by the Board within 30 days of the date upon which the Appeals Committee makes its recommendation. The Board may, in its discretion, affirm, reverse, or modify the Appeals Committee's recommendation and make any adjustments and impose any conditions it deems just and proper, if it finds two or more of the following: (1) the penalties or restrictions imposed under this Ordinance would cause an undue hardship, (2) the granting of the appeal will not significantly adversely affect the goals of this Ordinance, (3) due to peculiar facts and circumstances, none of the provisions of this Ordinance are applicable to the situation under consideration; or (4) error in the application of this Ordinance or other applicable rules or law.

10.4. Notice of Decision. The Board's decision shall be written and provided to the appellant. Such decisions are final as to the District and not subject to further appeal unless the Board's decision expressly provides otherwise. Judicial review of final decisions shall be available pursuant to California Code of Civil Procedure section 1094.5.

Section 11. Suspension of Conflicting Ordinances and Rules and Regulations. To the extent that the terms and provisions of this Ordinance are inconsistent, or in conflict with the terms and provisions of any prior District Ordinances, Resolutions and Rules and Regulations, the terms of this Ordinance shall prevail and inconsistent and conflicting provisions of prior Ordinances, Resolutions and Rules and Regulations shall be suspended during the effective period of this Ordinance.

Section 12. Allocation Adjustment. From time to time, the District may be able to obtain temporary supplies of supplemental water in excess of the amounts currently available, or the District's water supply may increase due to a change in weather conditions. In such event, the District may allocate additional water for use in the best interest of the District, and such an additional allocation shall require either an amendment to this Ordinance or a resolution. Conversely, from time to time the District may determine that allocations and associated demands cannot be satisfied without depleting the water supply and jeopardizing public health and safety. In that event, the District may reduce allocations in order to reduce water demand. Such a reduction in allocation shall also require either an amendment of this Ordinance or a resolution.

Section 13. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, that invalidity shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be invalid.

Section 14. Effective Date. This Ordinance shall become effective during the May, 2015 Monthly Billing Cycle and shall remain in effect until the Board declares that a water shortage emergency no longer exists.

PASSED AND ADOPTED by the Governing Board of the Montecito Water District this 24th day of March, 2015.

AYES: Directors Abel, Bierig, Frye, Morgan, and Shaikewitz

NAYES: None

ABSENT: None

ABSTAIN: None

APPROVED:
Darlene Bierig, President

ATTEST:
Tom Mosby, Secretary

APPROVED AS TO FORM AND CONTENT
Robert Cohen, District Counsel
Michael Colantuono, Special Counsel

Footnotes:

- a)** Ordinance No. 94, Section 7.5 was temporarily suspended on March 24, 2015
- b)** Ordinance No. 94, Section 8 was temporarily suspended on March 21, 2017