

ORDINANCE NO. 719

**AN URGENCY ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SHASTA
DECLARING A WATER SHORTAGE EMERGENCY AND A NECESSITY FOR
A WATER CONSERVATION PROGRAM,
ADOPTING A WATER CONSERVATION PROGRAM AND FINDING THAT THE
ACTIONS ARE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT
IN COUNTY SERVICE AREA NO. 6—JONES VALLEY WATER**

WHEREAS, the provision of potable water supplies for domestic use is essential to health, safety and general public welfare; and

WHEREAS, a water shortage emergency condition prevails in County Service Area No. 6—Jones Valley Water and that the ordinary demands and requirements of water consumers cannot be satisfied under the current restraints of County Service Area No. 6—Jones Valley Water without depleting the water supply to the extent that there would be insufficient water for human consumption, sanitation, and fire protection; and

WHEREAS, County Service Area No. 6—Jones Valley Water provides potable water to approximately 500 customers within its service area; and

WHEREAS, costs are incurred to provide potable water to customers; and

WHEREAS, County Service Area No. 6—Jones Valley Water is presently insolvent; and

WHEREAS, efforts to secure an adequate funding stream to support County Service Area No. 6 – Jones Valley Water operations have not been successful; and

WHEREAS, County Service Area No. 6—Jones Valley Water proposed a rate increase on May 16, 2017, which would have allowed it to continue to provide water service at the present level; and

WHEREAS, pursuant to article XIII C, Section 6 of the California Constitution, the water users in County Service Area No. 6—Jones Valley Water submitted protest ballots which constituted a majority of the users thus preventing the imposition of the new rates; and

WHEREAS, County Service Area No. 6—Jones Valley Water presently incurs incremental operational and infrastructure costs in excess of incremental revenues to provide water to customers in excess of supplies which may be deemed necessary for basic health and safety minimums; and

WHEREAS, operating County Service Area No. 6—Jones Valley Water does not have adequate revenue to provide the current level of water service thus threatening the entire future water supply; and

WHEREAS, County Service Area No. 6—Jones Valley Water is not required to provide a service which is beyond its financial ability; and

WHEREAS, the County Service Area Law embodies a State policy against the subsidization of one group of taxpayers by another; and

WHEREAS, Article X, Section 2 of the California Constitution declares that waters of the State are to be put to beneficial use, that waste, unreasonable use, or unreasonable method of use of water be prevented, and that water be conserved for the public welfare; and

WHEREAS, California Water Code Section 350 provides that a public entity water supplier may declare a water shortage emergency condition exists within the area served whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply to the extent that there would be insufficient water for human consumption, sanitation, and fire protection; and

WHEREAS, California Water Code Section 351 provides that except in the event of a breakage or failure of a dam, pump, pipeline or conduit causing an immediate emergency, a water shortage emergency declaration shall be made only after a public hearing at which consumers of such water supply shall have an opportunity to be heard to protest against the declaration and to present their respective needs to the public entity; and

WHEREAS, California Water Code Section 353 provides that upon declaration of a water shortage emergency, the public entity shall thereupon adopt such regulations and restrictions on the delivery and use of water as needed in the sound discretion of the public entity and conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection; and

WHEREAS, California Water Code Section 355 provides that the regulations and restrictions shall thereafter be and remain in full force and effect until the period of the emergency and until the emergency condition no longer exists; and

WHEREAS, California Water Code Section 356 provides that the regulations and restrictions may include the right to deny applications for new or additional service connections, and provisions for their enforcement by discontinuing service to customers willfully violating the regulations and restrictions; and

WHEREAS, California Water Code Section 357 provides that if the regulations and restrictions on delivering consumption of water adopted pursuant to California Water Code Section 350 conflict with any law establishing the rights of individual consumers to receive either specific or proportionate amounts of water supply available for distribution the service area, the regulations and restrictions adopted pursuant to California Water Code Section 350 shall prevail; and

WHEREAS, California Water Code Sections 375 *et seq.* empowers the County of Shasta through County Service Area No. 6—Jones Valley Water as the supplier of water to County Service Area No. 6—Jones Valley Water to adopt and enforce a water conservation program to reduce the quantity of water used by those within its service area after holding a public hearing and making appropriate findings of necessity for the adoption of a water conservation program; and

WHEREAS, Water Code Section 377 establishes that, from and after the publication of an ordinance pursuant to Water Code Section 376, violation of the ordinance is a misdemeanor punishable by up to 30 days in county jail, or by a fine of up to \$1,000 or both; and

WHEREAS, Water Code Section 377 establishes that any person violating this ordinance may also be subject to a civil penalty in an amount not to exceed \$10,000 in accordance with and subject to that provision as it may be amended from time to time. Civil penalties shall be:

- \$100 for the first violation, and
- \$150 for the second violation, and
- \$200 for the third and any subsequent violation, and
- \$1,000 for extraordinary situations where all of the following has occurred:
 - The residential user had actual knowledge of the requirements found to be violated, and
 - the conduct was intentional, and
 - the amount of water involved was substantial. “Substantial” is defined as an amount equal to, or exceeding, 10 times the Water Use Limitations set forth in Section 5 of this ordinance; and

WHEREAS, notice of the time and place of this hearing of this ordinance has been provided in accordance with the applicable provisions including, but not limited to, California Water Code Section 352 and Government Code Section 6061; and

WHEREAS, this ordinance is exempt from the California Environmental Quality Act (Public Resources Code Section 21000, *et. seq.*) (CEQA) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment as it includes regulations to protect water resources and the ability to provide water resources. Also it consists of regulations and restrictions on activities to ensure the maintenance, restoration, or enhancement of a natural resource pursuant to CEQA Guidelines 51501 (Existing Facilities), 15305 (Minor Alterations in Land Use Limitations), 15307 (Actions for Protection of Natural Resources) and 15308 (Actions for Protection of Environment), and there are no unusual circumstances under CEQA Guideline 15300.2(c); and

WHEREAS, on June 27, 2017, the County of Shasta held a public hearing to consider an ordinance adopting a water conservation program.

The Board of Supervisors of the County of Shasta ordains as follows in County Service Area No. 6—Jones Valley Water:

SECTION 1. Immediate Effect

This ordinance is an urgency measure and is effective immediately upon adoption.

SECTION 2. Publication

Pursuant to Water Code Section 376, the County of Shasta shall publish, in accordance with Government Code Section 6061, this ordinance adopting a water conservation program within 10 days after its adoption.

SECTION 3. Findings of Necessity

- (A) The Board of Supervisors finds and determines that the foregoing recitals are true and correct.
- (B) The Board of Supervisors further finds that because of fiscal insolvency within the County Service Area No. 6—Jones Valley Water, it is necessary and appropriate for the Board of Supervisors to adopt, implement and enforce this water conservation program to reduce the quantity of water used within County Service Area No. 6—Jones Valley Water to ensure the continued availability of water for human consumption, sanitation, and fire protection.
- (C) The Board of Supervisors further finds and determines that the general welfare requires that the County maximize the beneficial use of its available water resources in County Service Area No. 6—Jones Valley Water to the extent that it is capable, and that the unreasonable use, or unreasonable method of use of water shall be prevented and the conservation of water is to be extended with the view to the reasonable and beneficial use thereof in the interests of the people County Service Area No. 6—Jones Valley Water and for their public health, safety, and welfare.

SECTION 4. Application

Due to the unique circumstances involving the ability of County Service Area No. 6—Jones Valley Water to provide the current level of water service, including demand, thus threatening the availability of water in County Service Area No. 6—Jones Valley Water, it is necessary and appropriate for the Board of Supervisors to adopt, implement and enforce this water conservation program to reduce the quantity of water used within County Service Area No. 6—Jones Valley Water to ensure that there is sufficient water for human consumption, sanitation, and fire protection and for the public health, safety, and welfare of the residents of County Service Area No. 6—Jones Valley Water.

SECTION 5. Water Use Limitations

- (A) No metered connection shall use in excess of 225 gallons per day unless a variance is granted in accordance with the terms of this ordinance.
- (B) A water consumer may apply for a variance from the maximum permitted water consumption provisions prescribed in Section 5.A. by submitting a written request for a variance to the Director of the Shasta County Department of Public Works or his/her designee (Director). The Director shall consider all information provided by the water consumer in determining whether a variance will be granted. The Director may, in his or her sole discretion, grant a variance from the maximum permitted water consumption provisions of Section 5 if the application of the provisions prescribed in 5.A. would constitute an extraordinary hardship. The factors which may be taken into consideration include, but are not limited to: failure to grant such a variance would cause an emergency condition adversely affecting health, sanitation, or fire safety for the public or the person or entity requesting the variance; compliance with the water conservation measures cannot be accomplished due to technical or other limitations; is necessary to avoid or mitigate a significant adverse impact on an endangered or listed protected plant, animal, or aquatic species or critical environmental feature present on the property or to maintain the traditional and natural character of a critical environmental feature; or, other limitations and alternative methods achieving the same level of reduction in water use can be implemented and are specified in the request for the variance.
- (C) If the Director grants a variance, the maximum permitted water consumption shall be as determined by the Director, and the civil penalty provisions prescribed in this ordinance shall apply to the increased maximum permitted water consumption. The Director shall inform the water consumer seeking a variance of the decision within 30 days of the Director's receipt of the request for a variance. Service of the Director's decision shall be by first-class mail addressed to the water consumer at the address given by the water consumer in the request for a variance and shall be deemed received by the water consumer five days after the date of mailing. The water consumer may appeal the Director's decision to the Shasta County Board of Supervisors (BOS) by filing an appeal. The water consumer's appeal must be received by the Clerk of the Board within 30 days of the receipt by the water consumer of the Director's decision. The Clerk of the Board shall set the matter for hearing before the BOS and shall inform the water consumer seeking a variance of the BOS's of the date, time and place of the hearing of the appeal and shall inform the water consumer seeking the variance of the BOS decision. The BOS's decision on the appeal shall be final.

- (D) Any customers whose use has been found to exceed the above-prescribed maximums during a bi-monthly billing cycle shall be subject to civil monetary penalties in addition to the regular bi-monthly bill as follows:

\$100 for the first violation, and

\$150 for the second violation, and

\$200 for the third and any subsequent violation, and

\$1,000 for extraordinary situations where all of the following has occurred:

- The residential user had actual knowledge of the requirements found to be violated, and
- the conduct was intentional, and
- the amount of water involved was substantial. "Substantial" is defined as an amount equal to, or exceeding, 10 times the Water Use Limitations set forth in Section 5 of this ordinance.

- (E) The remedies provided for in this section are cumulative and not alternative.

- (F) Should there be any inconsistency or conflict with the penalty provisions of this ordinance and Water Code Section 377, the provisions of Water Code Section 377 shall control.

SECTION 6. Moratorium on New or Additional Water Service Connections

Pursuant to Article XI, Section 7 of the California Constitution and California Water Code Sections 350 *et seq.*, no new or additional water services connections shall be approved or established. This provision shall apply to all applications for new or additional water service connections that have not been received by the Shasta County Department of Resource Management as of the effective date of this ordinance.

SECTION 7. California Environmental Quality Act

This ordinance is exempt from the California Environmental Quality Act (Public Resources Code Section 21000, *et. seq.*)

SECTION 8. Severability

If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion or portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance in each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, senses, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 9. Adoption

This ordinance shall take effect and be in full force and effect immediately after its passage as an urgency ordinance pursuant to the provisions of Government Code Sections 25123 and 25131 and Water Code Section 376. The clerk shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this 27th day of June, 2017 by the Board of Supervisors of the County of Shasta by the following vote:

AYES: Supervisors Baugh, Kehoe, Moty, Rickert, and Morgan
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None



DAVID A. KEHOE, CHAIRMAN
Board of Supervisors
County of Shasta
State of California

ATTEST:

LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: 

Deputy