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ORDINANCE NO. 44

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE CARLSBAD MUNICIPAL WATER DISTRICT ADOPTING A DROUGHT RESPONSE PLAN AND WATER CONSERVATION PROGRAM AND REPEALING ORDINANCE NO 35

WHEREAS, article 10, 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, conservation of current water supplies and minimization of the effects of water supply shortages that are the result of drought are essential to the public health, safety and welfare; and

WHEREAS, regulation of the time of certain water use, manner of certain water use, design of rates, method of application of water for certain uses, installation and use of water-saving devices, provide an effective and immediately available means of conserving water; and

WHEREAS, California Water Code sections 375 et seq. authorize water suppliers to adopt and enforce a comprehensive water conservation program; and

WHEREAS, adoption and enforcement of a comprehensive water conservation program will allow the Carlsbad Municipal Water District (CMWD) to delay or avoid implementing measures such as water rationing or more restrictive water use regulations pursuant to a declared water shortage emergency as authorized by California Water Code sections 350 et seq.; and

WHEREAS, San Diego County is a semi-arid region and local water resources are scarce. The region is dependent upon imported water supplies provided by the San Diego County Water Authority, which obtains a substantial portion of its supplies from the Metropolitan Water District of Southern California. Because the region is dependent upon imported water supplies, weather and other conditions in other portions of this State and of the Southwestern United States affect the availability of water for use in San Diego County; and

WHEREAS, the San Diego County Water Authority has adopted an Urban Water Management Plan that includes water conservation as a necessary and effective component of

1 the Water Authority's programs to provide a reliable supply of water to meet the needs of the
2 Water Authority's 24 member public agencies, including the CMWD. The Water Authority's
3 Urban Water Management Plan also includes a contingency analysis of actions to be taken in
4 response to water supply shortages. This ordinance is consistent with the Water Authority's
5 Urban Water Management Plan; and

6 WHEREAS, as anticipated by its Urban Water Management Plan, the San Diego County
7 Water Authority, in cooperation and consultation with its member public agencies, has adopted
8 a Drought Management Plan, which establishes a progressive program for responding to water
9 supply limitations resulting from drought conditions. This ordinance is intended to be consistent
10 with and to implement the Water Authority's Drought Management Plan; and

11 WHEREAS, the Water Authority's Drought Management Plan contains three stages
12 containing regional actions to be taken to lessen or avoid supply shortages. This ordinance
13 contains drought response levels that correspond with the Drought Management Plan stages;
14 and

15 WHEREAS, the CMWD, due to the geographic and climatic conditions within its territory
16 and its dependence upon water imported and provided by the San Diego County Water
17 Authority, may experience shortages due to drought conditions, regulatory restrictions enacted
18 upon imported supplies and other factors. The Board of Directors of CMWD has adopted an
19 Urban Water Management Plan that includes water conservation as a necessary and effective
20 component of its programs to provide a reliable supply of water to meet the needs of the public
21 within its service territory. The CMWD's Urban Water Management Plan also includes a
22 contingency analysis of actions to be taken in response to water supply shortages. This
23 ordinance is consistent with the Urban Water Management Plan adopted by the Board of
24 Directors of CMWD; and

25 WHEREAS the water conservation measures and progressive restrictions on water use
26 and method of use identified by this ordinance provide certainty to water users and enable
27 CMWD to control water use, provide water supplies, and plan and implement water
28 management measures in a fair and orderly manner for the benefit of the public;

1 NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Carlsbad
2 Municipal Water District of the City of Carlsbad, California, as follows:

- 3 1. That the above recitations are true and correct.
- 4 2. The Board of Directors of the Carlsbad Municipal Water District of the City of
5 Carlsbad, California, hereby ordains as follows:

6 **SECTION 1.0 DECLARATION OF NECESSITY AND INTENT**

7 (a) This ordinance establishes water management requirements necessary to conserve water,
8 enable effective water supply planning, assure reasonable and beneficial use of water, prevent
9 waste of water, prevent unreasonable use of water, prevent unreasonable method of use of
10 water within the CMWD in order to assure adequate supplies of water to meet the needs of the
public, and further the public health, safety, and welfare, recognizing that water is a scarce
natural resource that requires careful management not only in times of drought, but at all times.

11 (b) This ordinance establishes regulations to be implemented during times of declared water
12 shortages, or declared water shortage emergencies. It establishes four levels of drought
response actions to be implemented in times of shortage, with increasing restrictions on water
use in response to worsening drought conditions and decreasing available supplies.

13 (c) Level 1 condition drought response measures are voluntary and will be reinforced through
14 local and regional public education and awareness measures that may be funded in part by
CMWD.

15 (d) During drought response condition Levels 2 through 4, all conservation measures and
16 water-use restrictions are mandatory and become increasingly restrictive in order to attain
escalating conservation goals.

17 **SECTION 2.0 DEFINITIONS**

18 (a) The following words and phrases whenever used in this chapter shall have the meaning
19 defined in this section:

20 1. "Grower" refers to those engaged in the growing or raising, in conformity with recognized
21 practices of husbandry, for the purpose of commerce, trade, or industry, or for use by public
22 educational or correctional institutions, of agricultural, horticultural or floricultural products,
and produced: (1) for human consumption or for the market, or (2) for the feeding of fowl or
23 livestock produced for human consumption or for the market, or (3) for the feeding of fowl or
livestock for the purpose of obtaining their products for human consumption or for the
24 market. "Grower" does not refer to customers who purchase water subject to the
Metropolitan Interim Agricultural Water Program or the Water Authority Special Agricultural
Rate programs.

25 2. "Water Authority" or "CWA" means the San Diego County Water Authority.

26 3. "DMP" means the Water Authority's Drought Management Plan in existence on the
27 effective date of this ordinance and as readopted or amended from time to time, or an
equivalent plan of the Water Authority to manage or allocate supplies during shortages.

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4. "Metropolitan" or "MWD" means the Metropolitan Water District of Southern California.

5. "Person" means any natural person, corporation, public or private entity, public or private association, public or private agency, government agency or institution, school district, college, university, or any other user of water provided by the CMWD.

6. "District" or "CMWD" means the Carlsbad Municipal Water District.

SECTION 3.0 WATER WASTE PROHIBITIONS

The following water conservation measures will be in effect at all times:

1. Washing down impervious surfaces, including but not limited to sidewalks, driveways, parking lots, tennis courts, or patios with water from a pressurized source, such as a garden hose, except when it is necessary to alleviate safety or sanitation hazards. When used in this section impervious surface means any surface covered with non-porous material.
2. Water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, or overspray, etc. is prohibited. Water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures is prohibited.
3. Use a hand-held hose equipped with a positive shut-off nozzle or bucket to water landscaped areas, including trees and shrubs located on residential and commercial properties that are not irrigated by a landscape irrigation system.
4. Use re-circulated water to operate ornamental fountains.
5. Wash vehicles using a bucket and a hand-held hose with positive shut-off nozzle or a mobile high pressure/low volume wash system.
6. Serve and refill water in restaurants and other food service establishments only upon request.
7. Offer guests in hotels, motels, and other commercial lodging establishments the option of not laundering towels and linens daily.
8. Use recycled or non-potable water for construction purposes when available.
9. Single pass-through cooling systems as part of new water service connections will be prohibited. Non-recirculating systems in all new conveyer car wash and commercial laundry systems will also be prohibited.
10. The excess use, loss or escape of water through breaks, leaks or other, malfunctions in the water user's plumbing or distribution system for any period of time after such escape of water could have reasonably been discovered and corrected.

SECTION 4.0 APPLICATION

(a) The provisions of this ordinance apply to any person in the use of any water provided by the CMWD.

(b) This ordinance is intended solely to further the conservation of water. It is not intended to

1 implement any provision of federal, State, or local statutes, ordinances, or regulations relating to
2 protection of water quality or control of drainage or runoff. Refer to the local jurisdiction or
3 Regional Water Quality Control Board for information on any stormwater ordinances and
4 stormwater management plans.

5 (c) Nothing in this ordinance is intended to affect or limit the ability of the CMWD to declare and
6 respond to an emergency, including an emergency that affects the ability of the CMWD to
7 supply water.

8 (d) The provisions of this ordinance do not apply to use of water from private wells or to recycled
9 water.

10 (e) Nothing in this ordinance shall apply to use of water that is subject to a special supply
11 program, such as the Metropolitan Interim Agricultural Water Program or the Water Authority
12 Special Agricultural Rate programs. Violations of the conditions of special supply programs are
13 subject to the penalties established under the applicable program. A person using water subject
14 to a special supply program and other water provided by the CMWD is subject to this ordinance
15 in the use of the other water.

16 **SECTION 5.0 AUTHORIZATION**

17 The District General Manager, or a designated representative, is hereby authorized and directed
18 to implement the provisions of this ordinance.

19 **SECTION 6.0 DROUGHT RESPONSE LEVEL 1 – DROUGHT WATCH CONDITION**

20 (a) A Drought Response Level 1 condition is also referred to as a “Drought Watch” condition. A
21 Level 1 condition may apply when the Water Authority notifies its member agencies that due to
22 drought or other supply reductions, there is a reasonable probability there will be supply
23 shortages and that a consumer demand reduction of up to 10 percent is required in order to
24 ensure that sufficient supplies will be available to meet anticipated demands. The Executive
25 Manager upon recommendation of the General Manager shall declare the existence of a
26 Drought Response Level 1 and take action to implement the Level 1 conservation practices
27 identified in this ordinance.

28 (b) During a Level 1 Drought Watch condition, CMWD will increase its public education and
outreach efforts to emphasize increased public awareness of the need to implement the
following water conservation practices.

1. Irrigate residential and commercial landscape before 10 a.m. and after 6 p.m. only.
2. Irrigate nursery and commercial grower’s products before 10 a.m. and after 6 p.m. only. Watering is permitted at any time with a hand-held hose equipped with a positive shut-off nozzle, a bucket, or when a drip/micro-irrigation system/equipment is used. Irrigation of nursery propagation beds is permitted at any time. Watering of livestock is permitted at any time.
3. Repair all water leaks within five (5) days of notification by the CMWD unless other arrangements are made with the General Manager or Designee.

29 **SECTION 7.0 DROUGHT RESPONSE LEVEL 2 – DROUGHT ALERT CONDITION**

30 (a) A Drought Response Level 2 condition is also referred to as a “Drought Alert” condition. A
31 Level 2 condition may apply when the Water Authority notifies its member agencies that due to

1 cutbacks caused by drought or other reduction in supplies, a consumer demand reduction of up
2 to 20 percent is required in order to have sufficient supplies available to meet anticipated
3 demands. The CMWD Board of Directors shall declare the existence of a Drought Response
Level 2 condition and implement the mandatory Level 2 conservation measures identified in this
ordinance.

4 (b) All persons using CMWD water shall comply with Level 1 Drought Watch water conservation
5 practices during a Level 2 Drought Alert, and shall also comply with the following additional
conservation measures:

6 1. Limit residential and commercial landscape irrigation to no more than three (3) assigned
7 days per week on a schedule established by the General Manager and posted by the
8 CMWD. During the months of November through May, landscape irrigation is limited to no
more than once per week on a schedule established by the General Manager and posted by
the CMWD. This section shall not apply to commercial growers or nurseries.

9 2. Limit lawn watering and landscape irrigation using sprinklers to no more than ten (10)
10 minutes per watering station per assigned day. This provision does not apply to landscape
11 irrigation systems using water efficient devices, including but not limited to: weather based
12 controllers, drip/micro-irrigation systems and stream rotor sprinklers.

13 3. Water landscaped areas, including trees and shrubs located on residential and
14 commercial properties, and not irrigated by a landscape irrigation system governed by
15 section 5 (b) (1), on the same schedule set forth in section 5 (b) (1) by using a bucket, hand-
16 held hose with positive shut-off nozzle, or low-volume non-spray irrigation.

17 4. Repair all leaks within seventy-two (72) hours of notification by the CMWD unless other
18 arrangements are made with the General Manager or Designee.

19 5. Stop operating ornamental fountains or similar decorative water features unless recycled
20 water is used.

21 **SECTION 8.0 DROUGHT RESPONSE LEVEL 3 – DROUGHT CRITICAL CONDITION**

22 (a) A Drought Response Level 3 condition is also referred to as a “Drought Critical” condition. A
23 Level 3 condition may apply when the Water Authority notifies its member agencies that due to
24 increasing cutbacks caused by drought or other reduction of supplies, a consumer demand
25 reduction of up to 40 percent is required in order to have sufficient supplies available to meet
26 anticipated demands. The CMWD Board of Directors shall declare the existence of a Drought
27 Response Level 3 condition and implement the Level 3 conservation measures identified in this
28 ordinance.

(b) All persons using CMWD water shall comply with Level 1 Drought Watch and Level 2
Drought Alert water conservation practices during a Level 3 Drought Critical condition and shall
also comply with the following additional mandatory conservation measures:

1. Limit residential and commercial landscape irrigation to no more than two (2) assigned
days per week on a schedule established by the General Manager and posted by the
CMWD. During the months of November through May, landscape irrigation is limited to no
more than once per week on a schedule established by the General Manager and posted by
the CMWD.

1 2. Limit lawn watering and landscape irrigation using sprinklers to no more than ten (10)
2 minutes per watering station per assigned day. This section shall not apply to commercial
growers or nurseries.

3 3. Water landscaped areas, including trees and shrubs located on residential and
4 commercial properties, and not irrigated by a landscape irrigation system governed by
5 section 6 (b) (1), on the same schedule set forth in section 6 (b) (1) by using a bucket, hand-
6 held hose with a positive shut-off nozzle, or low-volume non-spray irrigation.

7 4. Stop filling or re-filling ornamental lakes or ponds, except to the extent needed to sustain
8 aquatic life, provided that such animals are of significant value and have been actively
9 managed within the water feature prior to declaration of a drought response level under this
10 ordinance.

11 5. Stop washing vehicles except at commercial carwashes that re-circulate water, or by high
12 pressure/low volume wash systems.

13 6. Repair all leaks within forty-eight (48) hours of notification by the CMWD unless other
14 arrangements are made with the General Manager or Designee.

15 (c) Upon the declaration of a Drought Response Level 3 condition, no new potable water service
16 shall be provided, no new temporary meters or permanent meters shall be provided, and no
17 statements of immediate ability to serve or provide potable water service (such as, will serve
18 letters, certificates, or letters of availability) shall be issued, except under the following
19 circumstances:

- 20 1. A valid, unexpired building permit has been issued for the project; or
- 21 2. The project is necessary to protect the public's health, safety, and welfare; or
- 22 3. The applicant provides substantial evidence of an enforceable commitment that water
23 demands for the project will be offset prior to the provision of a new water meter(s).

24 This provision shall not be construed to preclude the resetting or turn-on of meters to provide
25 continuation of water service or to restore service that has been interrupted for a period of one
26 year or less.

27 (d) Upon the declaration of a Drought Response Level 3 condition, the Board of Directors of
28 CMWD will suspend consideration of annexations to its service area.

(e) The Board of Directors of CMWD may establish a water allocation for property served by
the CMWD taking into consideration a method that does not penalize persons for the
implementation of conservation methods or the installation of water saving devices. If the Board
of Directors of CMWD establishes a water allocation notice of the allocation shall be provided by
including it in the regular billing statement for the fee or charge or by any other mailing to the
address to which the CMWD customarily mails the billing statement for fees or charges for on-
going water service. Following the effective date of the water allocation as established by the
Board of Directors of CMWD, any person that uses water in excess of the allocation shall be
subject to a penalty in the amount equal to the penalty rate established by the Metropolitan
Water District for each billing unit of water in excess of the allocation. The penalty for excess
water usage shall be cumulative to any other remedy or penalty that may be imposed for
violation of this ordinance.

1 **SECTION 9.0 DROUGHT RESPONSE LEVEL 4 – DROUGHT EMERGENCY**
2 **CONDITION**

3 (a) A Drought Response Level 4 condition is also referred to as a “Drought Emergency”
4 condition. A Level 4 condition may apply when the Water Authority Board of Directors declares
5 a water shortage emergency pursuant to California Water Code section 350 and notifies its
6 member agencies that Level 4 requires a demand reduction of more than 40 percent in order for
7 the CMWD to have maximum supplies available to meet anticipated demands. The CMWD
8 Board of Directors shall declare a Drought Emergency in the manner and on the grounds
9 provided in California Water Code section 350.

10 (b) All persons using CMWD water shall comply with conservation measures required during
11 Level 1 Drought Watch, Level 2 Drought Alert, and Level 3 Drought Critical conditions and shall
12 also comply with the following additional mandatory conservation measures:

13 1. Stop all landscape irrigation, except crops and landscape products of commercial growers
14 and nurseries. This restriction shall not apply to the following categories of use unless the
15 CMWD has determined that recycled water is available and may be lawfully applied to the
16 use.

17 A. Maintenance of trees and shrubs that are watered on the same schedule set forth in
18 section 6 (b) (1) by using a bucket, hand-held hose with a positive shut-off nozzle, or
19 low-volume non-spray irrigation;

20 B. Maintenance of existing landscaping necessary for fire protection as specified by the
21 Fire Marshal of the local fire protection agency having jurisdiction over the property to be
22 irrigated;

23 C. Maintenance of existing landscaping for erosion control;

24 D. Maintenance of plant materials identified to be rare or essential to the well being of
25 rare animals;

26 E. Maintenance of landscaping within active public parks and playing fields, day care
27 centers, school grounds, cemeteries, and golf course greens, provided that such
28 irrigation does not exceed two (2) days per week according to the schedule established
29 under section 6 (b) (1);

30 F. Watering of livestock; and

31 G. Public works projects and actively irrigated environmental mitigation projects.

32 2. Repair all water leaks within twenty-four (24) hours of notification by the CMWD unless
33 other arrangements are made with the General Manager or Designee.

34 3. The District may install a flow restricting device for services of up to one and one-half
35 inch (1-1/2”) size and comparatively sized restrictors for larger services upon a prior
36 determination that the customer has repeatedly violated the provisions of this Ordinance and
37 that such action is reasonably necessary to assure compliance with this ordinance.

38 Any willful tampering with or removal of any flow restriction device may result in termination
39 of service for a period to be determined in writing by the General Manager.

1 Prior to any restoration of service, the customer may pay all District charges for any
2 restriction of service and its restoration as provided for in the District's rules governing water
service.

3 (c) The CMWD may establish a water allocation for property served by the CMWD. If the
4 CMWD establishes a water allocation it shall provide notice of the allocation by including it in the
5 regular billing statement for the fee or charge or by any other mailing to the address to which the
6 CMWD customarily mails the billing statement for fees or charges for on-going water service.
7 Following the effective date of the water allocation as established by the CMWD, any person
that uses water in excess of the allocation shall be subject to a penalty in the amount equal to
the penalty rate established by the Metropolitan Water District for each billing unit of water in
excess of the allocation. The penalty for excess water usage shall be cumulative to any other
remedy or penalty that may be imposed for violation of this ordinance.

8 **SECTION 10.0 CORRELATION BETWEEN DROUGHT MANAGEMENT PLAN AND**
9 **DROUGHT RESPONSE LEVELS**

10 (a) The correlation between the Water Authority's DMP stages and the CMWD's drought
11 response levels identified in this ordinance is described herein. Under DMP Stage 1, the
12 CMWD may implement Drought Response Level 1 actions. Under DMP Stage 2, the CMWD
may implement Drought Response Level 1 or Level 2 actions. Under DMP Stage 3, the CMWD
may implement Drought Response Level 2, Level 3, or Level 4 actions.

13 (b) The drought response levels identified in this ordinance correspond with the Water Authority
DMP as identified in the following table:

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Drought Response Levels	Use Restrictions	Conservation Target	DMP Stage
1 - Drought Watch	Voluntary	Up to 10%	Stage 1 or 2
2 - Drought Alert	Mandatory	Up to 20%	Stage 2 or 3
3 - Drought Critical	Mandatory	Up to 40%	Stage 3
4 - Drought Emergency	Mandatory	Above 40%	Stage 3

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19 **SECTION 11.0 PROCEDURES FOR DETERMINATION AND NOTIFICATION OF**
20 **DROUGHT RESPONSE LEVEL**

21 (a) The existence of a Drought Watch condition may be declared by the Executive Manager
22 upon a written determination of the existence of the facts and circumstances supporting the
23 determination. A copy of the written determination shall be filed with the Secretary of the
24 CMWD and provided to the CMWD Board of Directors. The CMWD may publish a notice of the
determination of existence of Drought Response Level 1 condition in one or more newspapers,
including a newspaper of general circulation within the CMWD. The CMWD may also post
notice of the condition on their website.

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1 (b) The existence of Drought Response Level 2 or Level 3 conditions may be declared by
2 resolution of the CMWD Board of Directors adopted at a regular or special public meeting held
3 in accordance with State law. The mandatory conservation measures applicable to Drought
4 Response Level 2 or Level 3 conditions shall take effect on the tenth (10) day after the date the
response level is declared. Within five (5) days following the declaration of the response level,
the CMWD shall publish a copy of the resolution in a newspaper used for publication of official
notices.

5 (c) The existence of a Drought Response Level 4 condition may be declared in accordance
6 with the procedures specified in California Water Code sections 351 and 352. The mandatory
7 conservation measures applicable to Drought Response Level 4 conditions shall take effect on
8 the tenth (10) day after the date the response level is declared. Within five (5) days following
9 the declaration of the response level, the CMWD shall publish a copy of the resolution in a
10 newspaper used for publication of official notices. If the CMWD establishes a water allocation, it
11 shall provide notice of the allocation by including it in the regular billing statement for the fee or
charge or by any other mailing to the address to which the CMWD customarily mails the billing
statement for fees or charges for on-going water service. Water allocation shall be effective on
the fifth (5) day following the date of mailing or at such later date as specified in the notice.

(d) The CMWD Board of Directors may declare an end to a Drought Response Level by the
adoption of a resolution at any regular or special meeting held in accordance with State law.

12 **SECTION 12.0 HARDSHIP VARIANCE**

13 (a) If, due to unique circumstances, a specific requirement of this ordinance would result in
14 undue hardship to a person using agency water or to property upon which agency water is
15 used, that is disproportionate to the impacts to CMWD water users generally or to similar
property or classes of water uses, then the person may apply for a variance to the requirements
as provided in this section.

16 (b) The variance may be granted or conditionally granted, only upon a written finding of the
17 existence of facts demonstrating an undue hardship to a person using agency water or to
18 property upon with agency water is used, that is disproportionate to the impacts to CMWD water
users generally or to similar property or classes of water use due to specific and unique
circumstances of the user or the user's property.

19 1. Application. Application for a variance shall be a form prescribed by the General
20 Manager of the CMWD and shall be accompanied by a non-refundable processing fee in an
amount set by resolution of the CMWD Board of Directors.

21 2. Supporting Documentation. The application shall be accompanied by photographs,
22 maps, drawings, and other information, including a written statement of the applicant.

23 3. Required Findings for Variance. An application for a variance shall be denied unless the
24 General Manager finds, based on the information provided in the application, supporting
documents, or such additional information as may be requested, and on water use
information for the property as shown by the records of the CMWD, all of the following:

25 A. That the variance does not constitute a grant of special privilege inconsistent with the
26 limitations upon other CMWD customers.

1 B. That because of special circumstances applicable to the person, property or its use,
2 the strict application of this ordinance would have a disproportionate impact on the
person, property or use that exceeds the impacts to customers generally.

3 C. That the authorizing of such variance will not be of substantial detriment to adjacent
4 properties, and will not materially affect the ability of the CMWD to effectuate the
purpose of this chapter and will not be detrimental to the public interest.

5 D. That the condition or situation of the subject person, property or the intended use of
6 the property for which the variance is sought is not common, recurrent or general in
nature.

7 4. Approval Authority. The General Manager or Designee shall exercise approval authority
8 and act upon any completed application no later than 10 days after submittal and may
approve, conditionally approve, or deny the variance. The applicant requesting the variance
9 shall be promptly notified in writing of any action taken. Unless specified otherwise at the
10 time a variance is approved, the variance applies to the subject property during the term of
the mandatory drought response.

11 5. Appeals to CMWD Executive Manager or Designee(s). An applicant may appeal a
12 decision or condition of the General Manager on a variance application to the CMWD
Executive Manager or Designee(s) within 10 days of the decision upon written request for a
13 hearing. The request shall state the grounds for the appeal. At the appeal hearing, the
CMWD Executive Manager or Designee(s) shall act as the approval authority and review the
14 appeal de novo by following the regular variance procedure. The decision of the CMWD
Executive Manager or Designee(s) is final.

15 **SECTION 13.0 VIOLATIONS AND PENALTIES**

16 (a) Any person, who uses, causes to be used, or permits the use of water in violation of this
ordinance is guilty of an offense punishable as provided herein.

17 (b) Each day that a violation of this ordinance occurs is a separate offense.

18 (c) Administrative fines may be levied for each violation of a provision of this ordinance as
19 follows:

20 1. For the first violation by any customer of any of the provisions of this Ordinance the
District shall verbally notice the fact of such violation to the customer.

21 2. For a second violation by any customer of any of the provisions of this Ordinance the
22 District shall issue a written notice of the fact of such violation to the customer.

23 3. For a third violation by a customer of any provision of this Ordinance the District may
24 install a flow restricting device of one gallon per minute (1 GPM) capacity for services of up
to one and one-half inch (1-1/2") size and comparatively sized restrictors for larger services
25 upon a prior determination that the customer has repeatedly violated the provisions of this
Ordinance regarding the conservation of water and that such action is reasonably necessary
26 to assure compliance with this Ordinance regarding the conservation of water. In addition,
the District may levy an administrative fine of one hundred dollars.

27 4. Two hundred dollars for a fourth violation of any provision of this ordinance within one
28 year.

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5. Five hundred dollars for each additional violation of this ordinance within one year.

(d) If determined by General Counsel to be necessary and appropriate, in lieu of administrative remedies above, each violation of this ordinance may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days or by a fine not exceeding \$1,000, or by both as provided in Water Code section 377.

(e) Willful violations of the mandatory conservation measures and water use restrictions as set forth in Section 7.0 and applicable during a Stage 4 Drought Emergency condition may be enforced by discontinuing service to the property at which the violation occurs as provided by Water Code section 356.

(f) All remedies provided for herein shall be cumulative and not exclusive.

(g) Any customer against whom a penalty is levied pursuant to this section shall have the right to appeal as follows:

1. The request must be in writing and received by the General Manager within ten (10) calendar days of the mailing of the notice of the action to the customer. Any determination not timely appealed shall be final. The written request shall include:

- A. a description of the issue,
- B. evidence supporting the claim, and
- C. a request for resolution of the dispute.

The General Manager will review the material submitted and make an independent determination of the issue, which shall be mailed out within fifteen (15) calendar days of receipt of the appeal.

2. The General Manager's determination may be appealed in writing within ten (10) calendar days of the mailing of the notice of determination to the Board of Directors of the CMWD by filing with the Secretary of the CMWD a written notice of such appeal. The Secretary shall set the matter for a hearing before the Board of Directors at an upcoming Board meeting. Notice of the hearing shall be mailed out at least ten (10) calendar days prior to the date of the appeal. The Board may, in its discretion, affirm, reverse or modify the determination.

3. Fees for filing an appeal under this section shall be established by a resolution of the Board of Directors of the CMWD.

SECTION 14.0 REPEAL OF ORDINANCE NO. 35

Ordinance No. 35 of the Carlsbad Municipal Water District relating to the Necessity for and Adopting a Drought Response Conservation Program is hereby repealed in its entirety.

SECTION 15.0 EFFECTIVE DATE

This ordinance is effective immediately upon adoption.

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INTRODUCED AND FIRST READ at a Special Meeting of the Carlsbad Municipal Water District Board on the 16th day of December, 2008, and thereafter.

PASSED, APPROVED AND ADOPTED at a Special Meeting of the Carlsbad Municipal Water District Board, on the 6th day of January, 2009, by the following vote to wit:

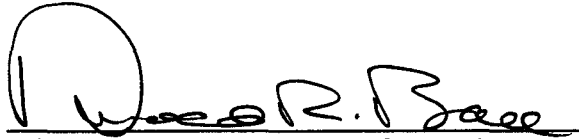
AYES: Board Members Lewis, Kulchin, Hall, Packard and Blackburn.


NOES: None.

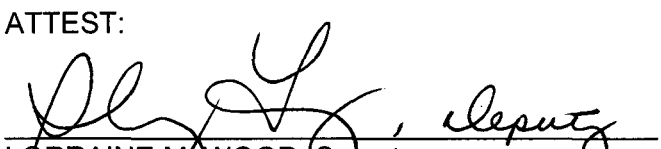
ABSENT: None.

ABSTAIN: None.

APPROVED AS TO FORM AND LEGALITY


RONALD R. BALL, General Counsel
1-6-09


CLAUDE A. LEWIS, President

ATTEST:

LORRAINE M. WOOD, Secretary

