

ORDER ADOPTING DROUGHT CONTINGENCY PLAN; PROVIDING FOR  
IMPLEMENTATION AND ENFORCEMENT THEREOF; PROVIDING  
PENALTIES FOR VIOLATIONS; AND CONTAINING OTHER  
PROVISIONS RELATED TO THE SUBJECT

WHEREAS, the Board of Directors (the "Board") of Varner Creek Utility District (the "District"), has carefully considered the current water conditions in the District and area-wide and has determined that the adoption of this Drought Contingency Plan (the "Plan") by the District is necessary to ensure that an adequate supply of water is maintained; and

WHEREAS, the Board of the District also desires to provide in the Plan for the possibility of a natural disaster or equipment failure; and

WHEREAS, the Board of the District desires to evidence its approval of this Plan and to adopt such Plan as the official policy of the District; NOW, THEREFORE,

BE IT ORDERED BY THE BOARD OF THE DISTRICT THAT:

Section 1: Approval of the Plan. The Board of the District hereby approves and adopts this Plan as set forth in this Order, and the provisions of such Plan shall be implemented immediately and enforced as a rule of the District.

Section 2: Education and Information. The District hereby institutes an educational program, to be implemented immediately, to promote the Plan by the general public which may include any of the following:

A. Publications of articles in a newspaper or newsletter of general circulation in the District's service area, providing information regarding the Plan; and

B. Direct distributions to all District residents and other users of water within the District, and all wholesale water customers of the District, if any, ("Users") explaining the Plan; and

C. Direct distributions to Users of educational and informational material regarding the Plan; and

D. Additional educational activities consisting of (i) publishing an article or articles in a local newspaper or newsletter of general circulation in the District's service area, providing tips or information on water saving techniques, or (ii) conducting an informational school program in a school attended by students within the District's service area, or (iii) conducting an educational program for Users at a public place within or accessible to residents of the District, or (iv) conducting or engaging in such other informational or educational activity designed to further the Plan as, in the discretion of the Board of Directors, may be consistent with the purposes and policies of this Plan, or (v) any combination of the foregoing.

Section 3: Retrofit Educational Program. The District shall make information regarding the Plan available to Users to use when purchasing and installing various plumbing fixtures, lawn watering equipment, and other water-using appliances.

Section 4: Coordination with Regional Water Planning Groups. The water service area of the District is located within the designated regional water planning area of the San Jacinto River Authority and the District has provided a copy of the Plan to the Authority.

Section 5: The Drought Contingency Plan.

A. Public Involvement. The District shall actively inform the public and wholesale water customers, if any, and affirmatively provide opportunity for input from the public and from wholesale water customers, if any, regarding the Plan. Such provision includes, but is not limited to, notifying the public and wholesale water customers, if any, of the District's public meeting regarding the proposed Plan, notice of which will be given pursuant to the Open Meetings Act.

B. Trigger Conditions. For the purpose of this Plan, the District hereby adopts the trigger conditions (the "Trigger Conditions") set forth below, which are based on a study and/or statistical analysis of the vulnerability of water sources under drought of record conditions. These Trigger Conditions are for the purpose of responding to, but not limited to, the following situations: (a) reduction in available water supply up to a repeat of the drought of record; (b) water production or distribution system limitations; (c) supply source contamination; or (d) water system outage due to the failure or damage of major water system components (e.g., pumps).

1. Mild Drought. This condition (herein, "Mild Drought Conditions") exists when demand on the District's water supply facilities reaches or exceeds eighty percent of the production capacity of such facilities for 3 consecutive days, as determined by the District's operator.

2. Moderate Drought. This condition (herein, "Moderate Drought Conditions") exists when demand on the District's water supply facilities reaches or exceeds ninety percent of the production capacity of such facilities for 3 consecutive days, as determined by the District's operator.

3. Severe Drought. This condition (herein, "Severe Drought Conditions") exists when demand on the District's water supply facilities reaches or exceeds one hundred percent of the production capacity of such facilities for 24 hours, as determined by the District's operator.

C. Notice. Once one of the above Trigger Conditions has occurred, Users will be notified that such Trigger Condition has occurred and of the Drought Response Measures (as defined below) to be taken. The process for notifying Users may include any of the following:

1. Mailing, at least 48 hours prior to the commencement of the required Drought Response Measures, a written notice to each User;
2. Posting of signs at the entrances to the District;
3. Posting of notices at public places in the District; and
4. Dissemination of press releases to the local news media.

5. For wholesale water customers, if any, the District operator shall contact wholesale water customers by written notice, and/or by other means, prior to commencement of the required Drought Response Measure.

Any notice issued shall contain (i) the date the Drought Response Measures will begin, (ii) the date the Drought Response Measures will terminate, if known, (iii) a list of Drought Response Measures to be implemented, and (iv) an explanation of penalties for violations of such Drought Response Measures.

D. Emergency Management Program. The District hereby establishes and adopts the following measures ("Drought Response Measures") for the respective Trigger Conditions. The Drought Response Measures related to each Trigger Condition shall automatically become effective and shall be implemented by the District when such Trigger Condition occurs.

1. Mild Drought. In the event of Mild Drought Conditions, the following Drought Response Measures shall be taken:

a. Users will be asked to voluntarily reduce water use and will be informed of specific steps that can be taken to reduce water use.

b. All outdoor water usage, including, but not limited to, lawn and garden watering, car washing, and window washing, shall be limited as follows:

(1) Only District residents and other users of water within the District with even-numbered addresses may use water outdoors on even-numbered days and only District residents and other users of water within the District with odd-numbered addresses may use water outdoors on odd-numbered days. In the event no street address exists, only District residents and other users of water within the District living on the north and west side of a street may use water outdoors on even-numbered days and only District residents and other users of water within the District on the south and east side of a street may use water outdoors on odd-numbered days.

(2) Outdoor water use shall be prohibited between the hours of 6:00 a.m. and 10:00 a.m. and between the hours of 6:00 p.m. and 12:00 a.m (midnight).

2. Moderate Drought. In the event of Moderate Drought Conditions, the following Drought Response Measures shall be taken:

a. The Drought Response Measures established for Mild Drought Conditions shall continue to be implemented.

b. All outdoor water use, including, but not limited to, lawn and garden watering, car washing, and window washing, must be conducted with a hand-held hose with a manual on-off nozzle.

c. The District shall recommend that the following public water uses by any of its Users not essential for public health and safety be curtailed:

- (1) Street washing;
- (2) Fire hydrant flushing; and
- (3) Filling of swimming pools.

d. The District's operator will initiate weekly contact with wholesale water customers, if any, to discuss water supply and/or demand conditions and the possibility of pro rata curtailment of water supplies if drought conditions worsen.

3. Severe Drought. In the event of Severe Drought Conditions, the following Drought Response Measures shall be taken:

a. The Drought Response Measures established for Mild Drought Conditions and Moderate Drought Conditions shall continue to be implemented.

b. All outdoor use of water, including but not limited to lawn and garden watering, car washing, and window washing shall be prohibited.

c. A surcharge equal to 200% of the applicable rate for all water used in excess of 10,000 gallons/month, shall be imposed on all District residents and other users of water within the District, but will not be imposed on wholesale water customers, if any.

d. The Board of the District may prohibit water use by certain industrial or commercial Users which uses are not essential to the health and safety of the community so that remaining water is available for essential health and safety related uses.

e. The Board of the District may utilize alternative water sources and/or alternative delivery mechanisms with the prior approval of the executive director of the Texas Natural Resource Conservation Commission as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).

f. The District is authorized to ration water to District residents and other users of water within the District on a pro rata basis, and to initiate allocation of water supplies to its wholesale water customers, if any, on a pro rata basis, in accordance with Texas Water Code, Section 11.039.

E. Termination of Trigger Conditions Notification. When a Trigger Condition occurs, the District shall enforce the Drought Response Measures applicable to such Trigger Condition for a minimum of five (5) days after the last day the demand on the District's water supply facilities reaches or exceeds the limits of such Trigger Condition. After such five (5) day period, the Drought Response Measures prescribed may, in the discretion of the Board, be continued for an additional five (5) day period. After the expiration of ten (10) days, and assuming no other Trigger Conditions have occurred, the Drought Response Measures prescribed shall terminate and the District shall cease implementation and enforcement of such measures. The District will notify Users of the termination of the particular Drought Response

Measures and may utilize the same manner of notification used to inform Users of the occurrence of the Trigger Condition and implementation of the Drought Response Measures.

**Section 6:** Emergency Contingency Plan. In the event of a fire, flood, hurricane, lightning strike, tornado, windstorm, or any other act of God, riot, terrorist act, or any other act of civil disobedience, or any other similar occurrence which results in the inability of the District to provide potable water to Users (or the likelihood thereof), the Board, in its discretion, may, without prior notice, invoke all or any of the Drought Response Measures set forth in this Plan as "Emergency Response Measures". The Board may establish any of the penalties set forth in Section 8 for violations of the Emergency Response Measures.

**Section 7:** Implementation. Without limitation to specific actions stated in this Plan to be taken by the District's operator, the District's operator will administer and enforce this Plan, and will oversee and be responsible for the execution and implementation of all elements of this Plan (or, if the District employs its own peace officers pursuant to Texas Water Code §49.216, such peace officers will be responsible for enforcement of this Plan). The operator shall keep adequate records for plan verification. The District's operator shall report to the Board of the District, at meetings of the Board, regarding actions taken and which need to be taken under this Plan. Without limiting the foregoing, the District's operator shall advise the President of the Board (or if the President is unavailable to receive notification, another member of the Board) as soon as reasonably practicable when a particular Trigger Condition has been reached under this Plan and when a particular drought condition no longer exists.

**Section 8:** Penalties. The following penalties shall apply to anyone violating the terms of this Plan or the Drought Response Measures or Emergency Response Measures adopted pursuant hereto:

A. First Violation. Any person or entity who violates this Plan shall receive written notification of such violation, which notice shall set forth (i) the date of the violation, (ii) the nature of the violation, (iii) the Drought Response Measures then in effect, and (iv) the penalties applicable for any further violations of this Plan; provided, however, that if such person or entity has ever previously violated this Plan, the penalties set forth in Section (B) below, may, in the discretion of the Board, be imposed.

B. Subsequent Violations.

1. Disconnection for Noncompliance. If any person or entity violates any provision of this Plan more than one time (which violation shall constitute an unauthorized use of District services and/or facilities), then in addition to any other remedies, penalties, sanctions and enforcement procedures provided for herein, the District shall have the right to terminate water service to such person or entity after notice and any other procedural requirements in the District's rate order are satisfied.

2. Monetary Penalties for Noncompliance. If any person or entity violates any provision of this Plan more than one time (which violation shall constitute an unauthorized use of District services and/or facilities), then, in addition to disconnection as provided in Subsection (B1) of this Section, the Board of the District, after providing required notice, may impose a penalty of up to \$5,000.00 for each violation of this Plan. Each day that a breach of any provision of this Plan continues shall be considered a separate violation. This penalty shall be in addition to any other legal rights and remedies of the District as may be allowed by law.

Section 9: Variances. The District may, in writing, grant a temporary variance to rationing or pro rata water allocation policies adopted pursuant to this Plan, or a temporary variance to a provision in the Plan, if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the public health, welfare, or safety and if one or more of the following conditions are met:

- (a) Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this Plan shall file a petition for variance with the District within 5 days after pro rata allocation has been invoked. All petitions for variances shall be reviewed by the District and shall include the following:

- (a) Name and address of the petitioner(s).
- (b) For District residents and other users of water within the District, a detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Plan or rationing of water adopted by the District pursuant to this Plan.
- (c) For wholesale water customers, if any, a detailed statement with supporting data and information as to how the pro rata allocation of water under the policies and procedures established in the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Plan.
- (d) Description of the relief requested.
- (e) Period of time for which the variance is sought.
- (f) Alternative measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.
- (g) Other pertinent information.

Variances granted by the District shall be subject to the following conditions unless waived or modified by the District or its designee:

- (a) Variances granted shall include a timetable for compliance.
- (b) Variances granted shall expire when the Plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

Section 10: Receiving Water from Wholesale Public Water Supplier. In case the District receives water from another water supplier, then the District shall consult with that water supplier in order to respond appropriately to the water supplier's drought contingency plan for reductions in water supply. Also in such case, if the other water supplier implements drought response stages pursuant to its drought contingency plan, the District will evaluate implementing its drought response stages and evaluate the need to discourage excessive use of water in an effort to reduce the use of water.

Section 11: Remedies Cumulative. All rights, remedies, sanctions, penalties and enforcement procedures provided for in this Order are cumulative. In addition, the District shall have and may exercise and enforce any and all rights and remedies provided by law or in equity.

Section 12: Notice to Texas Natural Resource Conservation Commission. The District's operator shall notify the executive director of the Texas Natural Resource Conservation Commission within five (5) business days of the implementation of any mandatory provisions of this Plan.

Section 13: Wholesale Customer Contracts. If the District enters into or renews any wholesale water contracts after adoption of the Plan, said contracts shall include a provision that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code, Section 11.039.

**[EXECUTION PAGE FOLLOWS]**