

**WESTERN HILLS WATER DISTRICT**

**ORDINANCE NO. 2014-02**

**AN ORDINANCE ADOPTING ENFORCEMENT PROCEDURES FOR WATER  
CONSERVATION MEASURES**

WHEREAS, the Department of Water Resources, the operator of the State Water Project from which WHWD ultimately derives its water supplies, has declared that currently there will be a zero percent ("0%") Table "A" Water Allotment for 2014; and

WHEREAS, pursuant to Water Code §375, *et seq.*, the District is enabled to implement conservation measures and enforcement proceedings; and

WHEREAS, the Western Hills Water District Board of Directors, as set forth in detail below, find that there is a current water shortage, and it is in the best interests of the District and its customers to implement the measures as set forth herein.

The Board of Directors of the Western Hills Water District does hereby ordain as follows:

1. Applicability.

(a) This ordinance provides for administrative citations which are in addition to all other legal remedies, criminal or civil, which may be pursued by the Western Hills Water District ("District") to address any violation of the District's Water Conservation Ordinance, dated February 26, 2014 (hereinafter the "Conservation Ordinance").

(b) The administrative citation process set forth in this ordinance applies to all violations of the Conservation Ordinance.

2. Enforcement officer defined.

For purposes of this ordinance, "Enforcement Officer" shall mean any District employee or agent of the District with the authority to enforce any provision of the Conservation Ordinance.

3. Administrative citation.

(a) Whenever an Enforcement Officer charged with the enforcement of any provision of the Conservation Ordinance determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.

(b) Each administrative citation shall contain the following information:

(1) The date of the violation(s);

- (2) The address or a definite description of the location where the violation(s) occurred;
- (3) The section(s) of the Conservation Ordinance violated and a description of the violation(s);
- (4) The amount of the fine for the violation(s);
- (5) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
- (6) An order prohibiting the continuation or repeated occurrence of the violation(s) described in the administrative citation;
- (7) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for a hearing form to contest the administrative citation may be obtained;
- (8) The name and signature of the citing Enforcement Officer; and
- (9) A statement that a failure to appeal shall constitute a failure to exhaust administrative remedies and result in the citation becoming a final administrative enforcement order.

#### 4. Administrative citation fines.

(a) If the responsible party fails to correct the violation(s), subsequent administrative citations may be issued for the same violation(s). The amount of the fine(s) shall increase at a rate specified in subsection (b) of this section.

(b) The penalties assessed for each violation cited shall be as follows:

(1) First administrative citation. One Hundred and no/100ths (\$100.00) Dollars for each violation cited.

(2) Second administrative citation within a twelve (12) month period. Two Hundred and no/100ths (\$200.00) Dollars for each violation cited.

(3) Third or subsequent administrative citation within a twelve (12) month period. Five Hundred and no/100ths (\$500.00) Dollars for each violation cited.

(c) Payment of the fine(s) shall not excuse the failure to correct the violation(s) nor shall it bar further enforcement action by the District.

(d) All fine(s) assessed shall be payable to the District unless otherwise directed on the citation. An administrative citation may be issued for multiple violations. Each violation constitutes a separate offense for which a separate penalty may be imposed. The aggregate amount of penalties imposed for each violation cited will be set forth on the administrative citation.

5. Payment of fines.

(a) Fines shall be paid to the District within thirty (30) days from the date of the administrative citation.

(b) Any administrative citation fine paid pursuant to this section shall be refunded in accordance with Section 9(d), below, if it is determined, after a hearing, that the person charged in the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.

(c) Payment of a fine under this ordinance shall not excuse or discharge any continuation or repeated occurrence of the code violation that is the subject of the administrative citation.

6. Hearing request.

(a) Any recipient of an administrative citation may contest that there was a violation of the Conservation Ordinance or that he or she is the responsible party by completing a request for hearing form and returning it to the District's office within thirty (30) days from the date of the administrative citation, together with an advanced deposit of the fine.

(b) A request for hearing form may be obtained from the District's office.

(c) The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.

(d) If the Enforcement Officer submits an additional written report concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of this report shall also be served on the person requesting the hearing at least five (5) days prior to date of the hearing.

7. Hearing Officer.

The District Manager shall designate the Hearing Officer for the administrative citation hearing.

8. Hearing procedure.

(a) No hearing to contest an administrative citation before a Hearing Officer shall be held unless the fine has been deposited in advance in accordance with Section 6(a).

(b) A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this ordinance.

(c) At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

(d) The failure of any recipient of an administrative citation to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies.

(e) The administrative citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.

(f) The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the administrative citation prior to issuing a written decision.

9. Hearing Officer's decision.

(a) After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or cancel the administrative citation and shall list therein the reasons for that decision. The decision of the Hearing Officer shall be final.

(b) If the Hearing Officer determines that the administrative citation should be upheld, then the fine amount on deposit with the District shall be retained by the District.

(c) If the Hearing Officer determines that the administrative citation should be upheld and the fine has not been deposited pursuant to an advance deposit hardship waiver, the Hearing Officer shall set forth in the decision a payment schedule for the fine.

(d) If the Hearing Officer determines that the administrative citation should be canceled and the fine was deposited with the District, then the District shall promptly refund the amount of the deposited fine.

(e) The recipient of the administrative citation shall be served with a copy of the Hearing Officer's decision.

(f) The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the Hearing Officer.

10. Late payment charges.

Any person who fails to pay to the District any fine imposed pursuant to the provisions of this ordinance on or before the date that fine is due shall be liable for a late payment charge of ten (10%) percent of the amount of the fine remaining unpaid and due the District.

11. Recovery of administrative citation fines and costs.

The District may collect any past due administrative citation fines or late payment charges by use of all available legal means.

12. Right to judicial review.

Any person aggrieved by an administrative decision of a Hearing Officer on an administrative citation may obtain review of the administrative decision by filing a petition for review with the Stanislaus County Superior Court in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

13. Effective Date.

This Ordinance shall be published by one insertion in the *Patterson Irrigator*, a newspaper of general circulation printed and published in the City of Patterson, within ten (10) days after its passage, and shall take effect immediately, in accordance with Water Code §376.

The foregoing Ordinance was introduced and adopted at a special meeting of the Board of Directors of the Western Hills Water District held on the 26<sup>th</sup> day of February 2014, by Director Orris who moved its introduction, which motion was seconded by Director C. Kearney, and said Ordinance was thereupon adopted by the following vote:

AYES: G Marrero, C Kearney, D Orris, D Kearney, R Beltran

NOES: None

EXCUSED: None

APPROVED:



Guillermo Marrero, President

ATTEST:

  
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Ruby Beltran, Secretary