

ORDINANCE NO. 09-16

**AN ORDINANCE OF RAINBOW MUNICIPAL WATER
DISTRICT ADOPTING A DROUGHT RESPONSE
CONSERVATION PROGRAM**

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

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

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

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

WHEREAS the water conservation measures and progressive restrictions on water use and method of use identified by this ordinance provide certainty to water users and enable Rainbow Municipal Water District to control water use, provide water supplies, and plan and implement water management measures in a fair and orderly manner for the benefit of the public; and.

WHEREAS the Rainbow Municipal Water District previously adopted Ordinance No. 08-01, an Ordinance of the Rainbow Municipal Water District Adopting a Drought Response Conservation Program; and

WHEREAS the Rainbow Municipal Water District wishes to amend Ordinance 08-01 to reflect current drought conditions.

NOW, THEREFORE, the Board of Directors of Rainbow Municipal Water District does ordain as follows:

SECTION 1.0 DECLARATION OF NECESSITY AND INTENT

(a) This ordinance establishes water management requirements necessary to conserve water, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, prevent unreasonable use of water, prevent unreasonable method of use of water within the Rainbow Municipal Water District (RMWD) 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.

(b) This ordinance establishes regulations to be implemented during times of declared water 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.

(c) Level 1 condition drought response measures are voluntary and will be reinforced through local and regional public education and awareness measures that may be funded in part by RMWD. During drought response condition Levels 2 through 4, all conservation measures and water-use restrictions are mandatory and become increasingly restrictive in order to attain escalating conservation goals.

(d) During a Drought Response Level 2 condition or higher, the water conservation measures and water use restrictions established by this ordinance are mandatory and violations are subject to criminal, civil, and administrative penalties and remedies specified in this ordinance and as provided in RMWD Administrative or Municipal Code.

SECTION 2.0 DEFINITIONS

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

1. "Grower" refers to those engaged in the growing or raising, in conformity with recognized practices of husbandry, for the purpose of commerce, trade, or industry, or for use by public 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 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 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.

2. “Water Authority” means the San Diego County Water Authority.
3. “DMP” means the Water Authority’s Drought Management Plan in existence on the 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.
4. “Metropolitan” 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 RMWD.

SECTION 3.0 APPLICATION

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

(b) This ordinance is intended solely to further the conservation of water. It is not intended to implement any provision of federal, State, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff. Refer to the local jurisdiction or Regional Water Quality Control Board for information on any stormwater ordinances and stormwater management plans.

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

(d) Notwithstanding any other section of this ordinance, the restrictions imposed upon the use of water herein do not apply to use of water from private wells or to recycled water.

(e) Nothing in this ordinance shall apply to use of water that is subject to a special supply program, such as the Metropolitan Interim Agricultural Water Program (“IAWP”) or the Water Authority Special Agricultural Rate programs, except as may be specified in those programs. For instance, the water reductions contained in this ordinance shall not be in addition to any mandatory reductions which may apply to a participant in the IAWP, unless expressly stated in the IAWP. Violations of the conditions of special supply programs are subject to the penalties established under the applicable program. A person using water subject to a special supply program and other water provided by the RMWD is subject to this ordinance in the use of the other water.

**SECTION 4.0 DROUGHT RESPONSE LEVEL 1 – DROUGHT WATCH
CONDITION**

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

(b) During a Level 1 Drought Watch condition, RMWD will increase its public education and outreach efforts to emphasize increased public awareness of the need to implement the following water conservation practices. [The same water conservation practices become mandatory if RMWD declares a Level 2 Drought Alert condition]:

1. Stop washing down paved surfaces, including but not limited to sidewalks, driveways, parking lots, tennis courts, or patios, except when it is necessary to alleviate safety or sanitation hazards.
2. Stop water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, or overspray, etc. Similarly, stop water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures.
3. Irrigate residential and commercial landscape before 10 a.m. and after 6 p.m. only.
4. 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.
5. 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 watering can. Irrigation of nursery propagation beds is permitted at any time. Watering of livestock is permitted at any time.
6. Use re-circulated water to operate ornamental fountains.

7. Wash vehicles using a bucket and a hand-held hose with positive shut-off nozzle, mobile high pressure/low volume wash system, or at a commercial site that re-circulates (reclaims) water on-site. Avoid washing during hot conditions when additional water is required due to evaporation.

8. Serve and refill water in restaurants and other food service establishments only upon request.

9. Offer guests in hotels, motels, and other commercial lodging establishments the option of not laundering towels and linens daily.

10. Repair all water leaks within five (5) days of notification by the RMWD unless other arrangements are made with the General Manager.

11. Use recycled or non-potable water for construction purposes when available.

(c) During a Drought Response Level 2 condition or higher, all persons shall be required to implement the conservation practices established in a Drought Response Level 1 condition.

SECTION 5.0 DROUGHT RESPONSE LEVEL 2 – DROUGHT ALERT CONDITION

(a) A Drought Response Level 2 condition is also referred to as a “Drought Alert” condition. A Level 2 condition applies when the Water Authority notifies its member agencies that due to cutbacks caused by drought or other reduction in supplies, a consumer¹ demand reduction of up to 20 percent is required in order to have sufficient supplies available to meet anticipated demands. The RMWD 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.

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

1. Limit residential and commercial landscape irrigation to no more than three (3) assigned days per week on a schedule established by the General Manager and posted by the RMWD. An irrigation schedule shall be established by the General Manager and posted by the RMWD. This section shall not apply to commercial growers or nurseries.

¹ Also referred to as Municipal or Industrial (M&I) water user.

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

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

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

(c) Upon the declaration of a Drought Response Level 2 condition, no new potable water service shall be provided, no new temporary meters or permanent meters shall be provided, and no statements of immediate ability to serve or provide potable water service (such as, will serve letters, certificates, or letters of availability) shall be issued, except under the following circumstances:

1. A valid, unexpired building permit has already been issued for the project; or

2. In the opinion of the RMWD Board of Directors the project is necessary to protect the public's health, safety, and welfare; or

3. The applicant provides substantial evidence of an enforceable binding commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of RMWD.

This provision shall not be construed to preclude the resetting or turn-on of meters to provide continuation of water service or to restore service that has been interrupted **for a period of one year or less, provided that such period shall in no event commence before the effective date of this ordinance.**

(d) Upon the declaration of a Drought Response Level 2 condition, RMWD will suspend consideration of annexations to its service area until such time that the Drought Response Level 2 is decreased to a Drought Response Level 1 condition or lower.

(e) The RMWD may establish a water allocation for any property served by the RMWD using a method that does not penalize persons for previous implementation of conservation methods or the installation of water saving devices. The decision to establish a water allocation and the method utilized to determine the amount of the allocation shall be at the sole discretion of RMWD.

SECTION 6.0 DROUGHT RESPONSE LEVEL 3 – DROUGHT CRITICAL CONDITION

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

(b) All persons using RMWD 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 RMWD. An irrigation schedule shall be established by the General Manager and posted by the RMWD. This section shall not apply to commercial growers or nurseries.

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

3. Stop filling or re-filling swimming pools, spas, ornamental fountains, lakes ponds or other water features, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a drought response level under this ordinance.

4. Stop washing vehicles except at commercial carwashes that recirculate water, or by high pressure/low volume wash systems.

5. Repair all leaks within forty-eight (48) hours of notification by the RMWD unless other arrangements are made with the General Manager.

**SECTION 7.0 DROUGHT RESPONSE LEVEL 4 – DROUGHT
EMERGENCY CONDITION**

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

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

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

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

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

C. Maintenance of existing landscaping for erosion control;

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

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

F. Watering of livestock; and

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

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

(c) The RMWD may establish a water allocation for any property served by the RMWD using a method that does not penalize persons for previous implementation of conservation methods or the installation of water saving devices. The decision to establish a water allocation and the method utilized to determine the amount of the allocation shall be at the sole discretion of RMWD.

SECTION 8.0 CORRELATION BETWEEN DROUGHT MANAGEMENT PLAN AND DROUGHT RESPONSE LEVELS

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

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

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	>20 to 40%	Stage 3
4 - Drought Emergency	Mandatory	Above 40%	Stage 3

SECTION 9.0 PROCEDURES FOR DETERMINATION AND NOTIFICATION OF DROUGHT RESPONSE LEVEL

(a) The existence of a Drought Response Level 1 condition may be declared by the General Manager upon a written determination of the existence of the facts and circumstances supporting the determination. A copy of the written determination shall be filed with the Clerk or Secretary of the RMWD and provided to the RMWD Board of Directors. The General Manager 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 RMWD. The RMWD may also post notice of the condition on their website.

(b) The existence of Drought Response Level 2 or Level 3 conditions may be declared by resolution of the RMWD Board of Directors adopted at a regular or special public meeting held in accordance with State law. The mandatory conservation measures applicable to Drought 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 RMWD shall publish a copy of the resolution in a newspaper used for publication of official notices.

(c) The existence of a Drought Response Level 4 condition may be declared in accordance with the procedures specified in California Water Code sections 351 and 352. The mandatory conservation measures applicable to Drought Response Level 4 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 RMWD shall publish a copy of the resolution in a newspaper used for publication of official notices. If the RMWD establishes a water allocation, it 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 RMWD 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 RMWD 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.

SECTION 10.0 HARDSHIP VARIANCE

(a) If, due to unique circumstances, a specific requirement of this ordinance would result in undue hardship to a person using agency water or to property upon which agency water is used, that is disproportionate to the impacts to RMWD 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.

(b) The variance may be granted or conditionally granted, only upon a written finding of the existence of facts demonstrating an undue hardship to a person using agency water or to property upon which agency water is used, that is disproportionate to the impacts to RMWD 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.

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

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

3. Required Findings for Variance. An application for a variance shall be denied unless the approving authority 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 RMWD, all of the following:

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

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

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

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

4. Approval Authority. The General Manager shall exercise approval authority and act upon any completed application no later than 30 days after submittal and may approve, conditionally approve, or deny the variance. The applicant requesting the variance shall be promptly notified in writing of any action taken. Unless specified otherwise at the time a variance is approved, the variance applies to the subject property during the term of the mandatory drought response.

5. Appeals to RMWD Board of Directors. An applicant may appeal a decision or condition of the General Manager on a variance application to the being mailed to the applicant. The appeal must be in the form of a written request for a hearing, and shall state the grounds for the appeal. At a public meeting, the RMWD Board of Directors shall act as the approval authority and review the appeal de novo by following the regular variance procedure. The decision of the RMWD Board of Directors is final.

SECTION 11.0 VIOLATIONS AND PENALTIES

(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.

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

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

1. One hundred dollars for a first violation.
2. Two hundred dollars for a second violation of any provision of this ordinance within one year from occurrence of the first violation.
3. Five hundred dollars for each additional violation of this Ordinance within one year of the first violation.

(d) Violation of a provision of this ordinance is subject to enforcement through installation of a flow-restricting device in the meter.

(e) 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.

(f) Willful violations of the mandatory conservation measures and water use restrictions as set forth in Section 7.0 and applicable during a Level 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.

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

SECTION 12.0 EFFECTIVE DATE

This ordinance is effective immediately upon adoption or as otherwise established by State law for RMWD.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of Rainbow Municipal Water District held on the 22nd day of September 2009 by the following vote:

AYES:	Directors Griffiths, Lucy, McManigle, Walson, and Petty
NOES:	None
ABSTAIN:	None
ABSENT:	None

Rua Petty, President, Board of Directors

ATTEST:

Dawn Washburn, Board Secretary