

1. SHORT TITLE

The short title of this Ordinance shall be the Drought Contingency Plan Enforcement Ordinance.

2. PURPOSE

The purpose of this Ordinance is to protect the valuable and limited water resources within the Hoopa Valley Indian Reservation, and to establish mechanisms for enforcement of best management practices for water use during declared drought emergencies, as outlined in the Hoopa Valley Tribe's Drought Contingency Plan.

3. APPLICABILITY

This Ordinance shall apply to all individuals utilizing water resources the exterior boundaries of the Hoopa Valley Indian Reservation, whether members or non-members of the Hoopa Valley Tribe. Those subject to penalties pursuant to this Ordinance shall include customers of the Hoopa Valley Public Utilities District (HVPUD), as well as non-customers, and all other individuals, households, associations, contractors, businesses, and organizations residing within or otherwise situated within the exterior boundaries of the Hoopa Valley Indian Reservation.

4. DEFINITIONS

For the purposes of this Ordinance, the following definitions shall apply:

- A. **Aesthetic water use:** water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.
- B. **Commercial and institutional water use:** water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings. The term is also referred to as non-residential water use.
- C. **Conservation:** those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.
- D. **Cultural and Spiritual Water Use:** Water use, practices and techniques that are integral and vital to the Cultural and Spiritual life of the Hupa People.
- E. **Customer:** any person, company, or organization using water supplied by the Hoopa Valley Tribe Public Utility District.
- F. **Domestic water use:** water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence. The term is also referred to as residential water use.

G. Drought stage: severity of the drought conditions indicated by the impact and/or vulnerability triggering criteria for the water source and capacity to meet demand, and corresponding best management practices to mitigate impacts.

H. Drought Task Force: the group of Tribal officials who have administrative and oversight authority over the Hoopa Valley Tribal Drought Contingency Plan, and Enforcement Ordinance. The drought task force consists of the following tribal officials:

1. Hoopa Valley Tribal Chairperson
2. Director Office of Emergency Services
3. Director Hoopa Valley Public Utilities District
4. Director, Hoopa Valley Tribal Environmental Protection Agency
5. Director Hoopa Tribal Fisheries
6. Chief, Wildland Fire Department
7. Chief, Hoopa Volunteer Fire Department

I. GPCD: Gallons per capita per day.

J. Industrial water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

K. Landscape irrigation use: water used for the irrigation and maintenance of landscaped areas, such as lawns, hedges, flower gardens, or other ornamental landscape areas, whether publicly or privately owned;

L. Non-essential water use: water uses that are not required for the protection of public, health and community safety.

M. Potable: water safe enough to be consumed by humans or used with low risk of immediate or long term harm.

N. Public Water System: a system provided by the Hoopa Valley Public Utilities District for human consumption through pipes or other constructed conveyances.

O. USGS: United States Geological Services.

P. USBOR: United States Bureau of Reclamation.

8. DROUGHT CONTINGENCY PLAN

On _____ the Hoopa Valley Tribal Council adopted Hoopa Valley Tribe's Drought Contingency Plan, a policy that was duly noticed and approved in accordance with the Tribe's Legislative Procedures Act. The purpose of the Drought Contingency Plan is to establish a framework of forward-leaning planning and objectives, managerial and technical actions, and practical rapid emergency response systems in order to prevent, or better respond to, a drought-related emergency. This Ordinance shall enforce the drought response actions and water use restrictions outlined in this Plan.

9. DROUGHT DECLARATION

Any authority to implement and enforce drought mitigation responses within the Hoopa Valley Indian Reservation shall be predicated by a Resolution declaring a state of emergency due to drought conditions. This declaration, if necessary based on assessment of water conditions, shall be presented and approved by the Tribal Council.

- A. Initial Assessment.** In April of each year, the Drought Task Force shall convene to conduct a drought condition assessment. The assessment shall be reported to Tribal Council at the last regularly scheduled Tribal Council meeting in April along with a request for approval, if water conditions require it, of a resolution declaring a state of emergency due to drought conditions. The assessment shall be compiled using the following data:
1. USGS National Water Information System
 2. USBR Trinity River Flow and Release Data
 3. Water quality and flow data collected by Tribal Departments from the tributaries and main stem of the Trinity River within the Hoopa Valley Reservation.
- B. Resolution Declaring State of Emergency.** Upon Tribal Council approval of any recommended resolution declaring a state of emergency, the Drought Task Force shall be authorized to announce the drought severity stage using the criteria listed in section 7, and implement any necessary water use restrictions applicable to the established drought stage.
- C. Drought Stage Updates.** The announcement of drought severity stage following Tribal Council approval of the Drought Declaration shall be issued no later than May 1. On the first day of every month thereafter for the duration of the declared state of emergency, the Drought Task Force shall provide an updated announcement on the drought severity stage. The Drought Task Force may increase or decrease the drought severity stage if water conditions require it.
- D. Public Notice.** After Council approval of the Declared State of Emergency, The Drought Task Force shall issue a public notice of the identified drought severity stage. Such notice shall be issued no later than May 1. The Drought Task Force shall also issue public notice of any modification to the drought stage no later than the first day of the month in which the modification occurs. For purposes of this Ordinance Public Notice shall include notification in the local Newspaper and Hoopa Valley Tribe website, as well posting in public buildings, such as the Tribe's Neighborhood facilities and Hoopa post office.
- E. Termination of Declared State of Emergency.**

10. DROUGHT STAGES AND COMMUNITY RESPONSE

During a declared state of emergency due to drought conditions the Drought Task Force shall develop a forecast of water supply available from all water sources on a monthly basis. This forecast shall compare the water supply available to the anticipated water demand, evaluate whether the available water supply is adequate to meet the demand over the projected time period of dry weather conditions, calculate any anticipated water shortfall, and implement any water shortage/drought response actions as necessary. The severity of drought conditions and necessary responses shall be divided into the following stages:

A. Stage 1: Minor/Abnormally Dry Conditions

1. **Criteria.** The Drought Task Force shall announce a drought Stage 1 when flows in the tributaries or in the main stem Trinity River at Hoopa, are equal to or less than 75% of average flows based on historical data.
2. **Water User Response.** All users shall be encouraged to reduce water use by 10%. In addition all users shall be encouraged to engage mitigation practices including, but not limited to the following best management practices:
 - a. Reduce flushing of water mains.
 - b. Initiate leak detection and repair.
 - c. Initiate use of reclaimed water for non-potable purposes.
 - d. limit irrigation of landscaped areas to two days a week,
 - e. Irrigate landscapes only between the hours of 8:00 P.M. to 10:00 A.M. on designated watering days.
 - f. Minimize or discontinue water use for non-essential purposes.

B. Stage 2: Severe Conditions

1. **Criteria.** the Task Force will implement Drought Stage 2 when flows in the tributaries or in the main stem Trinity River at Hoopa, are 50 % of average flows based on historical data.
2. **Water User Response.** All users must reduce water use by 25%. A drought stage 2 announcement automatically triggers the following water use restrictions:
 - a. HVPUD Customers shall reduce water consumption allocations. Residential users shall reduce Public Water System consumption to 75 GPCD, Commercial users shall reduce Public Water System consumption to 85% of average use.
 - b. All users shall limit the irrigation of landscaped areas to one day a week.
 - c. All users shall discontinue water use for non-essential purposes.

C. Stage 3: Exceptional Conditions

1. **Criteria.** The Task Force will implement Drought Stage 3 when flows in the tributaries or in the main stem Trinity River at Hoopa, are below 50 % of average flows based on historical data.
2. **Water User Response.** All users must reduce water use by 50%. A drought stage 3 announcement automatically triggers the following water use restrictions:
 - a. Discontinue flushing of water mains, except for emergency purposes;

- b. HVPUD Customers shall reduce water consumption allocations: Residential users shall reduce Public Water System consumption to 25 GPCD, Commercial users shall reduce Public Water System consumption to 50% of average use.
- c. All users shall discontinue water use for non-essential purposes.
- d. All users shall discontinue irrigation of landscaped areas.

11. PROHIBITED NON-ESSENTIAL WATER USE ACTIVITIES

In addition to the water use restrictions outlined in Section 11 above, when Drought Stages 2 and 3 are in effect, the following water non-essential uses are prohibited:

- A. Use of water to wash down any sidewalks, walkways, driveways, parking lots, basketball courts, or other hard-surfaced areas;
- B. Use of water for dust control;
- C. Use of water to wash down buildings or structures for purposes other than immediate fire protection;
- D. Flushing gutters or permitting water to run or accumulate in any gutter or street;
- E. Use of water to fill, refill, or add to any indoor or outdoor swimming pools or Jacuzzi-type pools;
- F. Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system;
- G. Use of water from hydrants for construction purposes without a permit or any other purposes other than firefighting.
- H. HVPUD Customer use of water in excess of the relevant drought stage restricted allocation.

12. VARIANCES

The Task Force may grant a temporary variance for existing water uses otherwise prohibited under this Ordinance if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the user requesting such variance, and alternative mitigation methods can be implemented which will achieve the same level of reduction in water use.

- A. Variance Petition.** Persons requesting a variance from the provisions of this Ordinance shall file a petition for variance with the Drought Task Force within five (5) days after drought response stage has been announced. All petitions for variances shall include the following:
 - 1. Name and address of the petitioner(s).
 - 2. Purpose of water use.
 - 3. Specific water restrictions from which the petitioner is requesting relief.
 - 4. Detailed statement as to how the specific water restrictions adversely affect the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with the water restrictions.
 - 5. Description of the relief requested.
 - 6. Period of time for which the variance is sought.

7. Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.

B. Review and Approval. All variance petitions shall be reviewed by the Drought Task Force within two weeks of receipt. If the Variance is granted, the petitioner shall receive notice of approval, along with variance terms, and a timetable for compliance through certified mail.

C. Compliance and Termination. Variances granted shall expire when the water restrictions in question are no longer in effect, due either to a modification of drought stage, or termination of the state of emergency. The variance shall be immediately terminated if the petitioner fails to comply with the terms of the variance.

D. Variances Not Retroactive. No variance shall be retroactive or otherwise justify any violation of this Ordinance occurring prior to the issuance of the variance.

13. PENALTIES

Any water user who engages in prohibited water use activities, or violates any water use restrictions in place, shall be subject to penalty in accordance with this Section. Penalties shall be issued for two types of violations: 1) Violations due to HVPUD customer over allocation of metered water, and 2) Violations due to observed non-essential use of water during a drought stage 2 or 3, regardless of whether individual is a customer of HVPUD

A. Public Water System Overage Fines. All residential, residential multi-family and Non-residential commercial HVPUD customers shall pay the following fines if they fail to limit their water allocation during stage 2 and 3 drought conditions. All fines shall be cumulative:

1. For the first 1,000 gallons over allocation: \$10.00
2. For the second 1,000 gallons over allocation: \$25.00
3. For the third 1,000 gallons over allocation: \$50.00
4. For each additional 1,000 gallons over allocation: \$75.00

B. Non-Essential Water Use Violations Fines. Any person who user water in a manner contrary to any mandated water use restrictions during stages 2 and 3 shall be subject to the following fines. All fines shall be cumulative, and each day that a violation persists shall constitute a separate offense:

1. For the first violation, the fee shall be deferred and the user shall receive a written warned against any further violations within the next 12 months.
2. For the second violation, the fee shall not be less than \$25.00.
3. For each additional violation, the fee shall not be less than \$50.00.

C. Restrictions to Public Water System. If a customer commits three or more distinct violations of this Ordinance within a one-year period, the customer shall be subject to the installation of flow restrictors or termination of the customer's water service at the

discretion of the Drought Task Force. Public Water Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge of \$75.00 and any other costs incurred by the public water system in discontinuing service.

- D. Additional Fine for Non-customers.** Any non-customer engaging in prohibited water uses shall also be subject to an additional fine of (\$50.00?) for every violation.

14. ENFORCEMENT AND JUDICIAL REVIEW

This Ordinance shall be enforced by the Drought Task Force and their assigned delegates, HVPUD, or the Hoopa Valley Tribal Police.

- A. Water Waste Monitoring.** When Drought stages 2 and 3 are announced the Drought Task Force shall also initiate a water waste monitoring program, comprised of tribal employees within the departments engaged in the Drought Task Force, to conduct regular community patrols to ensure compliance with water use restrictions and identify violations.
- B. Citation.** Any member of the Drought Task Force, Drought Task Force delegate, or police officer, may issue a citation or notice to a person he/she reasonably believes to be in violation of this Plan. Service of the citation shall be complete upon delivery of the citation to the alleged violator, or to a person over 18 years of age who is a member of the violator's immediate family or is a resident of the violator's residence.
- C. Presumed Responsibility.** Any person in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.
- D. Appeals.** The decision of the Drought Task Force to issue a citation and fine for violation of this ordinance may be appealed by filing a complaint in the Hoopa Valley Tribal Court within ten (10) days of receipt of notice of such action. All appeals shall be reviewed for an abuse of discretion by the citation issuer.
- E. Judicial Review.** The Hoopa Valley Tribal Court shall have personal and subject matter jurisdiction over all persons to adjudicate alleged violations of this ordinance, and shall issue any and all orders reasonably necessary to carry out the provisions of this

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ordinance, including but not limited to assessment of civil fines, injunctive relief and/or declaratory relief. Fines and costs assessed herein may be ordered paid by attachment of future per capita payments or other tribal funds due and payable to the violator.

15. SEVERABILITY

If any of this Ordinance or its application to any person or circumstance is held to be invalid, the remainder of the Ordinance or application of its provisions to other persons or circumstances shall not be affected, and to this end, the provisions of this ordinance are severable.

16. SOVEREIGN IMMUNITY PRESERVED

Nothing herein is intended to be nor shall be interpreted to be a waiver of sovereign immunity of the Hoopa Valley Tribe from un-consented suit in tribal, state or federal court.

CERTIFICATION

I, the undersigned as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which ____ (__) were present, constituting a quorum of a regular meeting thereof; duly called, noticed, convened and held this seventeenth (__) day of _____, 2014; and that this resolution was duly adopted by a vote of ____ (__) in favor, ____ (__) opposed and ____ (__) abstaining, and that said Ordinance has not been rescinded, amended or modified in any way.

Dated this ____ day of _____, 2014.

Danielle Vigil-Masten, Chairwoman
Hoopa Valley Tribal Council

Attest: _____
Judy Surber, Executive Secretary
Hoopa Valley Tribal Council