



## CITY OF BEVERLY HILLS STAFF REPORT

**Meeting Date:** November 13, 2007  
**To:** Honorable Mayor & City Council  
**From:** Shana Epstein, Environmental Utilities Manager  
**Subject:** Water Supply Update  
**Attachments:** 1. Staff Report dated May 29, 2007  
2. Emergency Water Conservation in the Municipal Code

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### **INTRODUCTION**

The City of Beverly Hills as a member agency of the Metropolitan Water District of Southern California (MWD) will be assigned a water supply allocation that reflects the Federal Court decision to protect the Delta Smelt and Chinook Salmon and based upon hydrology projections. The Delta Smelt and Chinook Salmon are fish whose habitat are the water sources that supplies the State Water Project (SWP).<sup>1</sup> The State Water Project is one of the two major surface water supplies that MWD depends upon to import water to southern California. The SWP supplies about 65% of MWD's annual imported water supply. In addition, there are many other communities that depend upon this SWP water besides MWD. MWD is currently requesting its service area to conserve 10% to accommodate for this reduction in supply. If conservation does not occur or other supplies of water are not found to backfill the re-allocated water supply, the MWD service area may use all of its reserves by 2010.

### **DISCUSSION**

*What is the State doing to solve this problem?*

The State Legislature in a special session has until mid-November to develop a bond solution for the February ballot to raise funds to improve conveyance, surface water storage, and fix the problems at the SWP. The Governor and his party currently have a different proposal than the majority of the legislature, which is why a resolution for the February ballot may be unlikely. If resolution is not found during the special session, a bond issue may be placed on the ballot through voter signatures. Funding is required for a sustained solution at the SWP.

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<sup>1</sup> Attached is the staff report last given to the City Council as an update when this habitat issue began at the State Water Project.

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*What is MWD doing to address this matter?*

MWD is encouraging conservation, pursuing water transfer contracts, engaging in the court process, following the legislative process, evaluating operational options, and planning for shortage allocations. Already, MWD has stopped supplying water for groundwater replenishment and has cut agricultural deliveries by 30%.

The City cannot clearly anticipate what the water allocation will be, but one possible scenario would be the City would be requested to reduce its annual usage by 15%. Not only will the new environmental regulations for the SWP be a factor, but also the hydrology for 2008. MWD's current proposal is expected to begin water shortage allocations in May of 2008. Below are the proposed MWD rates and financial impacts to the City:

- For FY 07/08, the City budgeted \$6.85 million for purchased water from MWD.
- The rate for calendar year 2008 is \$508 per AF
- MWD is discussing two penalty rate options.
- The draft proposal of a penalty rate from MWD ranges from \$1,114 to \$3,538 per AF.
- The two options assuming the City uses water 15% over the allocation may raise the annual water purchases from MWD to either \$8.14 million or \$8.98 million. This expense is approximately, \$2 million more than the typical annual budget. (Under normal conditions this amount of water would cost the City \$810,082.)

The City's projected water supply for FY 07/08 is as follows:

- 13,055 AF purchase from MWD 13,055 AF
- 1,340 AF of treated groundwater
- 14,395 AF total water supply projected based upon current usage, which is consistent with the City's usage since the 1970s.

As a separate issue, MWD originally was funded through property tax. Each year they submit a copy of the MWD Board's resolution to levy taxes. The City's Mayor is requested to sign as to acknowledge receipt of the resolution. Staff recommends that Mayor Delshad sign the acknowledgement.

*So what is the City's plan?*

This past summer the City asked the community to voluntarily conserve and depended mostly on MWD's outreach efforts to relay the message. With that said, the City's bill message highlighted the need to conserve, the City paid for advertisements in the two local newspapers, and the City released a press release. More importantly, the City itself as a water customer saved almost 8% from its water consumption last summer to this summer (comparing the months July, August and September). The City is beginning to build its campaign by creating cable TV messages, redesigning the utility bill, and briefing the press on a regular basis. Staff is working with MWD to bring water conservation programming to the schools. In addition, the City is exploring new ways to promote the water efficient appliance program especially the smart irrigation controller rebate.

Once MWD begins mandatory conservation, which financially penalizes the City if the whole customer base does not conserve, then a more dire effort will be recommended by staff. In 1992, the City Council approved the Emergency Water Conservation Ordinance, which is now part of the Municipal Code. The code has five stages of

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conservation beginning with voluntary 5% that may be declared by the City Manager and ending with a catastrophic interruption that the City begins allocating water to the customer and fines are up to \$1,000 per violation. Attached is the language in the Municipal Code.

With the knowledge staff has today, staff would recommend either a Stage B or Stage C Water Conservation action. Stage B requires 10% conservation and Stage C requires 20% conservation. Staff is considering two methods of implementing emergency conservation rates and will request Raftelis Financial Consultants to assist.

- 1) To implement the penalty surcharge as referenced in the municipal code. For Stage B that would double the basic water rate for those who exceed 90% of the baseline. For Stage C that would triple the basic water rate for those who exceed 80% of the baseline. This language was written before the City added the fourth tier in the residential rate structure so determining a basic water rate may be difficult. The benefit of this structure is every customer regardless of how much water they use will be equally affected by the rates.
- 2) To revise the water rate structure model to assume less water is being sold to spread the cost throughout the tiered structure that would put most of the penalty in the third and then the fourth tier. The fourth tier represents the top 20% of the City's water consumption. The advantage to this structure is the consumer who never uses more than the second tier of water, which is 55 HCF or 41,140 gallons every two months, would not be penalized as much as the consumer who always is in the highest tier of usage, which is over 120 HCF or over 89,760 gallons every two months. In other words, a household already conserving would not be affected as much by this option compared to a home not conserving.

Staff is not prepared to make a recommendation until the court decisions are confirmed and MWD's Board has voted on a course of action. At this time staff is taking this opportunity to share with the City Council the status of the water supply situation. Financial penalties will be required in order to pass on the burden that MWD will financially penalize the City's Water Enterprise Fund if conservation does not occur. In the early 1990s when the emergency conservation ordinance was last implemented, the City as a whole used 12% less water and had penalty rates in place. During that time, two members of the Public Works Commission served on an appeals board for those who felt their utility bills were unfair.

Staff expects to finalize a recommendation to the City Council within a month of MWD making a final decision of how to proceed with the diminished water supply from the SWP and the current hydrology. This rate adjustment will have to follow the rules of Proposition 218, which requires at least 45 days notice prior to the rate being presented at a public hearing.

In addition, staff continues to explore the other sources of water from shallow groundwater to deep wells further east of the City. Staff will prepare a separate report to discuss these options with the feasibility and risks associated by the end of the year.

As this water emergency grips the entire state of California, many opinions and facts will be bantered across the headlines. Two major issues have already been out in the press – reclaimed water and agricultural use.

- 1) Some will say there is enough water it is just not potable water as we have historically produced it and that the state should be more open to wastewater

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being transformed into potable water. This view point is acted upon in some countries and communities already. California has historically only used treated wastewater for irrigation. To implement these reclamation proposals are costly and not quick solutions in a dilemma that is unfolding presently.

- 2) Others will say if agriculture is the largest user why don't they conserve more than urban areas. Responses to that claim include that agriculture in California has increased its productivity without increasing its water usage. In 2001, a dry year for California, the California Water Plan (most recently updated in 2005) stated that agriculture was around 50% of the state's water usage.

Overall, these discussions are valuable for long-term planning, but the state does not have that luxury during this current situation to create new water except through purchasing water from new sources or conserving.

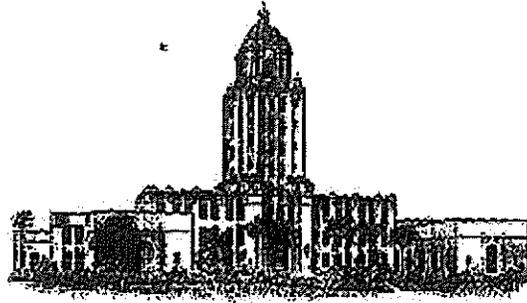
### **FISCAL IMPACT**

The fiscal impact is still unknown, but expected to be significant to the Water Enterprise Fund. More importantly, to meet the conservation goals staff is expecting to have to modify the rate structure.

### **RECOMMENDATION**

At this time staff is providing information only and will return with a recommendation when the court decisions are confirmed and MWD's Board has voted on a course of action.

 David Gustavson  
Approved By



**CITY OF BEVERLY HILLS**  
**STAFF REPORT**

**Meeting Date:** May 29, 2007  
**To:** Honorable Mayor & City Council  
**From:** Shana Epstein, Environmental Utilities Manager  
**Subject:** Update on the City's Imported Potable Water Supply  
**Attachments:**

1. March 29, 2007 Memorandum from MWD's General Manager
2. March 25, 2007 MWD Presentation
3. April 17, 2007 Memorandum from MWD's General Manager

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**INTRODUCTION**

The City of Beverly Hills imports 90% of its water supply as a member of the Metropolitan Water District of Southern California (MWD). On March 22, 2007, an important court decision regarding the California Endangered Species Act Ruling was issued. This ruling affects the State Water Project (SWP) which provides over 40% of the MWD's annual water supply. The ruling was issued as a draft decision and on April 17, 2007, the court issued a final ruling, which could have turned off the pumps of water from SWP as soon as June 18, 2007. This action has been delayed due to additional legal activity that will not be concluded until April 2008.

Staff is presenting this information to keep the City Council informed of a pending issue that has not been fully vetted in the MWD community, but is being closely monitored, and preparations are being made. In the meantime, MWD is encouraging all member agencies to voluntarily conserve not only because of this pending issue, but because this summer is predicted to be the hottest and driest since 1887. So what is conserved today may be what we rely upon next summer.

**DISCUSSION**

**What is the State Water Project?**

The SWP is owned and operated by the State's Department of Water Resources (DWR). The SWP water source originates in Lake Oroville, which is located on the Feather River in Northern California. That water, along with all additional unused water from the watershed, flows into the Sacramento/San Joaquin Delta. Water from the Delta is then either pumped to water users in the San Francisco Bay area or transported through the California Aqueduct to water users in Central and Southern California.



## METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

**Date:** March 29, 2007  
**To:** Board of Directors and Member Agency Managers  
**From:** Karen L. Tachiki, General Counsel  
Jeffrey Kightlinger, General Manager  
**Subject:** Report on *Watershed Enforcers v. California Department of Water Resources*

On March 22, 2007, the Alameda County Superior Court issued its Proposed Statement of Decision in *Watershed Enforcers v. California Department of Water Resources*. The draft decision finds that the Department of Water Resources (DWR) is illegally "taking" listed fish through operation of the State Water Project (SWP) export facilities, and orders DWR to "cease and desist from further operation" of the those facilities within 60 days unless it obtains take authorization from the Department of Fish and Game (DFG).

Plaintiffs allege in this case that DWR has not obtained a formal incidental take authorization from DFG regarding take of species listed under the California Endangered Species Act (CESA). DWR has not obtained such an authorization through the formal process for obtaining a take authorization enacted in 1997. Instead, DWR believes it has take authorization under a companion provision of CESA enacted at the same time authorizing "grandfathered" incidental take under agreements with DFG signed before the 1997 enactment of these provisions. DWR and DFG are parties to several such agreements.

The trial court noted that the agreements "certainly demonstrate the fact that DWR was and has been attentive to the issue of incidental take." The SWP has, in fact, been operated to minimize and mitigate for incidental take since the early 1990's under biological opinions and incidental take authorizations issued by the National Marine Fisheries Service and the United States Fish and Wildlife Service under the Federal Endangered Species Act. In the trial judge's opinion, however, the pre-existing agreements DWR relies on are not specific enough regarding the take of listed species to qualify for grandfathered take authorization under CESA. Therefore, the court ordered DWR to obtain a formal incidental take authorization.

The order is not final at this time; Defendants have 15 days to review and file objections to the proposed final judgment before the court signs it. Metropolitan staff is analyzing the possible near term ramifications for Metropolitan's SWP supplies and its options for mitigating any reduction of SWP supplies that may result from the litigation. Staff also is working with DWR and the State Water Contractors on options available to respond to the court's ruling.

An option potentially available under CESA is for DWR to request DFG to issue a determination that the existing federal biological opinions, with their existing operational restrictions to protect listed species and adaptive management process to evaluate additional appropriate actions, are consistent with requirements for incidental take under CESA. If that determination is made, the federal biological opinions essentially will be adopted and provide incidental take authorization under CESA. This option can be completed within the 60-day deadline established by the court.

Another option is a formal incidental take authorization process under CESA. However, this likely would take 8 to 12 months and cannot be done within the court's 60-day time frame. In the long run, the court could grant additional time as part of the remedy to get a formal permit. The preferred course of action is to complete the current Bay Delta Conservation Plan process which is intended to provide increased protection to listed species and stronger, long-term assurances to the SWP under both the federal ESA and CESA.

Staff also is coordinating potential litigation responses with the State Water Contractors (SWC) and DWR. Among the litigation options being considered if the consistency determination described above is not made are an appeal of the final judgment, along with a request to stay the operation of a trial court's judgment pending the outcome of an appeal, and a motion to the court to reconsider its 60-day deadline. Either option could provide additional time to develop alternative approaches to meeting the trial court's goal of having DWR obtain a take authorization within a more realistic time frame. The proposed 60-day deadline is inappropriately short because it is highly unlikely that a formal take authorization can be obtained in that time frame; there is no biological basis for an immediate, complete shut down of export pumping; the federal biological opinions already provides an adaptive management process for managing project operations to significantly reduce impacts on listed species; and 60 days may not be an adequate amount of time for some SWC members to plan for an immediate reduction of SWP supplies.

Staff will continue to keep you apprised of new developments in this case as soon as they occur.

## California Endangered Species Act Ruling

Potential Water Resource and  
Operational Strategies

March 25, 2007

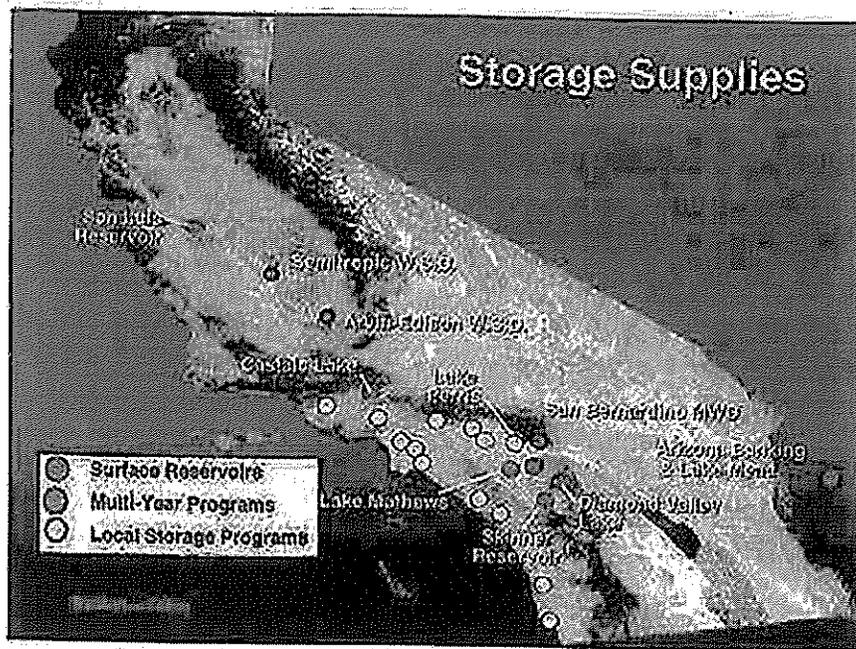
## Statewide Consequences of CESA Ruling

- Immediate impacts to Northern & Central California
  - Potential shortages due to limited storage
  - Potential requests from Northern and Central California State Water Project Contractors for aid
  - Adverse to economy and agricultural industry
- Prudent Water Supply Actions by Metropolitan and Member Agencies to reduce near-term risk to Southern California
  - Public information campaign and request for conservation
  - Maintain firm deliveries in 2007
  - At higher risk if an emergency (e.g. Delta levee failure) or extended drought were to follow
- Disparate water reliability throughout the State
- California's economic viability adversely impacted

### Metropolitan's Resource/Operational Potential Actions

- Call for voluntary conservation
  - 10 - 20% reduction in demands
- Manage SWP deliveries
- Manage approved CRA deliveries
- Maximize storage deliveries
  - Reservoirs in service area
  - Groundwater programs in Central and Southern California
- Other actions
  - Discontinue replenishment and interim ag deliveries
  - Additional supplies from existing programs

Metropolitan Water Services



**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

**Date:** April 18, 2007

**To:** Member Agency Managers

**From:** Jeffrey Kightlinger, General Manager  
Karen Tachiki, General Counsel

**Subject:** *Watershed Enforcers v. California DWR*

As previously reported to you, Judge Roesch of the Alameda County Superior Court on March 22, issued a proposed Statement of Decision in *Watershed Enforcers v. California Department of Water Resources* directing DWR to cease operation of the Banks Pumping facility of the State Water Project within 60 days unless DWR obtained authorization for the take of listed species under the California Endangered Species Act (CESA). Last Wednesday, DWR and the State Water Contractors filed objections to the proposed decision and requested that the Court refrain from finalizing its decision while the California Department of Fish and Game (DFG) considered DWR's request for a consistency determination as the means to obtain such CESA authorization. While disappointing, but not unexpected, the Judge yesterday signed a judgment which finalizes his decision to require DWR to obtain authorization from DFG within 60 days of entry of judgment. If DFG timely issues that authorization, it will avoid any shut down of the SWP pumps. DFG must make its determination within 30 days. In the meantime, Metropolitan along with other SWP contractors are prepared to pursue all litigation and administrative options to avoid disruption of SWP water supplies to urban and agricultural users throughout California. We will of course keep you apprised of any new developments.

**9-4-303: DECLARATION OF WATER CONSERVATION STAGES:**

- A. Water conservation stages shall be determined by the amount of water available or the potential for water interruption. The city manager shall monitor the supply and demand for water by customers. When the city manager finds that the guidelines for initiation of any stage, as set forth in this article, have been satisfied, he or she shall recommend to the city council that a resolution to declare the appropriate water conservation stage be adopted.
- B. The resolution by the city council implementing or terminating conservation stages shall be published at least once in a newspaper of general circulation within the city and posted in a least three (3) public places and shall continue to be posted until such time as the restrictions of each stage are repealed by resolution of the city council.
- C. Except as otherwise may be provided by this article or a resolution adopted by the city council, any prohibitions on the use of water shall become effective immediately upon publication in a newspaper of general circulation within the city. Except as otherwise may be provided by a resolution adopted by the city council, any provisions requiring a percentage reduction in the use of water shall become effective at the first full billing period commencing on or after the date of such publication. (Ord. 92-O-2129, eff. 4-2-1992)

## 9-4-304: REQUIREMENTS FOR WATER CONSERVATION STAGES:

### A. Stage A Requirements:

1. A stage A shortage shall be declared when the city manager determines that a five percent (5%) reduction in potable water use is required.
2. Stage A compliance shall consist of voluntary implementation of water conservation elements including, without limitation, reduced irrigation, no washdown of paved areas except to alleviate immediate fire or sanitation hazards, reduced operation of nonrecycling fountains, notification of hotel and restaurant patrons of water conservation goals, serving of water at restaurants only upon request and use of reclaimed water for construction purposes.

### B. Stage B Requirements:

1. A stage B shortage shall be declared when the city manager determines that a ten percent (10%) reduction in potable water use is required.
2. Stage B compliance elements shall include the following mandatory elements:
  - a. Restaurants shall serve water upon request only;
  - b. All public restrooms in the city and private bathrooms in hotels shall notify patrons and employees of water conservation goals;
  - c. Plumbing and irrigation leaks shall be repaired as soon as practicable. The city may issue notices to repair visible leaks;
  - d. Water usage shall be reduced to ninety percent (90%) of the baseline year amount as determined by the city manager.
3. A water penalty surcharge of up to two (2) times the basic water rate shall be charged for water usage in excess of ninety percent (90%) of the baseline year amount as determined by the city manager.
4. Violation by any person of the stage B mandatory requirements shall constitute an infraction and, upon conviction, shall be punished by a fine not to exceed one hundred dollars (\$100.00). The violation of each element, and each separate violation thereof, shall be deemed a separate offense, and shall be punished accordingly.

### C. Stage C Requirements:

1. A stage C shortage shall be declared when the city manager determines that a twenty percent (20%) reduction in potable water use is required.
2. Stage C compliance elements shall include the following mandatory elements:
  - a. Restaurants shall serve water upon request only;

b. All public restrooms in the city and private bathrooms in hotels shall notify patrons and employees of water conservation goals;

c. Plumbing and irrigation leaks shall be repaired as soon as practicable. The city may issue notices to repair visible leaks;

d. Water usage shall be reduced to eighty percent (80%) of the baseline year amount as determined by the city manager.

3. A water penalty surcharge of up to three (3) times the basic water rate shall be charged for water usage in excess of eighty percent (80%) and not more than one hundred percent (100%) of the baseline year amount as determined by the city manager. A water penalty surcharge of up to ten (10) times the basic water rate shall be charged for water usage in excess of one hundred percent (100%) of the baseline year amount as determined by the city manager.

4. Violation by any person of the stage C mandatory requirements shall constitute a misdemeanor and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00). Water supply through irrigation water services may be terminated for continued excessive use. The violation of each element, and each separate violation thereof, shall be deemed a separate offense, and shall be punished accordingly.

#### D. Stage D Requirements:

1. A stage D shortage shall be declared when the city manager determines that a thirty percent (30%) or higher reduction in potable water use is required.

2. Stage D compliance elements shall include the following mandatory elements:

a. Restaurants shall serve water upon request only;

b. All public restrooms in the city and private bathrooms in hotels shall notify patrons and employees of water conservation goals;

c. Plumbing and irrigation leaks shall be repaired as soon as practicable. The city may issue notices to repair visible leaks;

d. Landscape irrigation shall be restricted to selected days and times as determined by the city manager, unless such irrigation uses reclaimed wastewater;

e. Refilling of swimming pools, spas or ponds shall be prohibited unless required for health reasons;

f. Operation of water fountains shall be prohibited;

g. Exterior washdown of buildings and washdown of vehicles shall be prohibited, unless:

(1) The washing is done on the immediate premises of a commercial car wash or commercial service station or with reclaimed wastewater; or

(2) The health, safety and welfare of the public is contingent upon frequent vehicle cleaning.

such as the cleaning of garbage trucks and vehicles to transport food and perishables;

h. Water usage from fire hydrants shall be limited to fire fighting, related activities or other activities necessary to maintain the public health, safety and welfare;

i. Water usage shall be reduced to seventy percent (70%) of the baseline year amount as determined by the city manager.

3. A water penalty surcharge of up to four (4) times the basic water rate shall be charged for water usage in excess of seventy percent (70%) but not more than one hundred percent (100%) of the baseline year amount as determined by the city manager. A water penalty surcharge of up to ten (10) times the basic water rate shall be charged for water usage in excess of one hundred percent (100%) of the baseline year amount as determined by the city manager.

4. Violation by any person of the stage D mandatory requirements shall constitute a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars (\$1,000.00). Continued excessive use may result in termination of water supply through irrigation water services and/or restriction of water supply through domestic meters. The violation of each element, and each separate violation thereof, shall be deemed a separate offense, and shall be punished accordingly.

#### E. Stage E Requirements:

1. A stage E shortage shall be declared when the city manager determines that a catastrophic interruption of potable water supply has occurred or is foreseen.

2. The city manager shall have emergency water allocation authority in the case of a stage E declaration. This authority shall include the authority to interrupt service to any property or city service zone in order to provide the maximum water supply for human health and safety needs.

3. In allocating water, the city manager shall give first priority to health and safety needs of water utility customers. Subsequent water uses are prioritized to provide water supply first to maintain and expand commerce within the city, then to enhance the aesthetics of the environment, and then to facilitate construction activities.

4. Violation by any person of the stage E emergency water conservation regulations shall constitute a misdemeanor and, upon conviction, shall be punished by a fine not to exceed one thousand dollars (\$1,000.00) and six (6) months in jail. Continued excessive use may result in termination of water supply through irrigation water services and/or restriction of water supply through domestic meters. The violation of each element, and each separate violation thereof, shall be deemed a separate offense, and shall be punished accordingly. (Ord. 92-O-2139, eff. 4-2-1992)

**9-4-307: ADDITIONAL WATER CONSERVATION MEASURES:**

After holding a public hearing before the city council, the city manager may order implementation of water conservation measures including or in addition to those set forth in section 9-4-304 of this article, in order to encourage proper potable water use or to meet water conservation goals, regardless of supply. (Ord. 92-O-2139, eff. 4-2-1992)