

## FRY ROAD MUNICIPAL UTILITY DISTRICT

SECOND AMENDED AND RESTATED ORDER ADOPTING WATER CONSERVATION, DROUGHT AND EMERGENCY CONTINGENCY PLAN; PROVIDING FOR IMPLEMENTATION AND ENFORCEMENT THEREOF; PROVIDING PENALTIES FOR VIOLATION; AND CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT

WHEREAS, Southeast Texas from time to time suffers from a severe shortage of rainfall;  
and

WHEREAS, such shortages of rainfall result in decreased supplies of potable water; and

WHEREAS, Fry Road Municipal Utility District (the "District") was created for, among other purposes, the conservation and development of its water and the control, abatement, and change of any shortage of water, and the District has statutory authority to accomplish such purposes, including without limitation authority to prevent waste; and

WHEREAS, the Board of Directors (the "Board") of the District has carefully considered the situation and has determined that the adoption of this Water Conservation, Drought and Emergency Contingency Plan (this "Plan") by the District is necessary to prevent waste and to ensure that adequate supplies of water are maintained; and

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

WHEREAS, the Board has found and determined and does hereby find and determine that No Private Real Property Impact will result from adoption or enforcement of this Order; NOW THEREFORE,

BE IT ORDERED BY THE BOARD OF THE DISTRICT THAT:

Section 1: Public Involvement/Approval of the Plan. Opportunity for the public to provide input into the preparation of this Plan was provided by means of scheduling and providing public notice of a public meeting to accept input on 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: Coordination with Regional Water Planning Groups. The service area of the District is located within Regional Water Planning Area H as designated by the Texas Water Development Board. The District will provide a copy of this Plan to the Regional Planning Group for Regional Water Planning Area H.

Section 3: The Water Conservation Plan.

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

1. Publications of articles in a newspaper or newsletter of general circulation in the District's service area, providing information regarding water conservation; and
2. Direct distributions to all District residents and other users of water within the District ("Users") explaining the Plan; and
3. Direct distributions to Users of educational and informational material regarding water conservation; and
4. 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 water conservation, 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.

B. Retrofit Education Program. The District shall make information regarding water conservation available to Users to consider when purchasing and installing various plumbing fixtures, lawn watering equipment, and other water-using appliances.

Section 4: The Drought Contingency Plan.

A. Trigger Conditions. For the purpose of this Plan, the District hereby adopts the trigger conditions (the "Trigger Conditions") set forth below:

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 consecutive hours, as determined by the District's operator.

B. 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.

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.

C. 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 Conditions occurs.

1. Mild Drought. In the event of Mild Drought Conditions, the following Drought Response Measures shall be taken, with a target of achieving a 10% reduction in daily water demand:

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 Users with even-numbered addresses may use water outdoors on even-numbered days and only Users with odd-numbered addresses may use water outdoors on odd-numbered days. In the event no street address exists, only Users living on the north and west side of a street may use water outdoors on even-numbered days and only Users on the south and east side of a street may use water outdoors on odd-numbered days.

(2) All outdoor water use shall be prohibited between the hours

of 10:00 a.m. and 6:00 p.m.

2. Moderate Drought. In the event of Moderate Drought Conditions, the following Drought Response Measures shall be taken, with a target of achieving a 15% reduction in daily water demand:

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 not essential for public health and safety be curtailed:

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

3. Severe Drought. In the event of Severe Drought Conditions, the following Drought Response Measures shall be taken, with a target of achieving a 20% reduction in daily water demand:

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 Users.

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.

D. 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 5: 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 occurrence which results in the reduced ability 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 7 for violations of the Emergency Response Measures.

Section 6: 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 the 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. The District's operator shall notify the executive director of the Texas Commission on Environmental Quality within five (5) business days of the implementation of any mandatory provisions of this Plan.

Section 7: 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 the Plan, the penalties set forth in Subsection (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 (B.1) of this Section, the Board of the District 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 8: Variances. The Board may grant a temporary variance for existing water uses otherwise prohibited under this Plan if the Board determines that failure to grant such a variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance 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 a variance from the provisions of this Order shall file a petition for variance with the District within 5 days after the Plan or a particular Drought Response Measure has been invoked. All petitions for variances shall be reviewed by the Board, and shall include the following:

- a. Name and address of the petitioner(s).
- b. Purpose of water use.
- c. Specific provision(s) of the Plan from which the petitioner is requesting relief.
- d. 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 Order.
- e. Description of the relief requested.
- f. Period of time for which the variance is sought.
- g. 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.
- h. Other pertinent information.

Unless waived or modified by the Board, variances granted shall include a timetable for compliance, and variances granted shall expire when the Plan or particular Drought Response Measure is no longer in effect. No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

Section 9: 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 10: Severability. If any provision, section, subsection, sentence, clause, or phrase of this Order, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Order or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the Board of Directors in adopting this Order that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of unconstitutionality, voidness or invalidity of any other portion hereof. And all provisions of this Order are declared to be severable for that purpose.

Section 11. Open Meeting. The Board of Directors finds and determines that a sufficient written notice of the date, hour, place and subject to this meeting of the Board of Directors was posted at a place convenient to the public for the time required by law preceding this meeting, as required by Chapter 551 of the Texas Government Code and Section 49.063 of the Texas Water Code, as amended, and that this meeting has been open to the public as required by law at all times during which this Order and the subject matter thereof has been discussed, considered and formally acted upon. The Board further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 12. Public Record. This Order shall be kept with the other records of the District by the official custodian of the records of this District, and this Order is hereby declared to be a public record.

Section 13. Authority. This Order is promulgated pursuant to Section 49.004 and Sections 54.205, et. seq., Texas Water Code.

Section 14: Repeal of Prior Orders Relating to Water Conservation, Drought and Emergency Contingency Planning. Any and all prior orders or resolutions relating to water conservation, drought and emergency contingency planning are hereby repealed, and this Order shall supersede any such prior orders or resolutions.

Section 15. Renew and Update. The District shall renew and update, as appropriate, this Plan at least every five (5) years, based on new or updated information, such as adoption or revision of any applicable regional water plan.

Section 16. Effective Date. This Order shall be effective from and after the date of its adoption.

PASSED, APPROVED AND EFFECTIVE this 14th day of April, 2005.

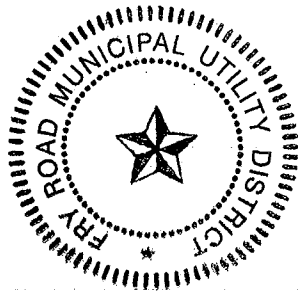
FRY ROAD MUNICIPAL UTILITY DISTRICT

  
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President, Board of Directors

ATTEST:

  
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Secretary, Board of Directors

[SEAL]





CERTIFICATE

I, the undersigned secretary of the board of directors of Fry Road Municipal Utility District, hereby certify that the foregoing is a true and correct copy of the Order Adopting Water Conservation, Drought and Emergency Contingency Plan adopted at a board meeting held on April 14, 2005, as said Order appears of record in the official minute book of the District on file in the District's office.

I further certify that said meeting was open to the public, and that notice thereof was posted in compliance with the provisions of Chapter 551 of the Texas Government Code, as amended, and Section 49.063 of the Texas Water Code, as amended.

Witness my hand and the official seal of said District, this 14th day of April, 2005.

*David Buskemp*  
Secretary, Board of Directors

