



MEMORANDUM

TO: City Council

FROM: Nicole Valentine, Director of Administrative Services
Bill Robeson, Assistant City Manager/Public Works Director

BY: Aleah Bergam, Management Analyst
Shane Taylor, Utilities Manager

SUBJECT: Consideration of a Resolution Suspending Penalties for Failure to Meet Required Water Use Reductions During the Current Stage 1 Water Shortage Emergency

SUMMARY: Adopting the Resolution suspending water penalties is not a project subject to the California Environmental Quality Act (“CEQA”) because it has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment (State CEQA Guidelines, §§ 15060, subd. (b)(2)-(3), 15378.) Alternatively, this is not a “project” as defined by CEQA because suspension of the penalties is merely administrative activity related to the implementation of Resolution 5119. (See State CEQA Guidelines, § 15378(b)(2),(4))

DATE: February 14, 2023

SUMMARY OF ACTION:

Approval of the proposed Resolution will authorize the Administrative Services Director to suspend penalties incurred by customers for failure to meet required water use reductions imposed pursuant to the Stage 1 Water Shortage Emergency Declaration adopted on October 12, 2021, Resolution 5119.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

The following mandatory financial penalties are currently levied on all water users who fail to reduce consumption in the percentages required in Paragraphs B and C of Exhibit “A” of Resolution 5119 declaring a State 1 Water Shortage Emergency:

First Violation: Written notice of violation and opportunity to correct violation.

Second Violation: \$50 penalty

Third Violation: \$100 penalty

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Subsequent Violations: \$200 penalty

Failure to pay: The City may discontinue water service to any customer who fails to pay penalties billed on the regular water bill. Any water shutoffs shall occur in compliance with Health and Safety Code 116900 et seq., known as the Water Shutoff Protection Act. Service will be restored upon full payment of all outstanding balances and reconnection charges. A delinquent bill shall also be increased by penalty of ten (10) percent of the amount of delinquency.

Since the Stage 1 Water Shortage Declaration was adopted on October 12, 2021, the City has billed a total of \$379,700 in mandatory penalties associated with failing to meet required water use reductions.

Suspending mandatory penalties reduces staff time and resources associated with penalty notices, conducting site visits with property owners about water conservation options and to conduct water audits, responding to inquiries from residents and water meter “re-reads”, and Water Shortage Appeals Board (WSAB) time reviewing appeals for baseline adjustments. AGMC Section 13.07.070 contains procedures for adjustments to the water allocation or water reduction requirements if a customer can provide evidence of unique circumstances. As of January 27, 2023, the Utilities Manager has reviewed 1,381 requests for baseline adjustments.

RECOMMENDATION:

Adopt a Resolution authorizing the City’s Administrative Services Director to suspend penalties imposed pursuant to the Stage 1 Water Shortage Emergency Declaration adopted on October 12, 2021, Resolution 5119, for failure to meet required water use reductions for February 2023 billing dates and all future billing dates until otherwise directed by the City Council.

BACKGROUND:

On October 12, 2021, Council approved Resolution 5119 declaring a Stage 1 Water Shortage Emergency and implementing Emergency Water Shortage Restrictions and Regulations (Attachment 2). At the time, the City of Arroyo Grande, along with much of the State of California was experiencing historic drought conditions that negatively impacted the City’s water supply and necessitated conservation requirements and the application of mandatory water use reductions.

AGMC and Declaration of Stage 1 Water Shortage Emergency

Chapter 13.07 of the Arroyo Grande Municipal Code (AGMC), Emergency Water Shortage Restrictions and Regulations, provides for stages of action that will be undertaken in response to water supply shortages and related triggering conditions. Chapter 13.07 was added to the AGMC in February 2015.

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In February 2017, AGMC Chapter 13.07 was amended to provide for stages of action consistent with the City's revised Urban Water Management Plan. The stages of action were created in recognition of the fact that the City's water supply consists of a combination of water from the Lopez Reservoir and groundwater sources, and that a variety of specific factors can result in the need to implement specific conservation measures, such as unanticipated interruptions of local water deliveries or the imposition of additional State mandated reductions in water use.

AGMC Section 13.07.030(A) provides that after holding a noticed public hearing in accordance with the requirements of Water Code Section 350, et seq., the City Council may declare a Stage 1 Water Shortage Emergency and institute reductions in water usage based upon historical use. Water Code Section 350, et seq., authorizes the governing body of a public water supply distributor to declare that water shortage emergency conditions prevail within the area served by such distributor whenever it finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the distributor to the extent that there would be insufficient water for human consumption, sanitation, and fire protection. Water Code Section 353 provides that when such a water shortage emergency is declared, the governing body shall adopt necessary regulations and restrictions on the delivery and consumption of water.

Under AGMC Section 13.07.030(A), triggering conditions for a Stage 1 Water Shortage Emergency may include, but are not limited to, a determination that the water level at the Lopez Reservoir is at or below fifteen thousand (15,000) acre-feet. When the Stage 1 Water Shortage Emergency was initially considered by Council on September 28, 2021, Lopez Reservoir was anticipated to fall below the triggering threshold of 15,000 acre-feet by approximately October 14, 2021.

AGMC Section 13.07.090 explains that penalties will be imposed to create a meaningful incentive to reduce water. Under AGMC Section 13.07.030(A)(2), "penalties may also be modified or amended by the City Council as deemed necessary and appropriate upon a determination of the severity of the water shortage emergency."

2021 and 2022 Water Supply and Demand Conditions

On July 8, 2021, Governor Gavin Newsom issued a Proclamation of a State of Emergency, pursuant to the California Emergency Services Act, due to drought in several counties in the State, including San Luis Obispo County. On July 13, 2021, the San Luis Obispo County Board of Supervisors (Board) declared a local drought emergency; and, on August 24, 2021, the Board enacted the Lake Lopez Low Reservoir Response Plan (LRRP) for Lopez Lake. The LRRP was developed by the San Luis Obispo County Flood Control and Water Conservation District Zone 3 and provides for a series of management procedures that are to be followed when the reservoir level drops below 20,000 acre-feet.

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On September 22, 2021, Lopez Lake was at 15,426 acre-feet of storage and water levels at Lopez Lake had been dropping at the rate of approximately 150 acre-feet per week and was, therefore, expected to fall below the triggering threshold of 15,000 acre-feet by approximately October 14, 2021. On September 8, 2021, the Zone III Technical Advisory Committee endorsed the action of reducing contract deliveries by 10%. The City began reducing the flow of Lopez Lake deliveries on September 15, 2021, to 1.9 million gallons per day, compared to the normal flow of 2.2 million gallons per day. On July 21, 2022, the Zone III Advisory Board approved the Technical Advisory Committee's recommendation to reduce contract deliveries by 20% prior to Lopez Lake reaching 10,000 acre-feet. As a result, the City began reducing the flow of deliveries on July 26, 2022, to 1.7 million gallons per day. As of December 1, 2022, deliveries from the Water Treatment Plant were restricted to 1.3 million gallons per day.

In addition, after the declaration of the Stage 1 Water Emergency, the Lopez Water supply contract with the County was amended to include storage rights for Lopez water contractors. At this time, the City holds 774.60 acre-feet in stored water in addition to the normal 2,290 acre-feet entitlement.

January 2023 Storms

On January 4, 2023, Governor Newsom issued a [Proclamation of a State of Emergency](#) relating to severe winter storms and a series of atmospheric river systems that struck California beginning December 27, 2022, bringing high winds, substantial precipitation, and river, stream, and urban flooding. After the substantial precipitation from the storms, water levels at Lopez Lake increased significantly, from 10,800 acre-feet at the end of December 2022, to 26,883 acre-feet as of February 6, 2023.

At the January 19, 2023, Zone III Technical Advisory Committee voted to suspend the LRRP, thereby rescinding contract deliveries to City and other Lopez water contractors.

At its regular meeting on January 24, 2023, two members of the City Council directed staff to present a Resolution to suspend penalties under the Stage 1 Water Shortage Declaration at its next regular meeting in light of the increased water levels at Lopez Reservoir.

ANALYSIS OF ISSUES

AGMC 13.07.030(A)(2) preserves the discretion of the City Council to modify or amend the imposition of mandatory financial penalties during a Stage 1 Water Shortage Declaration based on the conditions of the City's water supply. As of January 27, 2023, the United States Drought Monitor showed San Luis Obispo County as no longer in an extreme drought (as was identified in September 2021), but rather as abnormally dry. As of February 6, 2023, Lopez Reservoir levels are at 26,883 acre-feet and 54.4% of capacity. While this level exceeds the 15,000 acre-feet threshold identified in the AGMC as potentially triggering a Stage 1 Water Shortage Emergency, the Governor's drought

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declaration issued in July 2021 remains in effect. It is anticipated that this may be rescinded after the conclusion of the water year in April 2023, depending on the outcome of the remainder of the wet season. Until then, it is recommended that the existing Stage 1 Water Shortage Declaration remain in place. However, staff recommends suspending the imposition of financial penalties on customers who do not meet their required water use reductions in light of the current water levels at Lopez Reservoir and the lifting of the LRRP.

Additionally, following direction by Council to bring a Resolution forward to suspend penalties, the City Manager directed staff to withhold penalties that may have otherwise been incurred for customers whose bills were issued on February 1, 2023. The proposed Resolution (Attachment 1) includes a provision ratifying this direction to ensure that penalties will be deemed suspended for all customers for February billing dates and beyond. Penalties may resume if so directed by the City Council by adopted Resolution at a future date, depending on the status of the City's water supplies.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Adopt a Resolution authorizing the City's Administrative Services Director to suspend penalties for February billing dates and all future billing dates for failure to meet required water use reductions imposed pursuant to the Stage 1 Water Shortage Declaration adopted on October 12, 2021, Resolution 5119; or
2. Do not adopt the proposed Resolution, in which case penalties will continue to apply to customers who exceed their water use allocations under Resolution 5119; or
3. Modify and adopt the Resolution to confirm the suspension of penalties for bills issued in February and/or to establish an end date the period in which penalties will be suspended; or
4. Wait to consider whether to suspend penalties if and when the Governor decides to rescind the State Drought Emergency; or
5. Provide other direction to staff.

ADVANTAGES:

This action will provide financial assistance to residents who are being charged penalties for exceeding their baseline water allotment at a time where the community is still recovering from the severe impacts of the January 2023 storms. In addition, this action reduces staff time associated with notices and billing for penalties, evaluating requests for baseline adjustments, responding to inquiries from residents, conducting site visits with property owners about water conservation options and to conduct water audits, and responding to requests for water meter "re-reads."

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DISADVANTAGES:

Suspending penalties for failure to meet required water use reductions may lead to more water use during a Stage 1 Drought Emergency. Although Lopez reservoir levels are no longer below 20,000 acre-feet, the Governor's drought emergency declaration is still in effect in California.

ENVIRONMENTAL REVIEW:

The suspension of the penalties provided in Paragraph D of Exhibit "A" of Resolution 5119 is not a project subject to the California Environmental Quality Act ("CEQA") because it has no potential to result in either a direct, or reasonably foreseeable indirect, physical change in the environment (State CEQA Guidelines, §§ 15060, subd. (b)(2)-(3), 15378.). The suspension of the penalties does not alter the restrictions imposed on the baseline water usage levels provided in the resolution. Additionally, all remaining requirements of Resolution 5119 will remain in place. Alternatively, this is not a "project" as defined by CEQA because suspension of the penalties is merely administrative activity related to the implementation of Resolution 5119 (See State CEQA Guidelines, § 15378(b)(2),(4)). For those reasons, the action is exempt from CEQA.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2.

Attachments:

1. Proposed Resolution
2. Resolution 5119