



RESOLUTION NO. 2021-29
OF THE BOARD OF DIRECTORS OF THE NEVADA IRRIGATION DISTRICT

**RESOLUTION AMENDING RESOLUTION NO. 2021-28
ESTABLISHING ENFORCEMENT PROCEDURES, FINES, AND PENALTIES
FOR VIOLATIONS OF THE DISTRICT'S MANDATORY WATER USE
RESTRICTIONS ESTABLISHED IN RESOLUTION NO. 2021-21**

WHEREAS, on April 28, 2021, the Board of Directors of Nevada Irrigation District (District) adopted Resolution No. 2021-11 Declaration of Drought, which imposed increased conservation measures and requested a 10% reduction in water use from all District customers; and

WHEREAS, on May 10, 2021, California Governor Newsom issued a Proclamation of a State of Emergency due to drought, observing "a historic and unanticipated" depletion of the expected snowpack runoff and declaring a drought emergency in forty-one counties, including Nevada, Placer, and Yuba Counties; and

WHEREAS, consistent with Governor Newsom's May 10, 2021, Proclamation, the District's watersheds experienced a historic and unanticipated depletion of the expected snowpack runoff, resulting in the need to escalate drought response and enhance conservation measures; and

WHEREAS, in addition, the District's adoption of Resolution No. 2021-11 requesting voluntary 10% water conservation as compared to 2013 usage did not result in District customers achieving water conservation at a level necessary to address emergency drought conditions and to meet the District's carryover storage targets in the event emergency drought conditions persist into the 2021/2022 water year; and

WHEREAS, on July 1, 2021, following publication and public hearing, the District adopted Resolution No. 2021-21 Escalating Drought Response and Enhancing Conservation Measures (Resolution 2021-21); and

WHEREAS, Resolution 2021-21 requires, among other terms, wise water use practices, a reduction in treated water use by 20% compared to 2020 usage, and implementation of irrigation efficiency practices for raw water customers; and

WHEREAS, Resolution 2021-21 also directed the District's General Manager to prepare by July 28, 2021, an enforcement procedure to impose civil fines and penalties for any violations of Resolution 2021-21; and

WHEREAS, Resolution 2021-21 also requires District customers to comply with District's policies and rules and regulations concerning water use; and

WHEREAS, pursuant to Water Code §§ 375 et seq., the District is empowered to implement conservation measures, to conduct enforcement proceedings, and to impose fines and penalties for violations; and

WHEREAS, the District finds that sanctions including fines and penalties for excessive or wasteful water use are reasonable and are necessary to deter customers from taking excess water from District supplies or engaging in wasteful or prohibited water use practices; and

WHEREAS, the Board of Directors of Nevada Irrigation District finds and determines, as set forth in detail below, that this Resolution is necessary to address emergency drought conditions prevailing in the District's service area and to strengthen enforcement of the District's Resolution 2021-21, the District's policies, and its rules and regulations.

NOW, THEREFORE, BE IT RESOLVED AND PROCLAIMED by the Board of Directors of Nevada Irrigation District that this resolution supersedes Resolution No. 2021-28, adopted on July 28, 2021 and that the above recitals are true and correct and are incorporated by this reference as findings.

BE IT FURTHER RESOLVED that the District adopts the following process and procedures to provide due process and to enforce Resolution 2021-21 and District's policies and rules and regulations:

1. Applicability.
 - a. This Resolution provides for administrative citations, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the District.
 - b. The administrative citation process set forth in this Resolution applies to all violations of:
 - i. Resolution 2021-21;

- ii. A new resolution that supersedes Resolution 2021-21 and that requires revised and/or more stringent drought response and enhancing conservation measures; and/or
- iii. The District's policies as currently written or hereafter duly adopted or revised by the Board of Directors; and/or
- iv. The District's rules and regulations as currently written or hereafter duly adopted or revised by the Board of Directors.

c. The use of this Resolution shall be at the sole discretion of the District.

2. Definitions. For purposes of this Resolution:

- a. "Enforcement Officer" shall mean any District employee or agent of the District with the authority to enforce any provision of this Resolution; and
- b. "Hearing Officer" shall mean the District's General Manager or the person or persons appointed by the District's General Manager that presides over an administrative hearing provided for in this Resolution.

3. Administrative Citation.

- a. Whenever an Enforcement Officer determines that a violation has occurred, the Enforcement Officer shall have the authority to issue an administrative citation to any person responsible for the violation.
- b. Each administrative citation shall contain the following information:
 - i. The date of the violation(s);
 - ii. The address or a specific description of the location where the violation(s) occurred;
 - iii. The section(s), as applicable, of Resolution 2021-21, subsequent resolutions adopted by the Board of Directors that implement water conservation measures and/or drought responses, policies, and rules and regulations violated and a description of the violation(s);
 - iv. The amount of the fine for the violation(s);
 - v. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
 - vi. An order prohibiting the continuation or repeated occurrence of the violation(s) described in the administrative citation;

- vii. A description of the administrative citation review process, including the time within which the administrative citation may be contested by submitting a request for a hearing form;
- viii. The name and signature of the citing Enforcement Officer; and
- ix. A statement that a failure to contest the administrative citation shall constitute a failure to exhaust administrative remedies and result in the citation becoming a final administrative enforcement order.

4. Administrative Citation Fines.

- a. Except in cases where the violation or violations, in the judgment of the Enforcement Officer, pose an immediate threat to health and safety or constitutes one or more “unlawful acts” as defined by section 12.01 of the District’s rules and regulations, the District will utilize the following progressively more stringent enforcement procedure in issuing administrative citations:
 - i. First administrative citation: written warning. Whenever an Enforcement Officer determines that a violation has occurred, the Enforcement Officer may issue a warning of administrative citation to any person responsible for the violation. Service of a written warning shall be a prerequisite to the issuance of further administrative citations with attendant financial penalties. In addition to the information set forth in Section 3.b., and if applicable, the warning shall specify a time and date by which the violation shall be corrected, after which a second administrative citation may be issued if the violation is not fully corrected. The Enforcement Officer shall provide for a reasonable amount of time to correct the violation after considering the circumstances of the case, except that at least 24 hours shall be allowed for from the time and date of the warning. A warning shall not be required before the issuance of a second or any subsequent administrative citation for a continuing or repeated violation.
 - ii. Second administrative citation within any twelve (12) month period: \$250 for each violation cited.
 - iii. Third administrative citation within any twelve (12) month period: \$500 for each violation cited.

- iv. Fourth administrative citation within any twelve (12) month period: \$1000 for each violation cited.
 - v. Fifth and succeeding administrative citation within any twelve (12) month period: the District may resort to any and all available legal remedies, including without limitation suspending or reducing deliveries to the property and referring the matter to the Placer County or Nevada County District Attorney's office.
 - b. Each day or portion thereof during which a violation is committed, continued, or permitted is a separate and distinct violation for which an administrative citation may be issued. Each violation constitutes a separate offense for which a separate penalty may be imposed. The fine amounts shall be cumulative where multiple citations are issued and the aggregate amount will be set forth in the administrative citation.
 - c. Payment of the fine(s) shall not excuse the failure to correct the violation(s) nor shall it bar further enforcement action by the District.
 - d. For violations that, in the judgment of the Enforcement Officer, pose an immediate threat to health and safety or constitutes one or more unlawful acts under section 12.01 of the District's rules and regulations, the District reserves the right to impose civil liability in the maximum amount allowed by law, including amounts set forth in Water Code section 377 of up to \$10,000 and \$500 for each day on which the violation(s) continues.
- 5. Payment of the Fine(s).
 - a. All fine(s) assessed shall be payable to the District unless otherwise directed on the citation. Payment must be made within thirty (30) days from the date of the administrative citation.
 - b. Any fine paid shall be refunded in accordance with Section 7.g.ii. if it is determined, after a hearing or appeal, that the person charged with the administrative citation was not responsible for the violation or that there was no violation as charged in the administrative citation.
 - c. Payment of fines under this Resolution shall not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the administrative citation.

- d. Any person who fails to pay the District any fine imposed pursuant to this Resolution on or before the date that fine is due shall also be liable for the payment of a late payment charge per District Rules and Regulations Section 6.

6. Hearing Request.

- a. Any recipient of an administrative citation in which fines are imposed may contest that there was a violation of this Resolution or that the recipient is the responsible party by completing a request for hearing form and returning it to the District office within thirty (30) days from the date of the administrative citation, together with an advance deposit of the fine(s).
- b. A request for hearing form may be obtained from the District's office, 1036 W. Main Street, Grass Valley CA 95945
- c. The person requesting the hearing shall be notified of the time and place set for the hearing at least ten (10) days prior to the date of the hearing.
- d. If the Enforcement Officer submits an additional written report concerning the administrative citations to the Hearing Officer for consideration at the hearing, then a copy of this report shall also be served on the person requesting the hearing at least five (5) days prior to the date of the hearing.

7. Hearing Procedure.

- a. No hearing to contest an administrative citation before a Hearing Officer shall be held unless the fine(s) has been deposited with the District in advance.
- b. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the request for hearing is filed in accordance with the provisions of this Resolution.
- c. At the hearing, the party contesting the administrative citation shall be given the opportunity to testify and to present evidence concerning the administrative citation.

- d. The failure of any party contesting the administrative citation to appear at the hearing shall constitute a forfeiture of the fine and a failure to exhaust administrative remedies.
- e. The administrative citation and any additional report submitted by the Enforcement Officer, if compliant with Section 3.b., shall constitute prima facie evidence of a violation of this Resolution.
- f. The Hearing Officer shall be a disinterested employee, agent or consultant of the District. The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of administrative citation fines upheld by the Hearing Officer.
- g. Decision of the Hearing Officer:
 - i. After considering all the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or cancel the administrative citation and shall list in the decision the reasons for that decision.
 - ii. If the Hearing Officer decides to cancel the administrative citation, the District shall promptly refund the amount of the deposited fine.
 - iii. The person receiving the administrative citation shall be served with a copy of the hearing officer's written decision.
 - iv. For purposes of the Resolution, service is accomplished by either personal delivery or deposit in the United States Mail in a sealed envelope sent first class, postage prepaid, addressed to the person to be notified at the mailing address for the person as set forth in the District's files or such other address as provided by the person receiving notice.
- h. Appeal of Hearing Officer's Decision to Board of Directors:
 - i. If the Hearing Officer upholds the imposition of the administrative citation, the person aggrieved by the administrative citation may appeal the Hearing Officer's decision to the Board of Directors of the District.

- ii. A request for appeal to the Board of Directors must be made in writing to the District within ten (10) days of service of the Hearing Officer's decision. If an appeal to the Board of Directors is not timely received, the decision of the Hearing Officer shall be final. Timely appeal to the Board of Directors is a prerequisite to seeking judicial review under Section 8; failure to timely appeal to the Board of Directors constitutes a failure to exhaust administrative remedies.
 - iii. Timely appeal requests will be considered by the Board at its next regularly scheduled board meeting.
 - iv. The failure of any party appealing the Hearing Officer's decision to appear at the appeal shall constitute a denial of the appeal, forfeiture of the fine, and a failure to exhaust administrative remedies.
 - v. After considering the Hearing Officer's decision, evidence, testimony of the appealing party, and any public comments, the Board of Directors will make a decision, by motion and majority vote, to grant or deny the appeal.
8. Right to Judicial Review. Any person aggrieved by the Board of Directors' decision to deny and appeal and uphold the administrative decision of a Hearing Officer may obtain review of the decision by filing a petition for review within the applicable Superior Court in accordance with the timeliness, process and provisions set forth applicable law.
9. Recovery of Administrative Citations Fines and Costs. The District may collect any past due administrative citation fines or late payment charges by any or all available legal means.

* * * * *

PASSED AND ADOPTED by the Board of Directors of the Nevada Irrigation District at a regular meeting held on the 25th day of August 2021, by the following vote:

AYES: Directors: Heck, Hull, Johansen, Peters, Bierwagen

NOES: Directors: None

ABSENT: Directors: None

ABSTAINS: Directors: None



President of the Board of Directors

Attest:



Secretary to the Board of Directors