

ORDINANCE NO. 14

AN ORDINANCE OF THE MOJAVE WATER AGENCY FOR REGULATION OF MINIMAL PRODUCERS AND ESTABLISHING THE MINIMAL PRODUCERS PROGRAM

WHEREAS the Board of Directors of the Mojave Water Agency (MWA) hereby finds:

1. The Mojave Water Agency in City of Barstow, et al. v. City of Adelanto, et al. (Riverside County Superior Court Case No. 208568) is directed to implement a Minimal Producers Program for water wells or facilities that produce up to ten acre-feet per water year. Such a Program "shall achieve an equitable allocation of the costs of the Physical Solution that are attributable to Production" by Minimal Producers.
2. The Judgment in City of Barstow, et al. v. City of Adelanto, et al., supra, enjoins any water production within the Mojave Basin except pursuant to the provisions of the Judgment and the Minimal Producers Program adopted by MWA and approved by the Court after entry of Judgment. MWA began the Minimal Producer Monitoring Program in order to better understand water use by Minimal Producers and their impact upon the Basin. Through the monitoring program MWA has catalogued thousands of wells and accumulated data on water use by Minimal Producers. MWA continues to gather and analyze data regarding water use by Minimal Producers.
3. After undertaking this process the Board of Directors has determined that the pools for Minimal Producers established in the Judgment are sufficient for existing Minimal Producers. The Board of Directors has also determined that these pools have been exhausted and it is necessary to establish a program to regulate new Minimal Producers. Furthermore, given the thousands of wells and the vast number of Minimal Producers already identified by MWA, the Board of Directors finds that it would be too costly for MWA to attempt to manage a program that encompasses all Minimal Producers. New Minimal Producers are identifiable through the issuance of a well permit deemed approved by San Bernadino County. Therefore, the Board of Directors has determined that it is necessary to distinguish between Minimal Producers existing before July 1, 2022 and after. This distinction is necessary because:
 - a. The Mojave Basin is currently in a state of overdraft;
 - b. All new production by Minimal Producers starting on or after July 1, 2022 will contribute to the overdraft and such production needs to be regulated in order to assure an adequate water supply within the Basin;
 - c. The Minimal Producers Program will take effect July 1, 2022; and
 - d. The Judgment allows for the distinction.

4. In order to acquire more supplemental water to recharge the Mojave Basin, the Board of Directors finds that it has become necessary to implement an annual Minimal Producers Fee that shall only be applicable to those Minimal Producers whose production, as identified through the issuance of a well permit, begins on or after July 1, 2022.

Be it ordained by the Board of Directors of the Mojave Water Agency as follows:

**CLASSIFICATION OF MINIMAL PRODUCERS UNDER THE JUDGMENT
IN THE CITY OF BARSTOW, ET AL. V. CITY OF ADELANTO, ET AL.
(RIVERSIDE COUNTY SUPERIOR COURT CASE NO. 208568) AND
ESTABLISHMENT OF THE MINIMAL PRODUCERS PROGRAM:**

Section 1. Definition of Minimal Producers. Minimal Producers are defined in the Judgment as "Any Person whose Base Annual Production, as verified by MWA is not greater than ten (10) acre-feet" and who has not stipulated to the Judgment. A Person designated as a Minimal Producer whose Annual Production exceeds ten (10) acre-feet in any year following the date of entry of Judgment is no longer a Minimal Producer and is subject to the terms of the Judgment.

Section 2. Minimal Producers Fee. A Minimal Producers Fee shall be paid each year during the tax collection process to MWA by every Minimal Producer whose water production began on or after July 1, 2022. The Minimal Producers Fee shall be the total variable rate to be charged per one acre-foot for replacement water for purposes of the Mojave Basin Area Judgment for the fiscal year for which the fee is charged. The Minimal Producers Fee is a charge for water and is not a parcel charge. The Minimal Producers Fee shall be collected in the same manner, by the same persons, at the same time as, and together and not separately from, the collection of annual county ad valorem property taxes imposed upon real property. Failure to pay the fee on time shall subject the Minimal Producer to an additional penalty charge of \$25.00. Minimal Producers Fees not paid shall be considered delinquent and MWA may collect this amount as a lien on the San Bernardino County tax rolls.

Section 3. Exemption of Minimal Producers existing prior to July 1, 2022. Minimal Producers who began water production prior to July 1, 2022 shall not be subject to the Minimal Producers Fee, pursuant to the Agency Act, but records will be maintained and catalogued by MWA regarding pre-July 1, 2022 Minimal Producers. All Minimal Producers whose well permit applications were deemed approved by the San Bernardino County Department of Public Health on or before July 1, 2022 shall not be subject to the Minimal Producers Fee. Replacement wells for Minimal Producers existing prior to July 1, 2022 also shall not be subject to the Minimal Producers Fee.

Section 4. Funds used to purchase supplemental water. All funds collected by MWA pursuant to Minimal Producers water charges, including penalty fees, shall be used to acquire supplemental water to help recharge the Mojave Basin area and associated administrative costs. MWA shall keep all funds collected under this Program separate

from other funds and MWA shall provide an annual financial report on the status of these funds. Water charges from each sub-area will be used for water deliveries in that Subarea.

Section 5. Minimal Producers production non-transferable. Minimal Producers are not subject to the Judgment and production shall be confined to the parcel on which the water production facility exists. Sale or transfer of pumped water off the property or parcel is prohibited. Such Minimal Producer's status would move to the new owner on any sale or alienation of the property or parcel.

Section 6. Monitoring Wells, Rules and Regulations. MWA staff is authorized to monitor wells to assure compliance and establish rules and regulations to implement the Program.

Section 7. Annual Production greater than ten acre-feet. Any Minimal Producer who produces more than ten acre-feet in any given year shall no longer be considered a Minimal Producer and shall become a Party subject to the provisions of the Judgment.

Section 8. Enforcement. The Board of Directors may direct staff to bring a civil action seeking enforcement, including injunctive relief, of the provisions of this Ordinance. This enforcement provision is in addition to all other enforcement provisions, including those in the Agency Act, the Judgment, and otherwise provided by law.

Section 9. Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors declares that it would have passed this Ordinance, and each section, subsection, clause, sentence, or phrase thereof irrespective of the fact that any new or more other sections, subsections, clauses, sentences or phrases may be declared invalid or unconstitutional.

Section 10. Effective Date. This Ordinance shall be in full force and effect upon July 1, 2022, and shall be published in full in a newspaper of general circulation within ten (10) days from the date of adoption.

Passed and adopted this 14th day of April 2022, by the following vote:

Ayes: Cox, Ventura, Anderson, Page, Roelle, Hayhurst, Limbaugh

Noes: None

Abstain: None

Absent: None



Michael Limbaugh
Secretary, Board of Directors


Jeanette Hayhurst
President, Board of Directors