

ORDINANCE NO. 11

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**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 Superior Court #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 Producers Program in order to better understand water use by Minimal Producers and their impact upon the Basin. Through the 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 readily identifiable. Therefore, the Board of Directors has determined that it is necessary to distinguish between Minimal Producers existing before April 1, 2000 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 April 1, 2000 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 April 1, 2000; 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 begins on or after April 1, 2000.

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 SUPERIOR COURT #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 to MWA by every Minimal Producer whose water production began on or after April 1, 2000. The Minimal Producers Fee shall be the then going rate for one acre foot of aqueduct water charged to MWA by the State of California, plus any transportation costs established by the Board of Directors. 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 April 1, 2000. Minimal Producers who began water production prior to April 1, 2000 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-April 1, 2000 Minimal Producers. All Minimal Producers whose well permit applications were deemed approved by the San Bernardino County Department of Public Health on or before March 31, 2000 shall not be subject to the Minimal Producers Fee. Replacement wells for Minimal Producers existing prior to April 1, 2000 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 exclusively to acquire supplemental water to help recharge the Mojave Basin area. 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 sub-area.

Section 5. Minimal Producers production non-transferable. Minimal Producers not subject to the Judgment shall be confined to the parcel on which the water production facility exists. Such Minimal Producer's status would transfer on any sale or alienation of that 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.

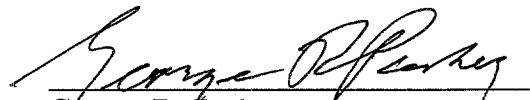
Section 8. Enforcement. The Board of Directors may direct staff to bring a civil action seeking enforcement, including injunctive relief, of the provisions of this Ordinance. This enforcement provision is in addition to all other enforcement provisions, including those in the Agency Act, the Judgment, 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 one or more other sections, subsections, clauses, sentences or phrases may be declared invalid or unconstitutional.

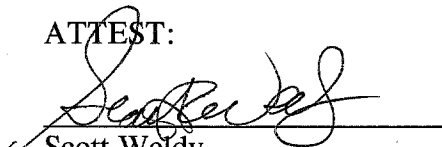
Section 10. Effective Date. This Ordinance shall be in full force and effect upon April 1, 2000, and shall be published in full in a newspaper of general circulation within ten (10) days from the date of adoption.

Passed and adopted this 25th day of January, 2000, by the following vote:

Ayes: Directors Almond, Fortytune, Hall, Lowry, Parker, Stringer and Weldy
Noes: None
Abstain: None
Absent: None


George R. Parker
President, Board of Directors

ATTEST:


Scott Weldy
Secretary, Board of Directors