

# Palomino Lakes Water Newsletter

October 2015

---

## **Open Board Meeting October 18, 2015**

The next Palomino Lakes Mutual Water Company Board of Directors meeting is scheduled for 3:00 PM, Sunday October 18th at the Old Crocker Inn: 1126 Old Crocker Inn Rd, Cloverdale, CA 95425.

## **Water System Improvement Project Status**

The new water system is complete and with the exception of a few minor glitches is operating as designed. The project design and construction team has been paid in full, and our payments to the USDA commence in October.

## **Drought Update**

The Board met in an open session on July 26<sup>th</sup> to address new regulations imposed on the Water Company to reduce consumption and to address the ongoing issue of a significant number of members who are exceeding the 275 gallon per day per household voluntary maximum use limit. The result of that meeting, based in large part on feedback received from the community, was a vote by the Board to change from a voluntary water use limit to a mandatory limit and to put in place a fine structure to motivate high users to comply with the new mandatory limits.

To better understand this issue, the following provides an overview of some of the key legislative actions and orders placed upon the Water Company by the State Water Resources Control Board (SWRCB).

### *State Requirements*

On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order (April 2014 Proclamation) to strengthen the State's ability to manage water and habitat effectively in drought conditions, and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation referred to the Governor's Proclamation No. 1-17-2014, issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions.

On February 21st, 2014 a water shortage emergency under California Water Code section 350 was declared by the Palomino Lakes Mutual Water Company (PLMWC) Board of Directors. The SWRCB then sent to 22 water companies (including PLMWC) a curtailment order to cease diversions from the Russian River, unless we submitted forms stating the source was our only supply of water for health and safety reasons which we promptly filed.

On October 17, 2014 the SWRCB sent to the PLMWC Compliance Order #02\_18\_14R\_003 which notified the Company that although we were in violation of the curtailment order, we may continue our diversions as long as we met the requirements of eight directives. The PLMWC Board followed through diligently with these eight requirements.

On May 2015, The PLMWC received the *Adopted Emergency Conservation Ruling and Regulation* which required the following for Non-urban water suppliers:

# *Palomino Lakes Water Newsletter*

October 2015

(f) (1) *To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an urban water supplier shall take one or more of the following actions:*

*(A) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or*

*(B) Reduce by 25 percent reduction its total potable water production relative to the amount produced in 2013.*

*(2) Each distributor of a public water supply that is not an urban water supplier shall submit a report by December 15, 2015, on a form provided by the Board, that either confirms compliance with subdivision (f)(1)(A) or identifies total potable water production, by month, from June through November, 2015, and total potable water production, by month, for June through November 2013. Authority: Section 1058.5, Water Code. References: Cal. Const., Art., X § 2; Sections 102, 104, 105, 275, 350, 1846,*

This was formerly instituted by the State of California Office of Administrative Law's Notice of Approval of Emergency Action effective 5/18/2015. As we had no means to monitor landscaping irrigation The Board opted for Section (f)(2) which requires us to report to the SWRCB on our conservation efforts documenting reductions in use from the June to November 2013 baseline by at least 25%.

The community has responded admirably to this call for action and we have achieved significant reductions in the 40% to 50% range. However, there were still many residents that were not adhering to the 275 gpd per household limit. This caused feelings of inequality to a number of residents which, based on their concerns, prompted the Board to organize the July 26<sup>th</sup> meeting. Prior to the meeting however, the Board reached out to our attorney to get guidance on what we could and what we could not do. Following is an excerpt from that letter:

*Under this statute, it is the Board's duty to set the water limits and regulations for assuring the limits are met. The statute does not provide for membership vote as doing so could hinder or defeat conservation.*

*The statutes, regulations, and cases do not require the Board to consider the effect on property values or the cost to Owners of replacing landscaping. Courts have heard cases where property owners claimed damages from moratoriums on new water connections and in each case held that conservation to assure adequate water supply for all users outweighed any damages the property owner suffered and that the owners were not entitled to any damages from the water agency. Public policy clearly provides that conservation of water and assuring adequate supply for all of the water system users and for fire suppression outweighs damages an individual may suffer by water restrictions.*

*Once a water shortage emergency is declared, the Board may institute any or all of the following conservation measures:*

*(1) Request voluntary reductions in usage.*

*(2) Require a mandatory reduction in usage.*

# *Palomino Lakes Water Newsletter*

October 2015

- (3) *Limit the type of uses water from the Company's system can be used for. For example, prohibiting car washing and limiting or prohibiting landscape irrigation as numerous cities are now doing. Several of my mutual water company clients are requiring pools be filled and livestock watered from water trucked in rather than from water from the company's system and owners are bringing in water tank trailers for this purpose.*
- (4) *Limit the amount of water per person or per household. Under the current regulations, the Company must document at least a 25% reduction from 2013. A failure to comply with the mandatory conservation ordered by the regulations may result in a fine of \$1,000 per day of violation and \$2,500 per acre foot of water used in excess of the limits set by the Water Control Board. As each lot in the Company is entitled to only one share of the available water, required conservation must be equal for each lot, regardless of how a lot is used, or another member can bring an action for failing to comply with the Bylaws.*

*In my opinion, the 275 gallons per lot per day limit set by the Company is reasonable. The 2014 Curtailed Water Rights information received by the Company states:*

*Minimal use for human health and safety does not include wasteful or unnecessary use of any kind, including but not limited to:*

- *More than 50 gallons per person per day for indoor personal use,*
- *Agricultural or commercial livestock operations,*
- *Outside uses including lawns, gardens, trees, golf courses, swimming pools, car washing, etc.*

*(2014 Curtailed Water Rights Human Health & Safety Claims Form). This is a limit that the Water Control Board can mandate for the Company.*

- (5) *Tiered rates can be used to encourage conservation.*
- (6) *Fines or penalties for exceeding water restrictions.*
- (7) *Institute a moratorium on new connections or expansions of existing uses. The Company has been required to do this by the Curtailment Order.*

*Under California law, the Board can establish a fine schedule to enforce any water restrictions it institutes. The fine schedule should consider the nature of the community and the effect of a violation. As excessive water use can have a devastating effect on the other residents of the community, on fire risk, and on the water system, and puts the Company at risk of high fines from the Water Control Board, very high fines are justified.*

Based on the above we clearly understood we could implement a fine schedule but we were unclear whether or not we should. We then called for the meeting to solicit recommendations from the community. Even though the meeting began with the presentation of savings to date (well in excess of the 25%) we were surprised that the discussion immediately moved to what type of fine schedule should be put in place and not whether or not there should be a fine schedule. After several fine structures were discussed, a tiered schedule was decided as most appropriate as it placed a smaller fine on those that were only slightly above the limit and a large fine on those that were substantially above the limit. Following is the fine schedule:

*0 to 275 gallons per day (gpd) - no fine  
276 to 375 gpd - \$100 fine  
376 to 475 gpd - \$300 fine*

# *Palomino Lakes Water Newsletter*

October 2015

*476 to 575 gpd - \$1,000 fine*

*576 to 675 gpd - \$1,500 fine*

*Over 675 gpd - \$2,000 fine*

*The penalty will be assessed quarterly based on the average use for that quarter and fines will not be assessed until the **end** of the August through October 2015 billing period, and then assessed each quarter until the Curtailment Order is lifted.*

**The purpose of the October 18<sup>th</sup> meeting is to reassess the fine structure prior to the beginning of the next billing cycle (November 1).**



Palomino Lakes Mutual Water Company  
P. O. Box 687  
Cloverdale, CA 95425

Douglas R. Chamberlin, P.E., President  
925-200-6250  
dchamberlin@palominolakes.org

Jan Tolbert, Vice-President  
707-695-5225  
jtolbert@palominolakes.org

Janet Vail, Secretary/Treasurer,  
707-273-8653  
jvail@palominolakes.org

**[www.palominolakes.org](http://www.palominolakes.org)**