

## EXHIBIT 12-F

### ORDINANCE NO. 152

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
AUTHORIZING AN ANNUAL WATER USE FEE TO FUND  
WATER SUPPLY SERVICES, FACILITIES AND ACTIVITIES  
NEEDED TO ENSURE SUFFICIENT WATER IS AVAILABLE  
FOR PRESENT BENEFICIAL WATER USE IN THE  
MAIN CALIFORNIA AMERICAN WATER DISTRIBUTION SYSTEM**

#### FINDINGS

1. The Monterey Peninsula Water Management District (“District”) was created to address water supply problems in the Monterey Peninsula area which the Legislature found required integrated management. The District is endowed with the powers set forth in the Monterey Peninsula Water Management District Law (“District Law”), set forth in Chapter 527 of the Statutes of 1977, West’s Water Code – Appendix, Section 118-1, et seq.
2. The District has general and specific power to do any and every lawful act necessary to ensure sufficient water is available for present or future beneficial use or uses, and to fix and collect rates and charges for the providing or availability of any service as set forth in District Law §§308, 325 and 326.
3. The District is authorized to impose rates and charges for services, facilities or water that it may furnish. (District Law, §326.) Govt C §53756 further authorizes MPWMD to adopt a schedule of fees to incorporate periodic adjustment for future increase cost and inflation.
4. Health and Safety Code (H&S) §5471 provides alternative authority and processes by which MPWMD may adopt water fees. H&S §§5473 and 5473.10 allow MPWMD to set water charges by ordinance. The District may also establish collection remedies. H&S §§5473, 5473.10; District Law §326.
5. *Richmond Community Services District v. Shasta Comm. Serv. Dist. (2004) 32 Cal.4th 409, 427*, provides that H&S §5471 "is to supplement rather than to limit a public agency's authority to impose charges for water or sewer services in connection with a water or sewerage system."
6. California American Water (“CAW”) is the Water Distribution System that provides water from the Monterey Peninsula Water Resource System (“MPWRS”) to most

residents and businesses within the District. The MPWRS includes the surface water in the Carmel River and its tributaries, water in the Carmel Valley Alluvial Aquifer that underlies the Carmel River, and water in the Seaside Groundwater Basin that includes the Northern and Southern Coastal Subunits and the Northern and Southern Inland Subareas.

7. The Seaside Groundwater Basin is the underground water basin underlying the Seaside Basin Area, corresponding to the Paso Robles and Santa Margarita aquifers, as illustrated in the April 14, 2005, “Seaside Groundwater Basin: Update on Water Resource Conditions” prepared by Gus Yates, Martin Feeney and Lewis Rosenberg (“Seaside Basin Report”), at Figure E-1, Figure 1 and as discussed on page 18 of that Report.
8. The annual quantity of groundwater that can be produced in the Coastal Subareas and the Laguna Seca Subarea of the Seaside Groundwater Basin without causing adverse effects, such as seawater intrusion, declining water levels, or land subsidence (characterized as “Safe Yield”) has been determined by the Superior Court in Monterey County in its final Judgment entered in *California American Water Company v. City of Seaside* (No. M66343). The Court’s Physical Solution, or a series of management actions required to reduce production of natural Basin water to its perennial safe yield, was initially set at 3,000 acre-feet per year. Steps include development of surface water supplies to augment use of groundwater from the basin. Such solutions include Aquifer Storage and Recovery (“ASR”), recycled water and other supplemental resources, such as the proposed Groundwater Replenishment project (“GWR”); and pumping reductions from pre-Judgment levels of production in increments every three years through 2021.
9. The District Law confers authority upon the District to manage and regulate use, reuse and reclamation of surface and groundwater within its jurisdiction. The District is charged with conservation and augmentation responsibilities in addition to its responsibility to integrate management of ground and surface water resources. To this end, the District owns and jointly operates with CAW an ASR project that diverts excess surface flows from the Carmel River through the CAW Water Distribution System for injection into the Seaside Groundwater Basin through the District’s ASR wells. The ASR project enables recovery of the injected water by CAW for delivery to property in the District via the CAW system during the summer when the Carmel River is dry or at low flow. Further, the District intends to enter into agreement with Monterey Regional Water Pollution Control Agency (“MRWPCA”) and CAW for development of a GWR project enabling the advanced treatment of wastewater from the MRWPCA regional facility for injection into the Seaside Groundwater Basin through MRWPCA wells to be developed to enable subsequent recovery of the injected water by CAW for delivery to its customers.

10. The District’s ASR project has artificially replenished water supplies within the Coastal Subarea of the Seaside Groundwater Basin by adding non-native surface water to the Seaside Basin, thereby providing water for delivery to property within the District via the CAW system. The proposed GWR project will do the same.
11. Proposed desalination project operations are also expected to utilize the Seaside Groundwater Basin for storage and recovery of produced water. To that end, studies must be executed to determine appropriate operation of the basin as whole as it relates to groundwater flow models, hydraulic models, water quality and mixing models, and overall permit strategies related to desalination water, ASR water, GWR water, and natural inflows. Collectively, ASR, GWR, and a proposed future desalination project are collectively referred to as the “Projects.”
12. The District has determined that the Projects are needed to address and mitigate potential adverse effects that may result from overproduction from the Carmel River and the Seaside Groundwater Basin. The Projects are required to promote and protect the adequacy and integrity of the waters of the MPWRS. These Projects are necessary to ensure sufficient water is available for present beneficial water use in the main CAW Water Distribution System (“WDS”), excluding the Bishop, Hidden Hills, Ambler, and Toro sub-units.
13. CAW is further limited in its ability to deliver potable water within its main WDS by California State Water Resources Control Board (“SWRCB”) Order No. WR 95-10, dated July 6, 1995. The SWRCB found that CAW does not possess the legal right to divert from the Carmel River system in the amount of water historically (and presently) being diverted. Order No. WR 95-10 limited production by CAW to 10,308 AF annually (Water Year 2012) from the Carmel River system, and ordered CAW to implement actions to terminate its unlawful diversions from the Carmel River, and in the interim to maximize its production from the Seaside Groundwater Basin.
14. The need for the Projects and related expenditures has been heightened by the lack of legal CAW water supplies resulting from SWRCB Order WR 95-10, the listing of the California red-legged frog and the steelhead trout as threatened species under the federal Endangered Species Act (“ESA”), and the limitations on water from the Seaside Groundwater Basin as determined by the Superior Court final Judgment in *California American Water Company v. City of Seaside*.
15. The District has further determined that Projects will increase water available to the main

CAW WDS and assist CAW in offsetting its reduced production of water to main WDS users from the Carmel River as mandated by Order 95-10.

16. The District regularly incurs expenses to build and operate the Projects, including but not limited to operations and maintenance costs and capital improvement costs including, but are not limited to, planning, specifications, engineering, site planning, debt service, the costs of staff, consultants, rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly install, operate, and maintain the Projects, and includes reserves needed to address reasonable yet unanticipated contingencies such as emergencies and disasters.
17. Expenses to build, maintain, repair, and facilitate the Projects cannot be adequately funded without the annual water use fees authorized by this Ordinance. The Projects are necessary to protect District water resources, satisfy water quantity and water quality requirements, meet existing commitments for water demand, and provide sufficient water for present beneficial use.
18. In addition to the Projects, proceeds of this annual water use fee may also be expended to ensure sufficient water is available for present beneficial use or uses, including water supply management, water demand management, water augmentation program expenses such as planning for, acquiring and/or reserving augmented water supply capacity, including engineering, hydrologic, legal, geologic, financial, and property acquisition.
19. Another purpose of the fees enacted by this measure is to further the District's interest in the conservation of water use in the main CAW WDS in accord California Constitution, Art. X, §2 and Water Code §375.
20. Based on its investigation, the Board of Directors has determined the annual water use fee needed to fund District activities for water supply facilities and other related water supply expenditures for the main CAW WDS. The District has estimated amounts to be raised from this annual water use fee equal to \$3,700,000 annually.
21. Without the levy and collection of the annual water use fee enabled by this Ordinance, the District otherwise will not have other available or sufficient funds to pay for water supply facilities and other related water supply expenditures.
22. Under Section 343 of District Law, the Board has the specific power, in addition to the powers enumerated elsewhere in the law, to levy and collect a groundwater charge for the production of water from the groundwater supplies within a zone or zones of the District

which will benefit from the augmentation of underground water supplies or the distribution of imported water in such zone or zones. However, the District has determined that the Projects do not produce water solely from groundwater supplies, or import water to a specific zone or zones, rather these deliver water to the general benefit of the CAW service area as a whole.

23. District Projects relate to waters that derive from the following sources of supply: surface water, percolating groundwater, subsurface water flowing through known and definite channels, reclaimed and recycled water derived from storm water and effluent, desalinated water derived from brackish and ocean water and extra-territorial purchased water. Some sources of supply available for use are produced by CAW or others, and are not directly produced by the District. Some of these sources of supply are produced under rights held by solely the District, under rights held jointly by the District and others, and under rights hold solely by others. Still other sources of supply are produced without the benefit of any recognized legal right or entitlement. Production from these different sources of supply shall vary from time to time depending upon availability, cost, impacts and other factors. Due to the complex array of water sources and water rights used by and benefitting from the Projects, the District has determined that the groundwater charge enabled by District Law §341, et seq., cannot adequately or legally fund these Projects.
24. The purposes for the groundwater charge set by District Law §345, and limits on the use of proceeds set by District Law §346, are not sufficient to meet all purposes required of the Projects. The District determines the Projects are needed to implement the District's mandate to provide integrated management services for its varied sources of supply, and the Projects are not limited to groundwater sources. The Projects cannot be adequately segregated or operated for groundwater services.
25. District Law §308 enables the District to fix and collect rates and charges for services. The District has the power by resolution or ordinance to adopt regulations respecting the exercise of its powers and the carrying out of its purposes. This ordinance fixes and collects rates and charges for the providing or the availability of any service the District is authorized to provide or make available or for the sale, lease, or other disposition of water or other product of its works or operations, including standby charges and connection charges.
26. District Law §326, consistent with the general power set by District Law §325, authorizes the District to fix, revise, and collect rates and charges for the services, facilities, or water furnished by it.

27. The District has determined, based upon industry practice and the recommendation of its professional rate consultant, that the annual water use fee enacted by this measure is properly allocated to properties connected to the main CAW WDS based on water use categories, including residential, multi-residential, and commercial water users (among other categories).
28. This measure further creates an administrative review and appeal process to remedy potential errors in allocating the annual water use fee, to enable property to be reclassified to a different use category, to consider unique circumstances, or to otherwise reduce or waive the water use fee, when warranted, to ensure the fee is fair, reasonable and proportional to the burdens or benefits that result from District activities supported by the fee.
29. The annual water use fee authorized by this Ordinance will be charged to the owners of all parcels connected to the CAW Water Distribution System, excluding the Bishop, Hidden Hills, Ambler, and Toro sub-units. Those sub-units do not benefit from the District activities supported by the fee.
30. Means to collect the water use fee shall be determined, and may be amended from time to time, by separate Resolution or Ordinance.
31. Revenue derived from the fee authorized by this measure will not exceed the funds required to ensure the availability of water supplies to the fee payer, and to provide the water related service to those persons. Revenue from the fee or charge will not be used for any purpose other than that for which the fee or charge was imposed or to fund general governmental activities.
32. The fee imposed on any parcel or person as an incident of property ownership will not exceed the proportional cost of ensuring water supplies or water service is available to that parcel or payer.
33. The fee imposed by this ordinance constitutes a charge as a monetary imposition for the use of a commodity or service consistent with *Bighorn-Desert View Water Agency v. Verjil* (2006) 39 Cal.4th 205 and consistent with the provisions of Article XIII D, §6(a) of the California Constitution, and as clarified by the Proposition 218 Omnibus Implementation Act (A.B. 1260 of 2007), codified in California Government Code §53750 et seq.

34. The fees enacted by this ordinance shall not exceed the estimated reasonable cost to provide the water supply and water management services which it is charged, and have been designed to be reasonable, fair, and equitable as they are proportionately representative of the costs incurred by the District.
35. The fees set by this measure take into account not only direct costs, but also incidental and indirect consequences of District services. These costs include the expense of direct regulation as well as incidental expenses, including administrative, inspection, maintenance and enforcement costs as well as costs to comply with Proposition 218. These fees incorporate costs required to manage water resources as a component of ensuring those resources are available for delivery and use. As such, preservation of scarce water resources has also been a factor in determining and apportioning these fees.
36. This measure sets forth the consequences for nonpayment of the fee, as provided by District Law §326.
37. In accord with the requirements of Article XIII D, §6(a) of the California Constitution, and California Government Code §53750, et seq, the District mailed notice of, and conducted a public hearing and protest proceeding on the annual water use fee proposed by this Ordinance on June 12, 2012. At this hearing, owners of parcels subject to the annual water use fee had an opportunity to provide oral and written testimony to the Board regarding the fee and had the opportunity to present formal written protests against the fee. The Board of Directors caused all written protests to be tabulated and, based on that tabulation, hereby determines that a majority protest does not exist.
38. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15273(a)(1) – Rates, Tolls, Fares, Charges. The Board of Directors determines and declares that water use fee authorized and extended by this Ordinance is to meet District operating expenses, including employee wage rates and fringe benefits, consultant services, legal services and direct costs, including permit processing, enforcement and associated litigation expenses. A Notice of Exemption shall be filed.
39. Having made fair investigation into the facts and circumstances requiring this Ordinance, each member of the District’s Board of Directors finds the authorized and extended rates and charges are reasonable based on his or her exercise of judgment and discretion.

NOW THEREFORE be it ordained as follows:

## **ORDINANCE**

### **Section One: Short Title**

This Ordinance shall be known as the 2012 Water Use Fee Ordinance of the Monterey Peninsula Water Management District (“District”).

### **Section Two: Findings**

The Findings above are determined to be true and correct, and are adopted as though fully set forth herein.

### **Section Three: Purposes**

This Ordinance authorizes an annual water use fee collected from persons and properties that derive water from the main CAW Water Distribution System by reason of the services, facilities or water furnished by the District, or made available to CAW. The annual water use fee shall be applied all property served by the CAW system based on water use categories, including residential, multi-residential, commercial, industrial, golf course, and public agency water users, among other categories, as described in the table shown in Section 5 below.

Proceeds of this fee may only be used to fund District water supply activities, including capital acquisition and operational costs for ASR and GWR purposes, as well as studies related to Project(s) necessary to ensure sufficient water is available for present beneficial water use in the main Cal-Am system. In addition to direct costs of the Projects, proceeds of this annual water use fee may also be expended to ensure sufficient water is available for present beneficial use or uses, including water supply management, water demand management, water augmentation program expenses such as planning for, acquiring and/or reserving augmented water supply capacity, including engineering, hydrologic, legal, geologic, financial, and property acquisition. Unexpended fee revenue in any single year may be placed in a reserve for later use to fund expenses for the same purposes.

### **Section Four: Fee Imposed**

The owner of each parcel of real property connected to the main CAW Water Distribution System, excluding the Bishop, Hidden Hills, Ambler, and Toro sub-units, shall pay the District an annual water service charge. The amount of the fee on each parcel shall be calculated as set forth in Section 5 of this ordinance. This is a fee charged by the district to parcels on the CAW system that receive water via the CAW system that is sourced, in whole or in part, from the District's replenishment activities. The fee for each fiscal year shall be due and payable on July 1



of that fiscal year. The Board of Directors may, by ordinance or resolution, change the method of collection for the fee by (i) providing that the annual fee be collected in installments over time, (ii) providing that the fee will be collected along with property taxes on the property tax roll, or (iii) providing the fee will be billed by the District or included on the bill of any utility that consents to such inclusion. The District may set penalties for nonpayment as permitted by District Law §326.

**Section Five: Table of Annual Water Use Fees by Use Category**

The annual water use fee for each parcel by user category is calculated as follows:

$$\text{Annual Water Use Fee} = \text{Meter Fee Based on Meter Size} + \left[ \text{Water Usage Fee Per Unit} \times \text{\# of Units} \right]$$

That is, the annual fee is the sum of the parcel user’s meter fee based on the size of the meter (from Table 1,) and the water usage fee per unit multiplied by the number of units for that parcel use (from Table 2.)

**Table 1: Meter Fee Based on Meter Size**

<b>Meter Size</b>	<b>Single-Family Residence Meter Fee</b>	<b>Multi-Family Meter Fee</b>	<b>Non-Residential Meter Fee</b>
5/8 x 3/4"			
Small house (less than 1,200 sq ft)	\$14.31		
Medium house (1,200 to 2,000 sq ft)	\$16.84		
Medium/large house (2,000 to 4,000 sq ft)	\$19.36		
Large house (4,000 sq ft+)	\$19.36		
5/8 x 3/4" multi-family or commercial		\$12.64	\$22.57
3/4"	\$25.27	\$18.97	\$33.85
1"	\$42.10	\$31.62	\$56.42
1 1/2"	\$84.19	\$63.22	\$112.84
2"	\$134.70	\$101.15	\$180.54
3"	\$252.57	\$189.66	\$338.52
4"	\$420.95	\$316.11	\$564.20
6"	n/a	\$632.21	\$1,128.40
8"	n/a	\$1,011.54	\$1,805.43

**Table 2: Water Usage Fee per Unit**

<b>Description</b>	<b>Water Usage Fee per Unit</b>	<b>Unit</b>
Small house (less than 1,200 sq ft)	\$24.75	per single family home
Medium house (1,200 to 1,999 sq ft)	\$38.50	per single family home
Medium house (2,000 to 3,999 sq ft)	\$77.00	per single family home
Large house (4,000 sq ft+)	\$154.00	per single family home
Vacant house	50%	Of non-vacant fee
Multifamily Property	\$20.90	per multifamily unit
Business/Govt 1 to 10 employees	\$52.80	per location/each business
Business/Govt 11 to 20 employees	\$105.60	per location/each business
Business/Govt 21 to 30 employees	\$158.40	per location/each business
Rate Increases for Business/Govt	\$52.80	increase per every 10 employees
Hotel/Motel	\$32.17	per room
Bed and Breakfast	\$21.54	per room
Supermarket	\$261.42	per location/each business
Medical Office	\$45.11	per licensed physician
Dental Office	\$61.09	per licensed physician
Rest Home	\$20.03	per bed of licensed capacity
General Hospital	\$118.65	per bed of licensed capacity
Animal Hospital	\$138.98	per location/each business
Restaurant 1 meal/day	\$2.43	per seat
Restaurant 2 meals/day	\$3.79	per seat
Restaurant 3 meals/day	\$7.28	per seat
Restaurant w/bar	\$9.71	per seat
Bar	\$79.91	per location/each business
Nightclub	\$233.45	per location/each business
Takeout Food - small	\$82.39	1 cash register or checkout lane
Takeout Food - medium	\$211.66	2 or 3 cash registers or checkout lanes
Takeout Food - large	\$372.03	4+ cash registers or checkout lanes
Bakery	\$101.81	per location/each business
Theater	\$109.24	per screen
Bowling Center	\$491.59	per location/each business
Gym	\$52.80	per 500 members
Mortuary	\$128.06	per location/each business
School Minimum	\$52.80	per location
School (Grades 0-6)	\$0.91	per student
School (Grades 7- college)	\$1.82	per student
Boarding School	\$23.21	per student
Instructional Facility	\$52.80	per location/each business
Church (0 to 100 members)	\$52.80	per location
Church (over 100 members)	\$105.60	per location
Photo Developer	\$52.80	per location
Laboratory	\$52.80	per 10 employees
Printer	\$52.80	per 10 employees
Service Station	\$52.80	per 10 employees
Auto Painters/Body Shop	\$52.80	per location
Rate Increases for Previous 4 Categories	\$52.80	increase per every 10 employees
Dry Cleaner	\$67.49	per location/each business
Laundromat	\$21.24	per each washing machine
Mobile Home	\$105.60	per living unit
Golf Course/City Parks/Cemeteries/Other Irrigated Area	\$105.60	per acre
Vacant Commercial	\$26.40	per location/each business
Temporarily Suspended (no active meter)	\$0	per location/each business
Special Users (determined individually)	\$52.80	Fee proportional to average business user, not to exceed \$2500.

## **Section Six: Administrative Review and Appeals**

**A. Purpose for Review.** The General Manager is directed to administer a process to enable administrative review and appeals to remedy potential error in the allocation of the annual water use fee imposed by this ordinance, to enable property to be reclassified to a different use category, to consider unique circumstances, or to otherwise reduce or waive the water use fee, when warranted, to ensure the fee is fair, reasonable and proportional to the burdens or benefits that result from District activities supported by the fee. Any property owner or fee payor may submit a claim to request an exemption, in full or in part, from fees imposed by this ordinance.

**B. Claim Presentation.** Any claim under this section shall be signed by the claimant or by some person on his or her behalf and verified by the claimant or by claimant's guardian, conservator, executor or administrator. Each claim shall be presented to the District by personal delivery or mail to the General Manager. Each claim shall set forth:

- (1) The name and address of the claimant;
- (2) The address to which the person presenting the claim desires notices to be sent;
- (3) The circumstances which gave rise to the claim;
- (4) The street address(es) and Assessor's Parcel Number(s) (APN) of each property to which the claim may be applicable;
- (5) The facts to demonstrate that the specific fee charged is (i) not reasonable, fair, or equitable, or (ii) is not proportionately representative of costs incurred by the District, or (iii) does not bear a fair or reasonable relationship to the payor's burdens or benefits from the activities of the District, or (iv) that water service upon which the fee is based is not actually used by or immediately available to the property in question.
- (6) The verified signature of each claimant (or the signature of each claimant's guardian, executor, conservator, or administrator) together with a contemporaneous statement that the information on the claim has been provided under penalty of perjury;
- (7) Any claim filed on behalf of more than one person shall be verified by each person on behalf of whom the claim is filed or by claimant's guardian, conservator, executor or administrator;
- (8) Any claim to recover money previously paid to the District may be filed by any person or the person's guardian, executor, conservator or administrator only if the payment, at the time it was first tendered, had been accompanied by a written statement, signed by the claimant or claimant's guardian, executor, conservator or administrator which states that the payment was made under protest, or other basis, providing notice to District that the payment was contested. This provision shall not be construed to relieve any person of the obligation to make full payment of any money due to the District.

**C. Class or representative claims.** No claim may be filed on behalf of a class of claimants, or on behalf of any person other than the person filing the claim, unless the membership of the class is identified with particularity; and unless the verified signature of each member of the class (or the signature of each class member's guardian, executor, conservator, or administrator) is appended to the claim; and that any claim filed on behalf of a class of claimants shall be further limited to persons who have tendered payments under written protest during the 365 days immediately preceding the filing of the class claim.

**D. Untimely claims.** No refund of any fee shall be allowed unless the amount paid was tendered together with written protest filed with the District by claimant or by claimant's guardian, executor, conservator. No refund of any fee shall occur for fees paid more than 365 days prior to the date of the claim.

**E. Time of presentation and receipt.** A claim for recovery of any money paid under protest shall be filed in writing with the District by claimant or by claimant's guardian, executor, conservator, or administrator no later than 365 days after the date the payment was made. A claimant may apply for leave to present a claim after the one-year statute runs, for a statement of good and unavoidable cause, but the District holds discretion to grant or deny the request.

**F. Notice of insufficiency.** If, the General Manager, or his or her designee, determines that a claim, as presented, fails to comply substantially with the requirements of this chapter, the General Manager or his or her designee may, at any time within 30 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omission therein. Failure of the District to provide notice of insufficiency shall not operate as a waiver of any defenses the District may have based on the sufficiency of the claim.

**G. Initial Review.** Each claim shall be screened by the General Manager or his or her designee may within 30 days after the claim has been determined to be sufficient. At this initial review and without conducting a hearing, the General Manager or his or her designee may act to adjust the fee in full or in part, as warranted, upon determining facts support the finding that the specific fee is (i) not reasonable, fair, or equitable, or (ii) is not proportionately representative of costs incurred by the District, or (iii) do not bear a fair or reasonable relationship to the payer's burdens or benefits from the activities of the District, or (iv) that water service upon which the fee is based is not actually used by or immediately available to the property in question.

**H. Administrative Hearing.** For those circumstances where the Initial Review does not resolve the claim, the General Manager or his or her designee shall convene a hearing, following 15 days written notice to the claimant, to review facts and issues supporting the claim. After the hearing, the General Manager shall take the matter under submission and thereafter render a written

decision, based on substantial evidence presented at the hearing, to adjust the fee in full or in part, or to deny the claim. Written notice of this decision shall be delivered to the claimant. Notice shall be mailed to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice to be sent. If no such address is given, notice may be mailed to any address the claimant sets forth in the claim.

**I. Administrative Appeal.** Any claimant may contest the decision of the General Manager, and request a hearing de novo before the District board of directors, by submitting a written request within 15 calendar days after the date the General Manager’s decision was provided to the claimant. At its next regular meeting, or at such other time that may be set by action of the board of directors, the board shall convene a hearing to review facts and issues supporting the claim and based on substantial evidence presented at the hearing may adjust the fee, in full or in part, or may deny the claim. Written notice of this decision shall be delivered in the same manner as required for notice of the Administrative Hearing, provided the Notice shall further advise the claimant that District Rule 16 and the California Code of Civil Procedure §1094.6 govern the time within which judicial review must be sought of this decision.

**J. Limitations.** No suit for the recovery of any fee paid or owing by any person against the District shall be filed in any court of law unless a claim has first been filed and rejected in accord with the provisions of this ordinance.

**K. Time-barred claims.** This ordinance shall not be construed to revive or reinstate any cause of action that, on the effective date of this ordinance, is barred by failure to comply with any previously applicable statute, ordinance or regulation requiring the presentation of a claim prior to a suit for recovery of money or damages, or by the failure to commence any action thereon within the period described by applicable statute of limitations. No provision of this ordinance shall enable payment of untimely claims.

### **Section Seven: Collection of Delinquent Payment, Costs and Penalties**

A. Dependent upon the collection method(s) selected by the District Board, which may be enabled by District resolution or ordinance and which may be modified from time to time, payment schedules may be available for the annual water use fee enabled by this Ordinance.

B. Except when allowed pursuant to an authorized installment payment schedule, if all or part of the fee is not paid on its due date, (a) the District may discontinue any or all services or facilities for which the bill is rendered; (b) a basic penalty of 10 percent shall be imposed for delinquent payment; (c) a penalty of one-half of 1 percent per month shall be imposed for nonpayment of the charges and the basic penalty; and (d) collection of the charge and penalties

the District may be made as a lien upon the real property and collectible at the same time and in the same manner as taxes and assessments are so collected upon such real property in accord with District law. Remedies for collection and enforcement are cumulative, and may be pursued alternatively or consecutively by the General Manager. The District may, from time to time, adopt by resolution or ordinance such other penalties and delinquency collection mechanisms allowed by law.

**Section Eight: Publication and Application**

This Ordinance shall not cause amendment or republication of the permanent Rules and Regulations of the Monterey Peninsula Water Management District. This Ordinance shall be read in conjunction with and complement those provisions of the District's Rules and Regulations. All definitions used in the District Rules and Regulations shall apply to this Ordinance.

**Section Nine: Effective Date; Review Requirement; Sunset**

This Ordinance shall take effect at 12:01 a.m. on July 1, 2012. This Ordinance shall not have a sunset date, provided however, that fees set by this Ordinance shall not be collected to the extent proceeds exceed funds required to achieve the Purposes of this Ordinance, as set forth in Section Three or as described in the Findings referenced in Section Two.

So long as this annual water use fee is collected, the Board of Directors shall hold a public hearing each calendar year in connection with review of the annual District budget. At that time, the Board shall review amounts collected and expended in relation to the purposes for which the fee is imposed. The District shall require the annual water use fee to sunset in full or in part unless the Board determines that the purpose of the fee is still required, and the amount of the fee is still appropriate. If the purpose expires, the fee shall be required to sunset. If the purpose for the fee is determined to continue, but amounts needed to fund that purpose are permanently decreased, the fee shall be reduced to that lesser amount. In the event aggregate annual fee collections are insufficient to fund all appropriate purposes to which the fee may be expended, the Board may determine, in its sole discretion, the extent to which any purpose or purposes shall be funded.

**Section Ten: Delegation**

The General Manager is directed to execute all documents and perform all tasks necessary to implement the effect and purpose of this ordinance. The delegation of authority extends to billing and collection of the fee enacted herein, together with collection of charges and penalties

for non-payment. The delegation of authority also authorizes the General Manager to tender payment on any claim for money previously paid to the District filed in accord with this ordinance, if approved according to the terms provided herein.

**Section Eleven: Severability**

If any subdivision, paragraph, sentence, clause or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this Ordinance, or of any other provisions of the District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion by Director \_\_\_\_\_, and second by Director \_\_\_\_\_, the foregoing Ordinance is adopted upon this 12<sup>th</sup> day of June 2012, by the following vote:

AYES:

NAYS:

ABSENT:

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the 12<sup>th</sup> day of June 2012.

Witness my hand and seal of the Board of Directors this \_\_\_\_\_ day of June 2012.

---

David J. Stoldt, Secretary to the Board

U:\dstoldt\Board Items and Exhibits\2012\4-16\Exhibit 12-F.docx