

**ITEM: PUBLIC HEARING**

**9. CONSIDER SECOND READING AND ADOPTION OF ORDINANCE NO. 162 --  
AMENDING THE WATER PERMIT PROCESS FOR PRIMARY AND  
SECONDARY PUBLIC SCHOOL DISTRICTS**

<b>Meeting Date:</b>	<b>August 18, 2014</b>	<b>Budgeted:</b>	<b>N/A</b>
<b>From:</b>	<b>David J. Stoldt, General Manager</b>	<b>Program/ Line Item No.:</b>	<b>N/A</b>
<b>Prepared By:</b>	<b>Stephanie Locke</b>	<b>Cost Estimate:</b>	<b>N/A</b>

**General Counsel Review: Completed**

**Committee Recommendation: The Water Demand Committee recommended adoption of this ordinance.**

**CEQA Compliance: Negative Declaration**

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**SUMMARY:** Proposed Ordinance No. 162 (**Exhibit 9-A**) adds definitions to Rule 11 for Public School District and Public School District Site, amends definitions for Permit Review Level and Water Waste, and amends Rule 24 to reduce the Adjusted Water Use Capacity for a project when a Public School District Site achieves Best Management Practices (as defined by MPWMD Rule 142), and establishes a Water Use Credit for removal of established sports fields. The amendments to the definitions were added for second reading and are deemed unsubstantial amendments to the ordinance by District Counsel. The Water Waste definition was amended to include Non-Essential Water Use definitions for consistency with the State's drought ordinance and to address power/pressure washing as discussed by the Water Demand Committee on August 11, 2014. Other minor language changes were made to clarify Water Waste.

This ordinance sets forth a process for public school districts to obtain Water Permits that enable facility updates and improvements in a water-short environment by recognizing that significant water savings occur in public schools once all reasonable retrofits (Best Management Practices) have been achieved. The ordinance recognizes the unique governmental mandate surrounding public elementary and secondary schools, whereby the district must provide a public education for students residing within the district. Student populations at public schools fluctuate up and down and the schools must be able to provide modern and adequate facilities. In addition, public school funding incentives rely on adequate facilities to reduce classroom size, particularly in the elementary schools. This ordinance facilitates upgrades to existing public school district facilities.

The implementation of Best Management Practices throughout a school district results in significant, permanent and quantifiable water savings. Currently MPWMD regulations consider permanent reductions in water use on a single site as the means to offset new construction or remodels. However, in this unique situation where a public school district is mandated to serve the children within its borders, it may be difficult to achieve sufficient water savings on a single site to offset proposed construction on that same site, particularly when the construction is to

improve an existing school. This ordinance allows a school district to implement a list of extensive Best Management Practices throughout the district to offset future construction projects.

The ordinance adds a Water Use Credit for the permanent abandonment of established sports fields. It is recognized that these fields represent significant water use and that the removal of irrigated sports fields will result in quantifiable water savings.

An Initial Study and Notice of Intent to Adopt a Negative Declaration (**Exhibit 9-B**) were filed with Monterey County and circulated to interested parties for comment. No comments were received. The ordinance was also reviewed with the District's Technical Advisory Committee members on July 10, 2014.

**RECOMMENDATION:** The Board should receive public comment before adopting the Negative Declaration and Ordinance No. 162.

**EXHIBIT**

**9-A** Draft Ordinance No. 162

**9-B** Notice and Intent to Adopt a Negative Declaration

**EXHIBIT 9-A****DRAFT  
ORDINANCE NO. 162****AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
AMENDING THE WATER PERMIT PROCESS FOR  
PRIMARY AND SECONDARY PUBLIC SCHOOL DISTRICTS****FINDINGS**

1. The Water Management District is charged under the Monterey Peninsula Water Management District Law with the integrated management of the ground and surface water resources in the Monterey Peninsula area.
2. The Water Management District has general and specific power to cause and implement water conservation activities as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.
3. There are three public school districts in the Monterey Peninsula Water Management District, each with a public service mandate to provide primary and secondary educational facilities and opportunities for the children of the Water Management District.
4. The right to a public education in California is a fundamental right fully guaranteed and protected by the California Constitution. Article 9, Section 5, of the California Constitution states: "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established."
5. Public School Districts do not receive local land use approvals, and often bypass the Water Permit requirement. Extensive time and effort is required after Project completion to retrospectively issue a Water Permit. Under the current MPWMD rules, the Public School District Site must have sufficient Water Use Credit to offset the Adjusted Water Use Capacity of a project or must receive water from a Jurisdiction's Allocation.
6. Water saving projects at a public school district facility often result in significant water savings. Adding a definition for Public School District Site allows Water Credit to be

used to offset Intensifications of Use at other school district facilities.

7. Best Management Practices are conservation measures or a series of measures that are useful, proven, cost-effective, and generally accepted among conservation experts to reduce water consumption and protect water quality.
8. Implementing Best Management Practices is proven effective at reducing consumptive use of water on a Site.
9. Best Management Practices proposed by this ordinance meet or exceed requirements imposed on other existing Non-Residential Users to mitigate potential Intensification of Use caused by one or more Projects on a Public School District Site.
10. This ordinance adds definitions to Rule 11 for Public School District and Public School District Site.
11. This ordinance amends the Rule 11 definitions for Permit Review Level and Water Waste. Water Waste is amended to include Non-Essential Water Use definitions and to add a definition for water waste related to power/pressure washing.
12. This ordinance amends Rule 24-B-1 to reduce the Adjusted Water Use Capacity when a Public School District Site achieves Best Management Practices as defined by added Rule 142-F.
13. This ordinance establishes a Water Use Credit for removal of established sports fields.
14. This ordinance amends Rule 172 to comply with the State's Emergency Drought Regulation.
15. This ordinance shall amend and republish the Rules and Regulations of the Water Management District.

NOW THEREFORE be it ordained as follows:

## ORDINANCE

### Section One:            Short Title

This ordinance shall be known as the **2014 Public School District Water Permit Ordinance** of the Monterey Peninsula Water Management District.

### Section Two:            Purpose

This ordinance sets forth a process for public school districts to obtain Water Permits that enable facility updates and improvements.

### Section Three:            Amendments to Rule 11, Definitions

Rule 11, Definitions, shall be amended as follows, with added language shown in ***bold italic*** type face and deleted language shown in ~~strikeout~~ type face.

***PUBLIC SCHOOL DISTRICT*** – “***Public School District***” shall be defined as a local government responsible to provide educational services and support to children in both primary and secondary education levels. Within MPWMD, the Carmel Unified School District, Monterey Peninsula Unified School District, and Pacific Grove Unified School District meet this definition.

***PUBLIC SCHOOL DISTRICT SITE*** – “***Public School District Site***” shall mean all facilities and properties owned by a single Public School District that are located within the MPWMD and that are supplied water by California American Water.

PERMIT REVIEW LEVEL - “Permit Review Level” refers to the type of administrative process for a Water Distribution System application; MPWMD staff determines whether the application should be processed as Level 1, Level 2, ***or Level 3*** ~~or Level 4~~ as defined in Rule 11.

WATER WASTE - “Water Waste” shall mean the indiscriminate, unreasonable, or excessive running or dissipation of water. Water Waste shall include, but not be limited, to the following:

1. Waste caused by correctable leaks, breaks or malfunctions. This loss of Potable water may be cited as Water Waste after a reasonable period of time has passed in which the leak or malfunction could have been corrected. Exceptions may be

granted by the General Manager for corrections, which are not feasible or practical.

32. Indiscriminate or excessive water use which allows excess to run to waste.
23. Use of Potable water for washing ~~buildings, structures,~~ driveways, patios, parking lots, tennis courts, or other hard surfaced areas, except in cases where health or safety are at risk ***and the surface is cleaned with a Water Broom or other water efficient device or method. Water should be used only when traditional brooms are not able to clean the surface in a satisfactory manner.***
4. ***Use of Potable water for pressure/power washing buildings and structures, except when preparing surfaces for paint or other necessary treatments.***
45. ~~Use of Potable water to irrigate turf, lawns, gardens or ornamental Landscaping between 9:00 a.m. and 5:00 p.m. by means other than drip irrigation, or hand watering without quick acting Positive Action Shut Off Nozzles. (Exceptions shall be made by the General Manager for professional gardeners where there is no ability to avoid watering between 9:00 a.m. to 5:00 p.m.).~~ ***Irrigation before 5 p.m. or after 9 a.m. on any day other than Saturdays and Wednesdays, except for irrigation overseen by a professional gardener or landscaper who is available on Site and that is not exceeding two watering days per week, or that is water efficient non-sprinkler irrigation managed by an operational Smart Controller.***
6. ***Failure to arrange for a Landscape Water Audit within 60 days of notification of a requirement to obtain an audit.***
7. ***Failure to complete a Landscape Water Audit within 60 days of a significant modification to an audited Landscape.***
- ~~10. Outdoor watering in excess of a Water Budget during Stages 2-4 Water Conservation when a Water Budget is required pursuant to Rule 172.~~
- ~~118.~~ Failure to maintain water use within a mandatory Landscape Water Budget.
89. Use of water for more than minimal Landscaping, as defined in the Landscaping regulations of the Jurisdiction or as described in Article 10.8 of the California Government Code.
10. ***Operation of fountains, ponds, lakes or other ornamental use of Potable water without recycling.***
11. ***Draining and refilling of swimming pools or spas except (a) to prevent or correct structural damage or to comply with public health regulations, or (b) upon prior approval of the General Manager.***

- ~~512.~~ Individual private washing of cars with a hose except with the use of a Positive Action Shut-Off Nozzle. ~~Use of water for washing commercial aircraft, cars, buses, boats, trailers or other commercial vehicles at any time, except at commercial or fleet vehicle or boat washing facilities operated at a fixed location where equipment using water is properly maintained to avoid wasteful use.~~
- 13. Use of water for washing commercial aircraft, cars, buses, boats, trailers or other commercial vehicles at any time, except at commercial or fleet vehicle or boat washing facilities operated at a fixed location where equipment-using water is properly maintained to avoid wasteful use.**
- ~~714.~~ Operation of a commercial **full service** car wash without recycling at least 50 percent of the Potable water used per cycle.
- 15. Charity car washes.**
- ~~916.~~ Use of Potable water for street cleaning.
- 17. Failure to meet MPWMD Regulation XIV retrofit requirements for an existing business after having been given a reasonable amount of time to comply.**
- 18. Serving drinking water to any customer unless expressly requested, by a restaurant, hotel, café, cafeteria or other public place where food is sold, served or offered for sale.**
- ~~1419.~~ Washing of livestock with a hose except with the use of a Positive Action Shut-Off Nozzle.
- ~~620.~~ Transportation of water from the Monterey Peninsula Water Resource System without prior written authorization from the MPWMD ~~shall be deemed Water Waste. Emergency or health-related situations are exempt from this provision in accordance with Rule 169 (Water Rationing Variance).~~
- 21. Unreasonable or excessive use of Potable water for dust control or earth compaction without prior written approval of the General Manager where non-Potable water or other alternatives are available or satisfactory.**
- 22. Use of unmetered fire hydrant water by individuals other than for fire suppression or utility system maintenance purposes, except upon prior approval of the General Manager.**
- ~~1223.~~ Misrepresentation of the number of Persons permanently residing on a property where water is supplied by a Water Distribution System or by a private Well.
- ~~1324.~~ Water use in excess of a Water Ration.

The following activities shall not be cited as Water Waste:

1. Flow resulting from firefighting or essential inspection of fire hydrants;
2. Water applied to abate spills of flammable or otherwise hazardous materials, where water application is the appropriate methodology;
3. Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available;
4. Storm run-off;
5. Flow from fire training activities during Stage 1 Water Conservation through Stage 3 Water Conservation;
6. Reasonable quantities of water applied as dust control as required by the Monterey Bay Unified Air Pollution Control District, except when prohibited by Regulation XV.

#### **Section Four: Addition of Rule 24-B-1-h**

Rule 24-B-1-h shall be added as follows, with added language shown in ***bold italic*** type face.

- h. Projects at Public School District Sites shall be considered to have a zero Adjusted Water Use Capacity when the entire Public School District Site meets or exceeds Rule 143 Water Efficiency Standards for Existing Non-Residential Uses.***

#### **Section Five: Amendment to Rule 25.5**

Rule 25.5 shall be amended as follows, with added language shown in ***bold italic*** type face.

- E. The following types of Permanent Abandonment of Capacity shall qualify for a Water Use Credit under this Rule:
1. Demolition of a building or use that has been recognized by the District as being a lawful water use;
  2. Permanent disconnection of a lawful water use from a Water Distribution System;



3. Residential removal of water fixtures;
4. Permanent installation of non-Mandated water fixtures or appliances;
5. *Removal of established Lawn on sports fields at a Public School District Site.*

**Section Six:**                      **Amendment to Rule 25.5**

Rule 172, Landscape Water Audits, shall be amended as follows, with added language shown in ***bold italic*** type face and deleted language shown in ~~strikeout~~ type face.

**E. LANDSCAPE IRRIGATION RESTRICTIONS**

~~Unless watering is by drip irrigation or through a hand held hose with a Positive Action Shut Off Nozzle, the following watering schedule shall apply:~~

1. All Sites that require irrigation shall water after 5 p.m. or before 9 a.m. on Saturdays and Wednesdays only.
2. Sprinkler irrigation overseen by a professional gardener or landscaper who is available on Site may occur between 9 a.m. and 5 p.m., but shall not exceed two watering days per week.
3. *Non-sprinkler water efficient irrigation managed by a Smart Controller.*

**Section Six:**                      **Publication and Application**

The provisions of this ordinance shall cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

**Section Seven:**                      **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading.

This Ordinance shall not have a sunset date.

**Section Eight:**                      **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 Monterey Peninsula Water Management 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 Pendergrass, and second by Director Edwards, the foregoing ordinance is adopted upon this \_\_\_\_ day of \_\_\_\_, 2014 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 an ordinance duly adopted on the \_\_\_\_ day of \_\_\_\_ 2014.

Witness my hand and seal of the Board of Directors this \_\_\_\_ day of \_\_\_\_ 2014.

\_\_\_\_\_  
David J. Stoldt, Secretary to the Board

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**EXHIBIT 9-B**

**NOTICE OF INTENT TO ADOPT AN INITIAL STUDY  
AND  
PROPOSED NEGATIVE DECLARATION  
For MPWMD Board review on July 21, 2014**

1. **PROJECT TITLE:** Adoption of Ordinance No. 162: "2014 Public School District Water Permit Ordinance of the Monterey Peninsula Water Management District."
2. **DESCRIPTION AND LOCATION OF PROJECT:** Ordinance No. 162 (Attachment 2) adds definitions to Rule 11 for Public School District and Public School District Site, amends Rule 24-B-1 to reduce the Adjusted Water Use Capacity for a project when a Public School District Site achieves Best Management Practices (as defined by MPWMD Rules and Regulations), and establishes a Water Use Credit for removal of established sports fields.

Ordinance No. 162 applies to Sites within the boundaries of the Monterey Peninsula Water Management District (MPWMD), including the cities of Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, Seaside, portions of Monterey County (primarily Carmel Valley, Pebble Beach and the Carmel Highlands), and the Monterey Peninsula Airport District. Each of these Jurisdictions regulates land use within its individual boundaries and is responsible for CEQA review of individual projects that are proposed. The District does not regulate land use.

3. **REVIEW PERIOD:** The Review Period is July 9, 2014 through August 8, 2014.
4. **PUBLIC MEETINGS:** The first reading of Ordinance No. 162 will be considered at the MPWMD Board meeting of July 21, 2014. The second reading and consideration of adoption of the Ordinance and Negative Declaration is scheduled for public hearing on August 18, 2014. The first reading will be held at 7:00 PM at the MPWMD offices at 5 Harris Court, Bldg G (Ryan Ranch), Monterey, California. The second reading will also be held at 7:00 PM on August 18, 2014 at the same location.
5. **LOCATION OF DOCUMENTS:** The proposed Negative Declaration and Initial Study and copies of proposed Ordinance No. 162, are available for review at the Monterey Peninsula

Water Management District office located at 5 Harris Court, Bldg. G, Monterey, CA 93940 (Ryan Ranch) and on the District's website at [www.mpwmd.net](http://www.mpwmd.net) under "Important Announcements -- CEQA Notices." The staff contact is Stephanie Locke at 831/658-5630 or [S.Locke@mpwmd.net](mailto:S.Locke@mpwmd.net).

6. **PROPOSED FINDING SUPPORTING NEGATIVE DECLARATION:** Based on the Initial Study, the Monterey Peninsula Water Management District Board of Directors finds that adoption of Ordinance No. 162 does not have a significant effect on the environment.

### **PROPOSED NEGATIVE DECLARATION**

**Based on this Initial Study, MPWMD believes that adoption of Ordinance No. 162 would have less than significant environmental impacts. MPWMD is aware that CEQA requires preparation of a negative declaration if there is no substantial evidence that the project may cause a significant effect on the environment. (CEQA Guidelines §15063(b)(2).) For these reasons, MPWMD intends to adopt a negative declaration regarding adoption of Ordinance No. 162.**

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