

EXHIBIT 13-A

**DRAFT – 2/25/2014 version
ORDINANCE NO. 160**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
COMPREHENSIVELY AMENDING ITS REGULATION OF THE
WATER DISTRIBUTION SYSTEM PERMIT PROCESS
(RULES 11, 20, 21, 22 AND 173)**

FINDINGS

1. The Water Peninsula Water Management District (MPWMD or 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 enacted, by ordinance, a set of Rules and Regulations to implement its statutory authority. District Rule 11 defines the terms used in the regulation of Water Distribution Systems (WDS). District Rules 20, 20.4, 21, 22, 40, 54-56 and 173 further define procedural and substantive rules that regulate these systems. Although these rules have been amended from time to time, the fundamental scope of these regulations was first enacted in the early 1980s. Significant refinements, changes and additions to the rules and regulations governing water distribution systems were adopted as part of Ordinance No. 96 in March 2001, Ordinance No. 105 in December, 2005, Ordinance No. 122 in August 2005, Ordinance No. 124 in July 2006, Ordinance No. 128 in June 2007, Ordinance No. 145 in September 2010, and Ordinance No. 150 in May 2012.
3. This ordinance would revise, amend and clarify the WDS regulatory process based on policy direction provided by the MPWMD Board of Directors at its December 9, 2013 meeting, with the goal of a more streamlined process that avoids duplication among agencies, while protecting the water resources of the Monterey Peninsula. It revises the types of exemptions available, consistent with the ministerial and categorical exemption categories in the California Environmental Quality Act (CEQA) Guidelines, and provides three levels of WDS Permit review based on the location, water production, number of parcels served, and type of water system, including Mobile WDS. Certain definitions are amended or clarified.
4. This ordinance shall amend the Rules and Regulations of the Water Management District. Specifically, this ordinance shall revise or add certain terms in Rule 11 (Definitions). This ordinance shall replace existing text for Rule 20-A (Permits Required), Rule 20-C (Exemptions), Rule 21-A (Applications), and Rule 22-A (Application Process); and shall make refinements to Rule 22-B (Findings), Rule 22-C (Minimum Standards), Rule 22-D (Mandatory Conditions of Approval), Rule 22-E (Amendments), and Rule 173 (Mobile WDS). Several rules refer to Implementation Guidelines for specific protocols.
5. The Water Management District Board of Directors determines that this ordinance is not considered to be a “project” under CEQA Guidelines Section 15378 because the function of the ordinance (and its associated Implementation Guidelines) is to clarify permit

processing protocol, and the ordinance does not have the potential to result in either a direct physical effect or reasonably foreseeable indirect physical effect on the environment. In contrast, each future WDS application received will be subject to CEQA review in order to determine whether the proposal meets the criteria for an exemption, or will require environmental review pursuant to the applicable CEQA sections.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the Comprehensive Water Distribution System Procedures Ordinance of 2014 (Rules 11, 20, 21, 22 and 173).

Section Two: Purpose

This ordinance shall revise the permanent Rules and Regulations of the Water Management District to clarify procedures that affect applications for the creation or amendment of Water Distribution Systems by revising and clarifying procedures, including exemptions, Mobile WDS and non-Well systems.

Section Three: Amendment of Rule 11 (Definitions)

District Rule 11 shall be amended by deleting the following defined terms in their entirety:

- “LEVEL 1 (CATEGORICAL) PERMIT”
- “LEVEL 2 (ADMINISTRATIVE) PERMIT”
- “LEVEL 3 PERMIT (HEARING OFFICER REVIEW)”
- “LEVEL 4 PERMIT (MPWMD BOARD HEARING)”

District Rule 11 shall be amended by deleting following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

CONFIRMATION OF EXEMPTION – “Confirmation of Exemption” shall mean a written approval by staff of the Monterey Peninsula Water Management District based on ~~a Pre-Application Request Form to Create/Establish a Water Distribution System~~ ***an application package*** which complies with Rule 20 ***and Rule 21***.

LEVEL 1 WDS PERMIT (BASIC, NON-MPWRS) – “Level 1 WDS Permit (Basic, Non-MPWRS)” shall mean a discretionary Permit for a Water Distribution System or Mobile Water Distribution System located outside of the Monterey Peninsula Water Resource System that does not meet the exemption criteria in Rule 20, but does qualify for a Permit to be issued without System Limits as a condition of approval, consistent

with the criteria specified in Rules 21, 22 and 173, and the associated Implementation Guidelines specified in those rules.

LEVEL 2 WDS PERMIT (BASIC SEASIDE BASIN) – *“Level 2 WDS Permit (Basic Seaside Basin)” shall mean a discretionary Permit for a Water Distribution System or Mobile Water Distribution System located within the Seaside Groundwater Basin that does not meet the exemption criteria in Rule 20, but does qualify for a Permit to be issued with System Limits consistent with production triggers in the Seaside Basin Adjudication Final Decision (March 2006 as amended), and consistent with the criteria specified in Rules 21, 22 and 173, and the associated Implementation Guidelines specified in those rules. Examples include a Multiple-Parcel Connection System that produces less than 5.0 Acre-Feet per year, or a Single-Parcel Connection System that produces 5.0 Acre-Feet per year or greater, if such production is specified in the Adjudication Decision.*

LEVEL 3 WDS PERMIT (PROJECT-SPECIFIC LIMITS IN MPWRS/OTHER) – *“Level 3 WDS Permit (Project-Specific Limits in MPWRS/Other)” shall mean a discretionary Permit for a Water Distribution System or Mobile Water Distribution System located within the Monterey Peninsula Water Resource System, or a system located outside of the Monterey Peninsula Water Resource System that does not meet the exemption criteria in Rule 20, and does not meet the criteria for a Level 1 Permit in Rules 21, 22 and 173, and the associated Implementation Guidelines specified in those rules. The Level 3 Permit is issued with System Limits as a condition of approval, and other restrictions as necessary to protect the MPWRS. Examples include any water system that extracts water from the Carmel Valley Alluvial Aquifer, and major water projects such as a dam, desalination plant or reclamation facility that requires an Environmental Impact Report.*

SENSITIVE ENVIRONMENTAL RECEPTOR (SER) -- A “Sensitive Environmental Receptor (SER)” ~~is~~ *shall mean* any one of the following areas or locations: (1) the Carmel Valley Alluvial Aquifer (alluvium) as delineated by the State Water Resources Control Board (SWRCB) in Order WR 95-10 as modified by Order 98-04, and as shown on maps at the District office; (2) ~~the five tributaries listed in MPWMD Rule 20, all tributaries to the Carmel River mainstem within the District boundary that are not within the Ventana Wilderness,~~ including *Cachagua, Pine, San Clemente, Tularcitos, Hitchcock Canyon, Garzas, Robinson Canyon and Potrero Creeks*; (3) the Seaside Groundwater Basin as delineated by MPWMD, and as shown on maps at the District office; (4) the Pacific Ocean as delineated by the mean high tide line; or (5) other sensitive locations as designated by Resolution of the MPWMD Board of Directors. *The Pacific Ocean is included as a potential indicator of seawater intrusion; the ocean itself is not a SER.*

SINGLE-PARCEL CONNECTION SYSTEM – *“Single-Parcel Connection System” refers to shall mean* a Water Distribution System providing water to one or more buildings or structures or providing water for irrigation purposes on one individual Legal Parcel. *The Well(s) or other Water Gathering Facility must be located on, overlying and serving the same individual Legal Parcel.* If the single Parcel is subdivided into two or more separate Parcels, the Water Distribution System is now considered to be a Multiple-Parcel Connection System, regardless of Parcel ownership, unless the newly

formed *L*legal Parcels each are served by a separate Well that has received a well construction permit from the Monterey County Health Department, *and has been* registered, metered, inspected and ~~has been~~ approved by the District within 180 days of the date of the final approval of the subdivision.

Section Four: Amendment of Rule 20-A (Permit to Create/Establish a WDS)

District Rule 20-A shall be amended by deleting the current text in its entirety and replacing that text with the following Section 20-A.

RULE 20 - PERMITS REQUIRED

A. PERMIT TO CREATE/ESTABLISH A WATER DISTRIBUTION SYSTEM

Before any Person Creates or Establishes a Water Distribution System or a Mobile Water Distribution System, such Person shall first obtain a written Confirmation of Exemption or Permit from the District, execute and record a notice on the title of the property, and pay all applicable fees.

Desalination, reclamation or importation facilities located within the District are not exempt because the Source of Supply is considered to be the water emanating from a facility within the District.

Persons who hold a valid permit for construction and operation of a Water Distribution System from the Monterey County Health Department, prior to March 12, 1980, or a Water Distribution System in existence prior to that date, shall be deemed to have been issued a Permit in compliance with these Rules and Regulations. Persons who filed a completed application to the Monterey County Health Department, date-stamped by the Department on or before March 19, 2001, for construction of a Well serving a Single-Parcel Connection System shall be deemed to have been issued a Permit in compliance with these Rules and Regulations provided all of the following actions were taken: (1) the Applicant received a valid well construction permit from the Monterey County Health Department, made the Well active, metered the Well, had the Well inspected by MPWMD and received an approved MPWMD Water Meter Installation Inspection form issued on or before October 15, 2001; and (2) each Water-Gathering Facility of that system was registered with the District on or before October 15, 2001.

No Mobile Water Distribution System shall be issued a Permit under the provisions of the previous paragraph. Each such system shall be required to apply

for and obtain a written Confirmation of Exemption or Permit in accord with Rules 21 and 22.

The Expansion Capacity Limit and System Capacity of previously existing systems shall be determined pursuant to Rule 40-A unless they meet the criteria for a Confirmation of Exemption or Level 1 WDS Permit, or do not have a water right specified in the Seaside Basin Adjudication Final Decision (as amended) or in a permit issued by the State Water Resources Control Board.

An Owner or Operator of a Water Distribution System shall not modify, add to or change his/her Source of Supply, location of uses, change the System Capacity (if applicable) or Expansion Capacity Limit (if applicable), or expand the Service Area unless that Person first files an application to do so with the District and receives an amended creation/establishment Permit or written Confirmation of Exemption.

Section Five: Amendment of Rule 20-C (Exemptions for WDS Permit)

District Rule 20-C shall be amended by deleting the current text in its entirety and replacing that text with the following Section 20-C.

C. EXEMPTIONS FOR WATER DISTRIBUTION SYSTEM PERMIT

Exemptions for a Water Distribution System Permit for a Well shall only be considered following receipt of a Well Construction Permit from the Monterey County Environmental Health Bureau and a State Department of Water Resources Well Completion Report. The Well must be properly registered with MPWMD, metered, inspected, and have an approved MPWMD Water Meter Installation Inspection form on file. Additional requirements are described in the Implementation Guidelines.

An MPWMD Water Distribution System Permit is not required for the situations enumerated below. Unless noted otherwise, a written and recorded Confirmation of Exemption prepared by MPWMD staff is required.

1. For properties that lie outside the District boundary, where both: (a) the property to be served is wholly outside of the boundaries of the Monterey Peninsula Water Management District; and (b) the water source is also located outside of the District boundary. A written Confirmation of Exemption is not required.

2. For properties that straddle the District boundary, where both: (a) the portion of the property served by the Water Distribution System is outside of the District boundary; and (b) the Source of Supply is outside of the District boundary. A written Confirmation of Exemption is not required.
3. For a Well (or Wells) which serves fewer than four Parcel and is located more than 1,000 feet from the boundary of any component of the Monterey Peninsula Water Resource System as defined in Rule 11.
4. For a Well (or Wells) that serves fewer than four Parcels located less than or equal to 1,000 feet from components of the Monterey Peninsula Water Resource System for which the well log shows no connectivity to these components as determined by qualified MPWMD staff.
5. For a Single-Parcel Connection System located within the Seaside Groundwater Basin with overlying water rights to percolating groundwater for which annual production shall total less than 5.0 Acre-Feet per year.
6. To Reactivate, Refurbish or Replace existing Wells that are registered with the District, as defined in Rule 11. To qualify for this exemption, the Reactivated, Refurbished or Replacement Well must have substantially the same purpose and Capacity of the structure replaced. The replacement structure must be consistent with other MPWMD Rules and Regulations. This exemption from the MPWMD permitting process does not affect in any way the Applicant's obligation to comply with permit requirements by other regional, state or federal agencies. This exemption shall not apply to an Abandoned Well, or replacement or refurbishment of an Abandoned Well, or Wells that have been Inactive for more than three years from the date of receipt of the Application Form described in Rule 21-A.
7. For On-Site rainwater capture facilities (e.g., Cisterns) that serve Single-Parcel Connection Systems for Residential or Commercial Use situations for On-Site Landscape irrigation use).
8. For Mobile Water Distribution Systems that meet either of the following criteria: (A) For deliveries of drinking water by commercial companies with licenses from the Monterey County Health Department in volumes less than or equal to 55 gallons per container. A written Confirmation of Exemption is not required. (B) For non-emergency situations, bulk hauled delivery of volumes of water greater than 55 gallons from sources outside the MPWMD boundary may only be used for non-Potable landscape

irrigation (including pools) and must be accompanied by written approval from the water agency, jurisdiction or other entity with regulatory authority over the source of supply. Sources of supply within the MPWMD boundary are subject to a Water Distribution System Permit from MPWMD pursuant to Rules 20, 21 and 22, and the Implementation Guidelines.

9. For non-Potable onsite use of water on one Parcel from a naturally occurring spring or seep in Fractured Rock as confirmed in writing by MPWMD staff following an on-site inspection.
10. For an existing or future new Irrigation System, owned and operated by MPWMD, which exists solely to irrigate riparian vegetation in the Carmel River Riparian Corridor as part of the MPWMD Water Allocation Program EIR Mitigation Program. A written Confirmation of Exemption is not required.
11. For a non-MPWMD Irrigation System that is served by a Well completed prior to January 15, 2003, with the purpose to irrigate riparian vegetation in the Carmel River Riparian Corridor pursuant to conditions of approval of an MPWMD River Work Permit, a contract with MPWMD, or any other irrigation use approved by the District. This exemption does not apply to Irrigation Systems that are served by Wells completed on or after January 15, 2003.
12. For a Water Distribution System in existence prior to April 18, 2001, that is comprised of multiple, contiguous Parcels owned by the same owner. Such a system may be referred to as “pre-existing Multiple-Parcel Connection System.” However, any amendments to such a Water Distribution System on or after April 18, 2001, must be permitted by the District pursuant to Rule 22.
13. For a Water Distribution System that serves water to Parcels within the Former Fort Ord Lands within MPWMD, but that does not derive water from the Seaside Groundwater Basin or the Carmel River Basin, including the Carmel Valley Alluvial Aquifer. A written Confirmation of Exemption is not required.
14. Any exemption pursuant to this Rule 20-C, however, shall not be construed to exempt the facility or its Owner or Operator from any other

requirement set forth in these MPWMD Rules and Regulations, or any other regulatory or legal requirement.

Section Six: Amendment of Rule 21-A (Application for WDS Permit)

District Rule 21-A shall be amended by deleting the current text in its entirety and replacing that text with the following Section 21-A.

RULE 21 - APPLICATIONS

A. APPLICATION FOR PERMIT TO CREATE/ESTABLISH A WATER DISTRIBUTION SYSTEM

The Applicant for a Permit to Create/Establish a Water Distribution System or for a Confirmation of Exemption shall submit the following, based on guidance provided in the Implementation Guidelines:

1. A completed written Application Form signed by the system Owner, in the manner and form prescribed by the Implementation Guidelines. Based on the information provided in the Application, the General Manager shall determine: (a) whether the application qualifies for an exemption under Rule 20; (b) whether ministerial or discretionary action is needed by MPWMD; and (c) which type of Permit is applicable to the project as prescribed by Rule 22 and the Implementation Guidelines. Depending on the situation, the Application package may be required to include some or all of the remaining numbered elements of this Rule 21-A; and
2. Environmental information as required by the California Environmental Quality Act (CEQA); and
3. Zoning and land use designations for the property; identify land use approvals which may be required for the proposed Project by the Municipal Unit in which proposed system would be located (i.e., tentative map, use permit, etc.), or by other Governmental agencies, consistent with state and local regulations that require proof of available water supply; and
4. Identify type of water right claimed to exist with each Water-Gathering Facility and each Source of Supply for the system (e.g., riparian, pre-1914, appropriative, overlying or other). Provide written verification of legal water rights applicable to type of right claimed. The verification shall include, but shall not be limited to the following forms of documentation:
 - (a) Condition of Title Report, prepared by a title company at the

Applicant's expense, and any and all supporting documentation to indicate whether legal water rights have been subordinated or severed; this documentation may include a judicial declaration of right or a full title opinion prepared by an attorney with expertise in water law; (b) information that describes the legal basis or authority for diversion and extraction of water; (c) if Groundwater is being pumped from a Groundwater basin that has not been adjudicated, a statement to that effect in addition to a copy of the current deed to the property is sufficient documentation to satisfy this requirement; or (d) if the source of the water is subject to permit requirements under the State Water Resources Control Board, a copy of the SWRCB water rights permit or domestic registration must be included; and

5. A copy of: (a) an approved Water Well Construction Permit issued by the Monterey County Environmental Health Bureau, including the associated impact assessment conducted by the Monterey County Water Resources Agency; (b) the State of California Well Completion Report submitted to the California Department of Water Resources ("well log"); and (c) Monterey County Environmental Health Bureau "*Source Water Quality and Quantity Analysis Certification Form*" or similar approval document from that agency; and
6. The name and address of each Responsible Party; and
7. The results of Well Capacity (Aquifer Pumping) Tests as specified by the Implementation Guidelines, the cost of which shall be borne by the Applicant, and which may be observed by a District representative or agent; and
8. The results of water quality tests as specified by the Implementation Guidelines, the cost of which shall be borne by the Applicant; and
9. An evaluation of the hydrogeologic information in the manner and form required in the Implementation Guidelines. This evaluation shall be prepared by a qualified individual or firm as determined by the District. Qualified consultants shall include a certified hydrogeologist, a licensed professional geologist with a specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or a registered civil engineer with a specialty in hydrology; these specialists shall be certified in, registered or licensed by the State of California. The costs of this evaluation shall be borne by the Applicant; and

10. Documentation regarding notification to Neighboring Well owners, if applicable. If required by the District, the Applicant shall provide notice to Neighboring Well owners regarding the opportunity to monitor Wells as specified in the Implementation Guidelines. Applicant shall provide documentation of notice to, and responses (if any) by, Neighboring Well owners to the District prior to the commencement of Well Capacity (Aquifer Pumping) Tests, as specified in the Implementation Guidelines.
11. For a Mobile Water Distribution System, documentation about the source of supply, quantity and intended uses, including written approval from the agency with regulatory authority over the source (if source is located outside of the MPWMD boundary); and
12. The applicable fees prescribed in Rule 60.

Section Seven: Amendment of Rule 22-A (Process for Application for WDS Permit)

District Rule 22-A shall be amended by deleting the current text in its entirety and replacing that text with the following Section 22-A.

**RULE 22 - ACTION ON APPLICATION FOR PERMIT TO
CREATE/ESTABLISH A WATER DISTRIBUTION SYSTEM**

A. PROCESS

1. Review of Application Package

The General Manager shall review each Application Form (and attachments) to Create/Establish a Water Distribution System or Mobile Water Distribution System, or to amend such a system. If the Application is determined to be complete pursuant to the Implementation Guidelines, the General Manager shall confirm the proper Permit Review Level as defined in Rule 11, Definitions. The General Manager shall notify the applicant in writing to confirm the Permit Review Level determination and the associated process steps, including the required recordation of notice on the title of the property, if applicable, and potential additional fees. If the Application is determined to be incomplete, the General Manager shall notify the applicant in writing of the missing or deficient information, and request the Applicant to submit that information.

2. Determination of Permit Review Level

Based on the information in the Application package, the General Manager shall determine the Permit Review Level as follows, using Table 22-A as a guide and consistent with the protocol provided in the Implementation Guidelines, and with the California Environmental Quality Act (CEQA). The Permit Review Levels are as follows:

Exempt: A system meets the criteria identified in Rule 20.

Level 1 Water Distribution System Permit (Basic Non-MPWRS): For a Water Distribution System or Mobile Water Distribution System located outside of the Monterey Peninsula Water Resource System that does not meet the exemption criteria specified in Rule 20, but does qualify for a Permit to be issued without System Limits as a condition of approval, consistent with the criteria in these Rules and the Implementation Guidelines.

Level 2 Water Distribution System Permit (Basic Seaside Basin): For a Water Distribution System or Mobile Water Distribution System located within the Seaside Groundwater Basin that does not meet the exemption criteria in Rule 20, but does qualify for a Permit to be issued with System Limits consistent with production triggers in the Seaside Basin Adjudication Final Decision (March 2006 as amended), and consistent with the criteria specified in Rules 21, 22 and 173, and the associated Implementation Guidelines specified in those rules.

Level 3 Water Distribution System Permit (Project-Specific Limits in MPWRS/Other): For a Water Distribution System or Mobile Water Distribution System located within the Monterey Peninsula Water Resource System, or a system located outside the Monterey Peninsula Water Resource System that does not meet the exemption criteria in Rule 20, or does not meet the criteria for a Level 1 or Level 2 Permit, in Rules 21, 22 and 173, and the associated Implementation Guidelines specified in those rules. The Level 3 Permit is issued with System Limits as a condition of approval, and other restrictions as necessary to protect the MPWRS.

Each application shall be reviewed pursuant to CEQA, except those projects which meet the CEQA criteria for a ministerial or categorical exemption (CEQA Guidelines Section 15268 and Article 19).

3. Protocol for Exempt System

Unless specified otherwise in Rule 20, the General Manager shall provide a written Confirmation of Exemption to the Applicant in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. A notice on the title of the property shall be recorded by the District prior to issuance of the written Confirmation of Exemption. District action is ministerial and is exempt from the requirements of CEQA (Guidelines Section 15268). Notice of the staff action shall be provided to the public via the “Appealable Decisions” section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, “Appeals.”

4. Protocol for Level 1 Permit (Basic Non-MPWRS)

The General Manager shall review the Application package in the form and manner prescribed in Rule 21 to determine if the submitted Application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the Application is determined to be incomplete, the General Manager shall notify the Applicant concerning that information in which the Application is deficient and request the Applicant to submit that information, in compliance with Rule 22-F. If the Application is determined to be complete, and all criteria specified in Rule 22-A-2 and the Implementation Guidelines are met, the General Manager shall issue a Level 1 Permit within a goal of sixty (60) days that specifies terms and conditions that are independent of, but consistent with, Rules 22-B, 22-C and 22-D. The Level 1 Permit does not set System Limits. However, a mandatory condition of approval shall state, “There shall be no permanent intertie to any other water system, and there shall be no intertie to the California American Water system under any circumstances, including a temporary emergency, until there is full compliance with SWRCB Order WR 95-10 (as amended), compliance with the Seaside Groundwater Basin Adjudication Final Decision of 2006 (as amended), and water is available in the respective Jurisdiction’s Allocation for release to the Parcel(s).” District action is discretionary and the application is subject to CEQA review unless the project qualifies for a CEQA categorical exemption (CEQA Guidelines Article 19). Notice of

the staff action shall be provided to the public via the “Appealable Decisions” section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, “Appeals.”

5. Protocol for Level 2 Permit (Basic Seaside Basin)

The General Manager shall review the Application package in the form and manner prescribed in Rule 21 to determine if the submitted Application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the Application is determined to be incomplete, the General Manager shall notify the Applicant concerning that information in which the Application is deficient and request the Applicant to submit that information, in compliance with Rule 22-F. If the Application is determined to be complete, and all criteria specified in Rule 22-A-2 and the Implementation Guidelines are met, the General Manager shall issue a Level 2 Permit within a goal of sixty (60) days that specifies terms and conditions that are consistent with Rules 22-Band 22-C, and in compliance with Rule 22-D unless a specific condition is not applicable. District action is discretionary and the Application is subject to CEQA review unless the project qualifies for a CEQA categorical exemption (CEQA Guidelines Article 19) or unless the project is covered by the previous action of the Superior Court, which supersedes CEQA. Notice of the staff action shall be provided to the public via the “Appealable Decisions” section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, “Appeals.”

6. Protocol for Level 3 Permit (Project-Specific Limits in MPWRS/Other)

a. The General Manager shall review the Application package in the form and manner prescribed in Rule 21 to determine if the submitted Application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the Application is determined to be incomplete, the General Manager shall notify the Applicant concerning that information in which the Application is deficient and request the Applicant to submit that information, in compliance with Rule 22-F. If the Application is determined to be complete, and all criteria specified in Rule 22-A-2 and the Implementation Guidelines are met, the General Manager shall issue a Level 3 Permit within a goal of 120 days that specifies terms and conditions that are consistent with Rules 22-Band 22-C, and in compliance with Rule 22-D unless a specific condition is

not applicable. Usually complex applications may take longer than 120 days. District action is discretionary and the Application is subject to CEQA review unless the project qualifies for a CEQA categorical exemption (CEQA Guidelines Article 19).

- b. The General Manager shall consult with the Board Chairperson to determine if the project is large, complex or controversial enough to be taken directly to the Board of Directors as a public hearing. If a hearing is scheduled before the Board of Directors, the standard Board protocol for such a quasi-judicial hearing shall be followed. The Chairperson may direct that a hearing be scheduled before the General Manager (or his designee) as the sole hearing officer, as described in subsections (c), (d) and (e) below. The Chairperson could direct that certain Single-Parcel Connection Systems do not require a public hearing. In that case, notice of the staff action shall be provided to the public via the “Appealable Decisions” section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, “Appeals.”
- c. At a hearing before the staff hearing officer, the Applicant shall be entitled to present evidence in support of the Application. Interested Persons may present evidence in opposition or support of the Application. The hearing officer, in conducting the public hearing, may request hydrologic, geologic, legal opinions or other studies necessary to obtain information required for his/her decision. The cost of such studies shall be borne by the Applicant. For every Application for which a Controversy, based on factual evidence already in the record or introduced into the record, arises concerning the extent or adequacy of water rights, the hearing officer may require and will specify additional documentation needed to support each water right claim. The hearing officer shall continue the public hearing on the Application until the specified information is provided by the Applicant.
- d. The hearing officer may deny, approve, or continue the Permit Application based on the minimum standards as set forth in Rule 22-C and its findings pursuant to Rule 22-B. The hearing officer may impose such conditions on the Permit that he/she deems necessary and proper, which must include the “Mandatory Conditions of Approval” specified in Rule 22-D, unless a specific

condition is not applicable. The General Manager shall notify the Applicant within thirty (30) days in writing by mail or in person of the hearing officer action taken; namely continuance, approval, conditional approval, or denial of the Application. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the address shown on the Application, or when personally delivered to the Applicant or the Applicant's representative. Notice of the hearing officer's action shall be provided to all MPWMD Board members.

- e. The hearing officer's decision may be appealed to the MPWMD Board of Directors pursuant to Rule 70, "Appeals," upon payment of the fee specified in Rule 60. Permits granted under this provision may be appealed to the Board of Directors for a *de novo* hearing. That hearing shall convene under the rules of process set in Rule 70, "Appeals."

Section Eight: **Amendment of Rule 22-B (Findings)**

District Rule 22-B shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

B. FINDINGS

In order to protect public trust resources, prior to making its discretionary decision to grant or deny any Permit to Create or Establish any Water Distribution System, or to Create or Establish any Mobile Water Distribution System, the Board (or the General Manager for certain systems) shall determine:

1. Whether the system for which a Permit is sought would cause unnecessary duplication of the same types of services by any existing system; and
2. Whether the Permit would result in exportation or importation of water outside or into the District; and
3. Whether the proposed Water Distribution System would result in significant environmental effects that cannot be mitigated by conditions attached to the Permit; and

4. Whether the Application adequately identifies the claim of right for each Source of Supply for the Water Distribution System, whether it provides adequate supporting verification documentation thereto, and/or whether the system relies on any non-existent or questionable claim of right; and
5. Whether the Application demonstrates the existence of a long-term reliable Source of Supply *as demonstrated by standard methodology adopted by the Monterey County Environmental Health Bureau and/or MPWMD testing procedures identified in the Implementation Guidelines*; and
6. Whether the Source of Supply is shared by any other Water Distribution System, and if so *the system is within the Monterey Peninsula Water Resource System, the extent to which cumulative impacts may affect each Source of Supply, and species and habitat dependent upon those Sources of Supply*; and
7. Whether the Source of Supply derives from (a) the Monterey Peninsula Water Resource System, and/or (b) waters within the jurisdiction of the State Water Resource Control Board, and/or (c) waters tributary to the Source of Supply for any other system; and
8. Whether the proposed Water Distribution System (a) shall intertie to any other system, (b) shall be able to obtain emergency supplies in the event of system failure, (c) shall provide fire flow requirements for development served by that system; and (d) the extent other Water Distribution Systems shall be required to provide emergency supplies and/or meet fire flow requirements; and
9. Whether the proposed Water Distribution System shall incorporate adequate cross contamination and backflow measures to protect other systems and Sources of Supply.

Section Nine: **Amendment of Rule 22-C (Minimum Standards for Granting Permit)**

District Rule 22-C shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

C. MINIMUM STANDARDS FOR GRANTING PERMIT

An Application may be considered for approval if it complies with each of the following minimum standards; if any one of the following standards is not met, the Application shall be denied:

1. The Application identifies at least one Responsible Party who, at all times, will be available and legally responsible for the proper performance of those things required of a Permit holder by this regulation.
2. The ability of the Source of Supply for any Water Distribution System designed to deliver water for any Potable use to other than a Single-Parcel Connection System, to provide water that complies with the standards set forth in Title 22 of the California Administrative Code *or standards set forth by the Monterey County Environmental Health Bureau.*
3. The Application identifies the location of each Source of Supply for the Water Distribution System *or Mobile Water Distribution System*, and the location of each use supplied by ~~the system~~ *the Mobile Water Distribution System.*
4. The proposed Water Distribution System will not create an Overdraft or increase an existing Overdraft, unless a valid superior right is proven.
5. The proposed Water Distribution System will not adversely affect the ability of existing systems to provide water to Users unless a valid superior right is proven.

Section Ten: Amendment of Rule 22-D (Mandatory Conditions of Approval)

District Rule 22-D shall be amended by deleting the following provisions shown in strikethrough text (~~strikethrough~~), and by adding the following provisions set forth in italicized and bold face type (*bold face*).

D. MANDATORY CONDITIONS OF APPROVAL

1. ~~When the Board or hearing officer approves the~~ *The Level 2 or 3 Permit* it shall establish for each system: (i) an Expansion Capacity Limit, which sets the total number of Connections which can be served; (ii) a System Capacity ~~Limit~~, which sets the maximum annual production in Acre-Feet per year; and (iii) a Municipal Unit (Jurisdiction) Allocation, *if applicable. The Level 1 Permit shall not set an Expansion Capacity Limit or a System Capacity.* In addition to the following mandatory conditions, the ~~District Board or hearing officer~~ may impose other conditions in granting

the Permit. Conditions that are not applicable to Mobile Water Distribution Systems need not be imposed:

- a. Permit shall designate geographic boundary of Water Distribution System Service Area, including Assessor's Parcel Numbers;
- b. Permit shall identify authorized use of Water Distribution System (e.g., Potable, Sub-potable, Residential, Commercial, and/or other types of use);
- c. Permit shall identify approvals by other agencies that shall be obtained before Water Distribution System Permit is finalized or vested;
- d. Applicant shall execute an indemnification agreement that holds the District harmless, and promises to defend the District from any claims, demands, or expenses of any nature or kind arising from or in any way related to the adequacy of the water supply of the system;
- e. Applicant shall comply with all District Rules relating to water Well registration, metering and reporting;
- f. Applicant shall comply with all District water conservation regulations; this may include requirements for installation of low-flow fixtures or drought tolerant Landscaping;
- g. Applicant shall comply with District regulations that govern water meter Connections, including payment of applicable fees;
- h. Permit shall identify whether interties to other systems are allowed and shall identify restrictions or prohibitions on such interties, including devices to prevent cross-contamination of systems. MPWMD shall not approve any Water Permit for a new Connection to the California American Water system due to the inability of a permitted Water Distribution System to deliver adequate water quality or quantity to Parcels within its Service Area until there is full compliance by California American Water with State Water Resources Control Board Order No. WR 95-10 (as amended); California American Water compliance with the March 2006 Final Decision of the Seaside Groundwater Basin

Adjudication (as amended); and water is available in the respective Jurisdiction's Allocation for release to the Parcel(s);

- i. Permit shall identify which mitigation measures, if any, are required to address potential adverse environmental impacts associated with the proposed Water Distribution System, and specify funding mechanism, if applicable;
- j. Applicant shall provide a copy of agreement(s) to serve water to recipient Parcels, if a Multiple-Parcel Connection System;
- k. Applicant shall receive a District Permit prior to Intensifying or Expanding the approved Water Distribution System;
- l. Applicant shall pay to the District the invoiced cost for MPWMD staff time and/or its agents *as well as direct cost* (pursuant to Rule 60) to process the Permit, as documented in billing logs, before the Permit is finalized;
- m. Applicant shall sign an "Acceptance of Permit Conditions" form upon finalization of Permit conditions, wherein the Applicant states that he/she understands and accepts the conditions as a binding part of the Permit approval, and agrees to carry out the conditions in good faith; the Permit is not valid until the signed form is received from the Applicant;
- n. Applicant shall execute a Notice and Deed Restriction prepared and recorded by the District regarding the limitation on water use as set forth in the conditions of approval prior to issuance of the final Permit;
- o. Upon notice to the Water Distribution System Owner or Operator in writing, e-mail or by telephone, reasonable access to the Site shall be given to MPWMD staff or its designated representative to inspect and document Water-Gathering Facilities and Water-Measuring Devices, obtain hydrogeologic data, and take readings from Water-Measuring Devices.
- p. Permit shall state that the Permit is subject to Revocation in the event the Applicant does not comply with the provisions set forth in each condition in this Rule.

2. Every Applicant, as a condition to holding a Permit pursuant to this Rule, shall report annually in the form and manner prescribed by the District: (i) the quantity of water delivered from each Source of Supply, (ii) the total water produced, (iii) the maximum number of Connections in the system, (iv) the number of new Connections and disconnections, (v) provide a map or maps of the Service Area, and (vi) list the identity and address of each Responsible Party as of September 30th of the previous year.
3. As a condition precedent to use or enjoyment of any Permit pursuant to this Rule, each Applicant shall be required to first obtain and comply with any required approval from the local Jurisdiction in which the property is located; and if applicable, obtain and comply with a certificate from the California Public Utilities Commission, or a coastal development permit or other approvals pursuant to the California Coastal Act. Failure to comply with this prerequisite shall provide cause for Revocation of any Permit issued pursuant to this Rule.
4. For Permits issued after January 15, 2003, construction tasks for facilities authorized in the MPWMD Water Distribution System Permit (e.g., Well, pipelines, storage tanks and water treatment) shall be initiated within one year (~~365 days except 366 days for leap years~~) from the date the Permit is issued. The Permit shall expire if no action is taken within that year. Construction of permitted Water-Gathering Facilities shall be completed and Water Distribution System operation shall commence within two years from the date the Permit is issued. The permittee may apply in writing to the General Manager for *up to a one year* ~~180-day~~ extension to the Project initiation deadline and/or the system operations commencement deadline, to be approved at the discretion of the General Manager. *Multiple extensions may be requested with good cause.*

Section Eleven: Amendment of Rule 22-E (Amendments to Permit)

District Rule 22-E shall be amended by deleting the following provisions shown in strikethrough text (~~strikethrough~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

E. AMENDMENTS TO PERMIT

No Owner or Operator of a Water Distribution System shall modify, add to or change his/her Source of Supply, location of uses, Expand the system beyond the System Capacity (annual production limit), ***if applicable***, or the Expansion Capacity (Connection) Limit, ***if applicable***, or Expand the Service Area including

annexations, unless that Person first files an Application to do so with the District and receives an amended Creation/Establishment Permit. Such Applications shall be made pursuant to Regulation II (Permits), shall comply with each Rule therein, and shall be investigated, considered, determined and acted upon on the same terms and conditions as provided for the approval, conditional approval, or denial of a Permit, as provided in this Rule.

Section Twelve: Amendment of Table 22 (Permit Level Matrix)

Table 22-A shall be amended by deleting the current text in its entirety and replacing that text with the revised Table 22-A, which is attached.

Section Thirteen: Amendment of Rule 173 (Regulation of Mobile WDS)

District Rule 173 shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

RULE 173 - REGULATION OF MOBILE WATER DISTRIBUTION SYSTEMS

- A. No Person, Extractor, Owner or Operator shall operate a Mobile Water Distribution System without first securing a written Permit ***or Confirmation of Exemption*** from the District. In accordance with Monterey County Code (e.g., Title 15.20), no applications will be accepted or permitted for bulk hauled water for permanent Potable use. Applications for establishment of a Mobile Water Distribution System shall be made pursuant to ***Rule 20, Rule 21, and Rule 22*** (~~Action on Application for Permit to Create/Establish a Water Distribution System~~) and shall be investigated, considered, determined, and acted upon ~~on the same terms and conditions as provided for the approval, conditional approval or denial of a creation/establishment Permit as stated in that rule~~ ***in accordance with those rules and the Implementation Guidelines***. The application shall identify each Source of Supply and the location of each use. For any Sub-potable Mobile Water Distribution System within the California American Water Service Area, a condition of approval shall require that California American Water be notified so that a back-flow protection device can be installed pursuant to Monterey County Code, ***as necessary***.
- B. In the event prior authorization is not obtained by reason of an emergency or health-related situation, authorization for the Mobile Water Distribution System Permit shall be sought from the District by submittal of a complete application compliant with Rule 21, within five working days following commencement of the emergency or health-related event.

- C. California American Water shall not provide portable water meters to any Person unless a Permit has been issued by the District pursuant to Rule 22 or Rule 23.
- D. Delivery and/or receipt of water from an unpermitted Mobile Water Distribution System shall be deemed Water Waste, and shall be subject to fine, restriction, and cease and desist order as set forth in Rule 171 and Regulation XI.

Section Fourteen: 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 titles and captions are provided for convenience and shall not be construed to limit the application of the text.

Section Fifteen: Effective Date and Sunset

This ordinance shall be given effect at 12:01 a.m. on the 30th day following the date of its adoption on second reading.

Section Sixteen: 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 of Director _____, and second by Director _____, the foregoing ordinance is adopted upon this ____th day of _____, 2014 by the following vote:

AYES: Directors _____

NAYS: Directors _____

ABSENT: Directors _____

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 ____th day of _____, 2014.

Witness my hand and seal of the Board of Directors this ___ day of _____, 2014.

David J. Stoldt, Secretary to the Board

U:\staff\Board_Committees\RulesRegs\2014\20140304\03\13A.docx

DRAFT