



This meeting is not subject to Brown Act noticing requirements. The agenda is subject to change.

**Water Supply Planning Committee Members:**

*Robert S. Brower, Sr.  
Chair  
Jeanne Byrne  
David Pendergrass*

**Alternate:**

*Kristi Markey*

**Staff Contact**

*David J. Stoldt,  
General Manager*

*After staff reports have been distributed, if additional documents are produced by the District and provided to the Committee regarding any item on the agenda, they will be made available at 5 Harris Court, Building G, Monterey, CA during normal business hours. In addition, such documents may be posted on the District website at mpwmd.net. Documents distributed at the meeting will be made available in the same manner.*

**AGENDA**

**Water Supply Planning Committee  
Of the Monterey Peninsula Water Management District  
\*\*\*\*\***

Tuesday, March 17, 2015, 10 am  
MPWMD Conference Room, 5 Harris Court, Building G, Monterey, CA

**Call to Order**

**Comments from Public**

*The public may comment on any item within the District's jurisdiction. Please limit your comments to three minutes in length.*

**Action Items** – Public comment will be received

1. [Consider Adoption of February 10, 2015 Committee Meeting Minutes](#)
2. Consider Recommendation to the Board to Utilize District Credit for Pure Water Monterey Financing
3. [Consider Recommendation to the Board to Conduct First Reading of Malpaso Water LLC Ordinance](#)
4. [Consider Recommendation to the Board to Conduct First Reading of Pacific Grove Ordinance](#)

**Discussion Item** – Public comment will be received

5. Discuss Action Plan for Los Padres Dam Improvements and Acquisition
6. Update on California American Water Co. Desalination Plant
7. Update on Pure Water Monterey Project
8. Update on Local Water Projects

**Suggestions from the Public on Water Supply Project Alternatives** (15 min limit)

**Set Next Meeting Date**

**Adjournment**

Upon request, MPWMD will make a reasonable effort to provide written agenda materials in appropriate alternative formats, or disability-related modification or accommodation, including auxiliary aids or services, to enable individuals with disabilities to participate in public meetings. MPWMD will also make a reasonable effort to provide translation services upon request. Please send a description of the

requested materials and preferred alternative format or auxiliary aid or service by 5PM on Friday, March 13, 2015. Requests should be sent to the Board Secretary, MPWMD, P.O. Box 85, Monterey, CA, 93942. You may also fax your request to the Administrative Services Division at 831-644-9560, or call 831-658-5600.

## **WATER SUPPLY PLANNING COMMITTEE MEETING**

### **ITEM: ACTION ITEM**

#### **1. CONSIDER ADOPTION OF JANUARY 21, 2015 COMMITTEE MEETING**

**Meeting Date:** March 17, 2015

**From:** David J. Stoldt,  
General Manager

**Prepared By:** Arlene Tavani

**General Counsel Review:** N/A

**Committee Recommendation:** N/A

**CEQA Compliance:** N/A

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**SUMMARY:** Attached as **Exhibit [1-A](#)** are draft minutes of the January 21, 2015, Water Supply Planning Committee meeting.

**RECOMMENDATION:** The Committee should review the minutes and adopt them by motion.

#### **EXHIBIT**

**[1-A](#)** Draft Minutes of the January 21, 2015 Committee Meeting



## **EXHIBIT 1-A**

### **DRAFT MINUTES Water Supply Planning Committee of the Monterey Peninsula Water Management District *February 10, 2015***

**Call to Order**        The meeting was called to order at 10:00 am in the Water Management District conference room.

**Committee members present:**    Robert S. Brower, Sr. - Committee Chair  
David Pendergrass  
Jeanne Byrne

**Committee members absent:**    None

**Staff members present:**        David Stoldt, General Manager  
Larry Hampson, Planning & Engineering Division Manager  
Arlene Tavani, Executive Assistant

**Comments from the Public**        No comments were directed the committee.

#### **Action Items**

1.     **Consider Adoption of January 21, 2015 Committee Meeting Minutes**  
On a motion of Byrne and second of Pendergrass, the January 21, 2015 meeting minutes were approved unanimously on a vote of 3 – 0 by Byrne, Pendergrass and Brower. No comments from the public were directed to the committee during the public comment period on this item.
  
2.     **Discussion and Recommendation to the Board on the Acquisition of Los Padres Dam**  
Byrne offered a motion that was seconded by Pendergrass, to recommend that the Board direct staff to develop a comprehensive action plan for intervention at Los Padres Dam with a focus on dredging, sediment management, preservation of water rights, and investigations into CEQA, liability, and project costs. The motion was adopted on a vote of 3 – 0 by Byrne, Pendergrass and Brower. No comments from the public were directed to the committee during the public comment period on this item.

Committee Comments: (1) We should investigate the possibility of dredging Los Padres reservoir as an emergency measure due to the drought. Other areas of California have accomplished dredging projects with minimal environmental review due to the drought emergency. (2) There is an urgent need for the project, due to the uncertainty of the California American Water. (3) Studies proposed for completion in the Los Padres Dam Long-Term Plan would determine if dredging is a preferred option. The 2015-

2017 General Rate Case (GRC) includes joint funding between Cal-Am and the Water Management District for those studies. Until the GRC is approved, the Water Management District could decide to fund the studies and then be reimbursed. (4) If dredging and other measures were to increase storage by 1,200 acre-feet, water rights are needed to divert that water for community use. Cal-Am has 800 acre-feet of water rights that could be utilized. The Water Management District could make application to the SWRCB to use 400 acre-feet of its 2808B water rights permit for diversion. (5) One concern is that if storage is available at Los Padres Dam, it might be used in the short-term until Cal-Am's desal project is online. However, there may be objections to using it long-term which could result in the desal project being downsized. (6) In order to be considered a water supply option, the cost of new water from Los Padres must cost less per acre-foot than the price of water from the desal plant. (7) One possible scenario is that the Water Management District could raise the spillway at Los Padres with a rubber dam, and also dredge to create additional storage. In conjunction with those projects, the District would file water rights applications with the SWRCB for 3 potential ASR sites and expansion of storage at the dam. (8) Staff should proceed aggressively, and not be dissuaded by the previous opinion of the Division of Safety of Dams that it would only work with Cal-Am, the owner of the dam.

**3w. Consider Development of Recommendation to the Board on Amendment to Cost Sharing Agreement with DeepWater Desal (item added on 2/10/15)**

On a motion by Pendergrass and second of Byrne, the committee recommended that the Board of Directors approve an amendment to the cost sharing agreement with DeepWater Desal. The motion was adopted on a vote of 3 – 0 by Pendergrass, Byrne and Brower. No comments were directed to the committee during the public comment period on this item.

**3y. Consider Development of Recommendation to the Board on Funding Acquisition of Pure Water Monterey Pilot Plant (item added on 2/10/15)**

Byrne offered a motion to recommend that the Board of Directors fund acquisition of the Pure Water Monterey pilot plant. The motion was seconded by Pendergrass and adopted on a vote of 3 – 0 by Byrne, Pendergrass and Brower. No comments from the public were directed to the Board during the public comment period on this item.

**3z. Consider Development of Recommendation to the Board on Award of Local Project Grant Funds to City of Pacific Grove (item added on 2/10/15)**

On a motion by Pendergrass and second of Byrne, the committee recommended that the Board of Directors award Local Project Grand Funds to the City of Pacific Grove. The motion was adopted on a vote of 3 – 0 by Pendergrass, Byrne and Brower.

In response to a question from the committee, Mike McCullough, Recycled Water Project Assistant for the Monterey Regional Water Pollution Control Agency (MRWPCA), stated that the City of Pacific Grove may have overestimated the amount of recycled wastewater that will be available for use. Also, there has been no discussion of the increase in costs for MRWPCA to treat the heavy waste stream that will flow from the Pacific Grove treatment facility to the MRWPCA facility.

### **Discussion Items**

**3. Progress Report on Property Lease from City of Seaside for Aquifer Storage and Recovery Project**

Revised lease documents have been submitted to the City of Seaside. Staff will contact the City again in approximately one week.

**3. Discuss Development of Groundwater Sustainability Plan**

Stoldt reported that he will submit a recommendation for the Water Management District to become the Groundwater Sustainability Agency (GSA) for areas within the District's boundaries and the Seaside Groundwater Basin. The timing for this action has not been determined. Development of a groundwater sustainability plan may require regulation of pumpers on the Carmel River, and a determination of safe yield. The County of Monterey plans to conduct facilitated meetings with stakeholders within its jurisdiction on development of a GSA. There is a possibility that these discussions could result in development of a joint powers authority. Stoldt has requested to be a member of the JPA so that he can monitor the process, as some regulatory agencies do not acknowledge that there is a boundary between the Seaside Groundwater Basin and the Salinas Valley Groundwater Basin.

**5. Update on California American Water Co. Desalination Plant**

The committee reviewed the project schedule presented in the staff report.

**6. Update on Pure Water Monterey Project**

See item 3y.

**7. Update on Local Projects Grant Request by City of Pacific Grove**

See item 3z.

### **Suggestions from the Public on Water Supply Project Alternatives**

No comments.

### **Set Next Meeting Date**

The meeting was scheduled for March 17, 2015 at 10 am.

### **Adjournment**

The meeting was adjourned at 11:30 am.

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## **WATER SUPPLY PLANNING COMMITTEE**

### **ITEM: ACTION ITEM**

#### **3. CONSIDER RECOMMENDATION TO THE BOARD TO CONDUCT FIRST READING OF MALPASO WATER LLC ORDINANCE**

**Meeting Date:** March 17, 2015 **Budgeted:** N/A

**From:** David J. Stoldt,  
General Manager **Program/  
Line Item No.:** N/A

**Prepared By:** David J. Stoldt **Cost Estimate:** N/A

**General Counsel Review:** N/A

**Committee Recommendation:** N/A

**CEQA Compliance:** N/A

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**SUMMARY:** In 1997, Margaret and Clint Eastwood (Eastwood) canceled permits for development of 82 homesites on the historic Odello East property, located on the south bank of the Carmel River and primarily immediately east of Highway 1, and donated approximately 49 acres of the 131 acre Odello East and an agricultural water supply to the Big Sur Land Trust.

The Eastwood still owns the remaining approximately 82 acres of Odello East and are planning to donate this property to the Big Sur Land Trust to facilitate the Carmel River Floodplain Restoration and Environmental Enhancement Project ("Floodplain Project"). This property currently is being used for irrigated pasture. After the donation is completed, the Big Sur Land Trust will restore native vegetation on this property.

The Odello East water rights will not be needed to irrigate this property after native habitat is established. As envisioned by the project proponents, eighty-five acre-feet per year of the Odello East water supply will be made available for community benefits on existing lots of record within California American Water Company's service area that is within the Carmel River watershed or the City of Carmel. This water, for example, would allow for an existing home to be remodeled or added on to, and for a new home to be built on an existing lot of record. Also, this water could be used by Cal-Am on an interim basis to reduce Cal-Am's unauthorized diversions from the Carmel River, consistent with the State Water Resource Control Board (SWRCB) Cease and Desist Order. Forty-five acre-feet per year (AFY) of the Odello East water supply will be dedicated permanently to Carmel River instream use. This is structured to provide beneficial use without adversely affecting water flows in the Carmel River or water levels in the alluvial aquifer; and enhance flows to the Carmel River Lagoon. The Eastwood donation of Odello East to the Big Sur Land Trust will occur after final regulatory action to approve the water rights assignment and the necessary agreements have been signed.

Bottlenecks in the lower Carmel River from the construction of levees and Highway 1 have contributed to significant floods. The 1995 flood destroyed the Highway 1 Bridge and the 1998 flood caused millions of dollars in damage to residents and businesses north of the Carmel River. The Floodplain Project will let the river use its floodplain by removing portions of the river levees, restoring the natural floodplain on lower Odello East and building a causeway to allow flood flows to pass under Highway 1 to the floodplain on the west side of the highway. The original Floodplain Project included removal of approximately 101,500 cubic yards of fill material on Odello East (the "Blister" area), which blocked the Carmel River from floodplain habitat. The Margaret Eastwood Trust removed the Blister in 2009 and compacted it to create an east/west haul road on the property. Removal of the Blister facilitates the Floodplain Project, and the haul road can be used as a recreational trail through the donation to the Big Sur Land Trust. Reconnecting the floodplain to the Carmel River and the Lagoon will create and maintain a mosaic of wildlife habitats and aid in the restoration of Steelhead. The recreational component of the project will include development of an integrated trail and parkland system along the Carmel River.

The County of Monterey is coordinating with public agencies for environmental review for all phases of the Floodplain Project.

A Memorandum of Understanding (MOU) Regarding Proposed Actions and Proposed Process for Collaboration and Coordination on Community and Environmental Benefits from Use of the Eastwood/Odello Water Right was entered into on June 7, 2013 by and between California American Water Company (Cal-Am) and the Margaret Eastwood Trust u/D/T dated

August 21, 1990 and Clint Eastwood. The MOU calls for the following:

- Eastwood will form a limited liability company (LLC), for the purposes of holding and administering water right License 13868A and entering into subscription agreements, as described in the following paragraphs. The LLC is Malpas Water LLC.
- Eastwood will file a petition with the SWRCB: (1) to split Eastwood's water-right License 13868 into two parts; (2) to add seven of Cal-Am's wells to the authorized points of diversion (the points of diversion may change at the request of the SWRCB) and to add the part of Cal-Am's service area that is in the Carmel Valley watershed or the City of Carmel to the authorized place of use in one of the licenses (which will be designated License 13868A); and (3) to assign this new license to the LLC.
- Eastwood will work with the SWRCB to prepare an environmental impact report on Eastwood's petition. The SWRCB will certify the final EIR.
- The other license (which will be designated License 13868B) will be for the remainder of License 13868. This license will be for approximately 45 AFY of instream use.
- Eastwood will request the Monterey Peninsula Water Management District (MPWMD) to adopt a new rule, similar to Rule 23.5 (which was used for the Pebble Beach subscription agreements), under which the District will issue water use permits to the parcel owners who have entered into subscription agreements with the LLC. The proposed ordinance to adopt the new rule is attached as **Exhibit 3-A**.
- The LLC will enter into subscription agreements with owners of legal lots of record in the areas of use. The subscription agreements and water-use permits issued by MPWMD will run with the land and will not be transferable.
- Eastwood and Cal-Am will enter into a water supply conveyance and temporary water transfer agreement.
- Eastwood's will ask the SWRCB to confirm that SWRCB Order WR 2009-0060 (as modified by Order WR 2010-0001) does not prohibit Cal-Am from diverting and conveying water under the Eastwood LLC's water-right License 13868A to Eastwood's subscribers.
- Cal-Am will seek a modification of CPUC Decision 11-03-048 to clarify that the moratorium ordered by the Decision does not apply to connections to Cal-Am's system by Eastwood's subscribers.
- After the SWRCB, the CPUC and the MPWMD have taken the necessary regulatory actions, Cal-Am will convey and deliver water to Eastwood subscribers that have received water-use permits from the MPWMD, and Cal-Am will provide any necessary new meters and connections for such subscribers. After these regulatory actions have occurred, Cal-Am will use any available surplus under License 13868A to divert water from the Carmel Valley aquifer through the wells designated as points of diversion in License 13868A and to supply the diverted water to its existing customers in the Carmel River watershed or the City of Carmel. MPWMD has requested that to the extent such water is surplus to the legally available supplies from other Cal-Am sources, the Odello East water be made available to the Aquifer Storage and Recovery system.



**EXHIBIT**  
**3-A**     Proposed Ordinance

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## ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
AMENDING RULES 11, 21, AND 23.1 AND ADDING RULE 23.7  
TO ESTABLISH A WATER ENTITLEMENT FOR  
MALPASO WATER LLC WATER RIGHT LICENSE 13868A  
AND PROCEDURES FOR ISSUING WATER USE PERMITS  
THAT RELY ON THIS ENTITLEMENT**

**FINDINGS**

1. The Monterey Peninsula Water Management District (MPWMD or District) is charged under the Monterey Peninsula Water Management District Law with the integrated management of all ground and surface water resources in the Monterey Peninsula area.
2. The Monterey Peninsula Water Management District Law grants MPWMD general and specific powers to cause sufficient water to be available for present and future beneficial use or uses of lands or inhabitants within the District. MPWMD Rule 30 requires the District to establish a specific Allocation for each Jurisdiction and provides that the District also may establish Water Entitlements as necessary to manage water supplies throughout the District.
3. On **[insert date]**, the SWRCB issued water right License 13868A to Clint Eastwood and the Margaret Eastwood Trust. On **[insert date]**, Clint Eastwood and the Margaret Eastwood Trust assigned this license and all water rights associated with it to Malpaso Water LLC (Malpaso). This water right license authorizes Malpaso to divert up to 85.6 acre-feet of production water per year from the Carmel River system, and to have this water (less production and conveyance losses) diverted and conveyed by Cal-Am through Cal-Am's water distribution system to property owners that have entered into subscription agreements with Malpaso, for beneficial uses on their properties.
4. Associated with its issuance of water right License 13868A, the SWRCB certified an Environmental Impact Report (EIR) for the Eastwood/Odello Water Rights Change Petition Project, in accord with the California Environmental Quality Act (CEQA). This project does not involve any construction activities. In the SWRCB's action certifying this EIR, the California State Water Resources Control Board ("SWRCB") made specific findings which, by this reference, are made an integral part of this ordinance, as if set forth in full.
5. In its Order WR 95-10, the SWRCB concluded that California-American Water Company (Cal-Am) was diverting approximately 10,730 acre-feet per year of water from the Carmel River system without a valid basis of right. Order WR 95-10 directed Cal-Am to

diligently implement actions to terminate its unlawful diversions from the Carmel River system. In its Order WR 2009-0060, the SWRCB prohibited Cal-Am, with limited exceptions, from diverting water from the Carmel River system for new service connections or for any increased uses at existing service addresses resulting from changes in zoning or use.

6. In its **[insert date]** order, the SWRCB determined that: (a) diversions of water from the Carmel River system under water right License 13868A by Cal-Am for the benefit of Malpaso subscribers will be accounted for separately from Cal-Am's other diversions from the Carmel River system and will not be included in the calculations described in term 3 on pages 57-59 of SWRCB Order WR 2009-0060; and (b) term 2 on page 57 of that order does not apply to new service connections or increased uses of water by Cal-Am customers that have entered into agreements with Malpaso Water LLC under which a Water Use Permit allows new service connections or increased uses of water supplied by water diverted under water right License 13868A.

7. Besides authorizing diversions from the Carmel River system for the benefit of Malpaso Water LLC Water Use Permit owners, License 13868A also authorizes Cal-Am to temporarily use portions of License 13868A that are not needed by Malpaso's subscribers. Cal-Am may use these portions of License 13868A to assist Cal-Am in complying with term 2 on page 40 of SWRCB Order WR 95-10 by diverting water from the Carmel River system under this license.

8. On **[insert date]**, Malpaso entered into an agreement with Cal-Am under which Cal-Am may temporarily use the portions of License 13868A that are not needed each year by Malpaso subscribers, as authorized by License 13868A. In this agreement, Malpaso has committed to authorize Cal-Am to make these temporary uses after MPWMD adopts this ordinance and the other necessary regulatory actions occur.

9. This ordinance establishes a Water Entitlement for Malpaso under which Cal-Am may divert water from the Carmel River system under License 13868A and convey that water through Cal-Am's water distribution system to Malpaso subscribers that obtain a Water Use Permit. This ordinance also establishes procedures under which Malpaso subscribers may apply to the District for Water Use Permits receive and use water that is diverted under License 13868A.

10. This ordinance amends Rules 11 (Definitions), 21 (Applications) and 23.1 (Action on Application for a Water Use Permit on a Benefited Property) of, and add Rule 23.7 (Permits for Water from the Malpaso Water LLC Water Right License 13868A) to, the Rules and Regulations of the Monterey Peninsula Water Management District.

11. This ordinance will allow for Non-residential and Residential water uses thereby contributing to the economy as well as providing new housing opportunities within the District.

12. It is beneficial to the community to allow temporary diversions and use of water under water right License 13868A by Cal-Am to serve its existing customers and to assist Cal-Am in its compliance with SWRCB Order WR 95-10.

13. The MPWMD is a responsible agency under CEQA. As a CEQA responsible agency, the MPWMD may rely on the SWRCB's Eastwood/Odello Water Rights Change Petition EIR for MPWMD's CEQA compliance for this ordinance. Based on this EIR, the MPWMD makes the following findings:

[insert MPWMD's CEQA findings].

NOW THEREFORE, be it ordained as follows:

**Section One: Short Title**

This ordinance shall be known as the Malpaso Water LLC Water Entitlement Ordinance of the Monterey Peninsula Water Management District.

**Section Two: Purpose**

The purpose of this ordinance is to allow Malpaso Water LLC and the California-American Water Company to divert and use water from the Carmel River system in the manner and for the purposes authorized by Water Right License 13868A.

**Section Three: Amendment of Rule 11, Definitions**

The following definitions in Rule 11 shall be amended as shown in bold italics (***bold italics***) and strikeout (~~strike through~~).

ASSIGNMENT DOCUMENT - "Assignment Document" shall refer to ***either (1)*** the document titled, "An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 39 Water Entitlement and Water Use Permit" issued and recorded by the Pebble Beach Company, or ***(2)*** to "An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 132 Water Entitlement and Water Use Permit" issued and recorded by the City of Sand City, ***or (3) to "An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. \_\_\_\_ Water Entitlement and Water Use Permit" issued and recorded by Malpaso Water LLC.***

BENEFITED PROPERTY – “Benefited Property” shall mean *either (1)* those properties located in the unincorporated portion of the Del Monte Forest described on Exhibit “A” to Monterey Peninsula Water Management District Ordinance No. 109, or *(2)* Sand City Sites located within the jurisdictional limits of the City of Sand City pursuant to Monterey Peninsula Water Management District Ordinance No. 132, *or (3) those properties that are subject to a subscription agreement with Malpasos for beneficial water use on that property pursuant to Monterey Peninsula Water Management District Ordinance No. \_\_\_\_.*

WATER USE PERMIT -- “Water Use Permit” means a writing from MPWMD which evidences the dedication of the Water Entitlement as a present vested property right enuring to the use and benefit of one or more of the Benefited Properties. A Water Use Permit shall by non-discretionary ministerial action, cause the present Connection to or modification of the California American Water Distribution System for Benefited Properties upon designation of the location of use and upon payment of applicable Connection Charges and fees, and issuance of a Water Permit as provided in Rule 23.5, ~~or 23.6~~ *or 23.7.*

#### **Section Four: Amendment of Rule 21, Applications**

Section E. of MPWMD Rule 21 shall amended as shown in bold italics (***bold italics***) and strikeout (~~strike through~~):

**E. APPLICATION FOR WATER USE PERMIT FOR “BENEFITED PROPERTIES” AS THAT TERM IS DEFINED IN RULE 11, 23.5, ~~AND 23.6 AND 23.7~~**

Each application for a Water Use Permit shall follow the process set forth in Rule 23.1. A proper Applicant for a Water Use Permit may be the property owner or any agent thereof. The application for a Water Use Permit shall be deemed complete when the Applicant submits all of the following:

1. A completed Water Use Permit application,
2. A copy of the recorded Assignment Document ***which is either (1)*** “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 39 Water Entitlement and Water Use Permit,” or ***(2)*** “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 132 Water Entitlement and Water Use Permit” ***or (3) “An Assignment of a Portion of Monterey Peninsula***

*Water Management District Ordinance No. \_\_\_\_ Water Entitlement and Water Use Permit”* specific to the application Site.

3. Processing fees.

**Section Five: Amendment of Rule 23.1, Action on Application for a Water Use Permit on a Benefited Property.**

Rule 23.1 shall be revised as shown in bold italics (***bold italics***) and strikeout (~~strikethrough~~)

The Application and Process for Water Use Permits issued after May 24, 2007 shall be controlled by this Rule in conjunction with either Rule 23.5, ~~or Rule 23.6~~ ***or Rule 23.7.***

**A. PROCESS**

1. Action on Application for a Water Use Permit

- a. The General Manager shall review the application and determine whether the Applicant has met the criteria for a Water Use Permit. If additional information is required to complete the application, the Applicant shall be notified in writing within thirty (30) days of the initial application.

- b. The General Manager shall ensure that the Assessor’s Parcel Number of the Benefited Property shown on the Assignment Document matches the APN(s) shown on the spreadsheet of water purchasers provided to the District by ~~either the Pebble Beach Company, or the City of Sand City~~ ***or Malpas Water LLC.***

- (1) When the APN(s) shown on the Assignment Document does not match the spreadsheet of water purchasers, the General Manager shall contact the appropriate Water Entitlement holder to verify the validity of the Assignment Document.

- (2) When the APN shown on the Assignment Document is found to be incorrect, the Applicant shall submit a corrected and recorded Assignment Document from the Water Entitlement holder prior to issuance of a Water Use Permit. The Water Entitlement holder shall notify the District in writing of any correction.

- c. The General Manager shall prepare and execute a Water Use Permit for the APN(s) shown on the Assignment Document.
- d. The original Water Use Permit shall be mailed to the Applicant.
- e. The District shall retain one copy of the Water Use Permit and the copy of the Assignment Document.

**B. AMENDMENT OF WATER USE PERMIT**

- 1. A Water Use Permit may be amended to reflect a Change of Ownership of a Parcel.
- 2. A Water Use Permit may be amended to reflect assignment of water previously held collectively by two or more Parcels under a Water Use Permit. A written request for assignment shall be submitted to the District, along with processing fees and ownership information sufficient to prepare a new Water Use Permit.
- 3. A Water Use Permit may be amended to reflect newly-assigned Assessor's Parcel Numbers when a Benefitted Property is subdivided into two or more Parcels. *Water Use Permits for a Malpaso Water LLC shall not be amended to support subdivision of any Benefitted Property, but may be amended to reflect current Assessor's Parcel Numbers.* A written request for amendment shall be submitted to the District, along with processing fees, evidence of the subdivision approval by the land use Jurisdiction and ownership information sufficient to prepare a new Water Use Permit.

**Section Six: Addition of Rule 23.7, Permits for Water from Cal-Am Water Distribution System Dedicated for Use in Connection With Malpaso Water LLC Water Right License 13868A**

The following text shall be added as Rule 23.7 – Permits for Water from the Malpaso Water LLC Water Right License 13868A:

**RULE 23.7 – PERMITS FOR WATER FROM THE MALPASO WATER LLC WATER RIGHT LICENSE 13868A**

**A. MALPASO WATER LLC WATER ENTITLEMENT**

1. There is hereby established the Malpaso Water LLC Water Entitlement which confers on Malpaso Water LLC a vested property right to take up to 85.6 Acre-feet of production water per Water Year from the California American Water Distribution System (CAW System). For so long as the Malpaso Water LLC Water Entitlement continues: (a) Malpaso Water LLC shall hold Water Right License 13868A (issued by the California State Water Resources Control Board); (b) Malpaso Water LLC shall exercise Water Right License 13868A in a manner that will allow the diversion of up to 85.6 Acre-Feet of production water per Water Year by California American Water from the Carmel River system for conveyance (less production and conveyance losses) through the CAW System to, and for use by, Malpaso Water LLC subscribers, or for interim use by California American Water; and (c) California American Water shall divert up to 85.6 Acre-Feet of production water per Water Year into the CAW System and deliver this amount of water (less production and conveyance losses) to Malpaso Water LLC subscribers or California American Water customers.. The amount of the Malpaso Water LLC Water Entitlement during each Water Year shall equal the amount of water diverted by California American Water, less production and conveyance losses, conveyed through the CAW System to Malpaso Water LLC subscribers or California American Water customers and used by them under Water Right License 13868A during that Water Year. The Malpaso Water LLC Water Entitlement shall continue for so long as Malpaso Water LLC and California American Water comply with the preceding conditions (a), (b) and (c).
2. Malpaso Water LLC is authorized to separately sell, transfer and convey to owners of Benefited Properties that are existing lots of record, for such consideration and upon such terms and conditions as Malpaso Water LLC in its discretion may determine, such portions of the Malpaso Water LLC Water Entitlement as it may choose. Any portion of the Malpaso LLC Water Entitlement conveyed to the owner of a Benefited Property shall vest in the owner of the Benefited Property, and appurtenant to title to the particular Benefited Property, at the time the Water Use Permit is issued as evidence of such conveyance.
3. The Malpaso Water LLC Water Entitlement shall be separate and distinct from *any other* Allocations provided in Rule 30. The existence of the Malpaso Water LLC Water Entitlement shall not affect any existing use of water in the County of Monterey or *any City* , or any existing or future Allocation to the County of Monterey or *any City* .



**B. APPLICATIONS FOR AND ISSUANCE OF WATER USE PERMITS**

1. Any person that has an Assignment Document for a portion of the Malpaso Water LLC Water Entitlement may file an Application for Water Use Permit pursuant to Rule 21, Section E, and Rule 23.1.
2. Upon compliance with Rule 21, Section E, and Rule 23.1, including payment of all applicable fees, each holder of an Assignment Document for a portion of the Malpaso Water LLC Water Entitlement shall be entitled to issuance of a Water Use Permit by the General Manager. The Water Use Permit shall authorize use only through a Residential or a Non-Residential connection, only on the Benefited Property described in the Water Use Permit, and only for up to the amount of the Malpaso Water LLC Water Entitlement that is described in the Assignment Document. Lots of Record created after the Effective Date of the ordinance creating this Rule shall not be eligible to receive water from this Entitlement.
3. Each Water Use Permit issued pursuant to this Rule 23.7 shall be appurtenant to the title of the Benefited Property listed in the Water Use Permit and shall vest in the owner of the Benefited Property a property interest for the use and benefit of the quantity of Potable water (in Acre-Feet) per year specified in the Water Use Permit, produced by the CAW System and diverted under Water Right License 13868A.
4. Upon issuance of a Water Use Permit to the owner of a Benefitted Property, the General Manager shall simultaneously make a record of the quantity of the Malpaso Water LLC Water Entitlement that was conveyed to the owner of the Benefited Property and a commensurate reduction in the remaining amount of the Malpaso Water LLC Water Entitlement, if any, that thereafter still is held by Malpaso Water LLC.

**C. WATER USE PERMIT LIMITATIONS**

Water Use Permits issued under this Rule 23.7 shall be subject to the following limitations:

1. The Water Use Permit and subsequent Water Permit shall not limit the power of the District to curtail water use in the event of any emergency caused by drought, or other threatened or existing water shortage, as defined in Section 332 of the Monterey Peninsula Water Management Act

or other provision of law, including without limitation the power of the District to terminate water service as a consequence of a violation of water use restrictions. However, because the Malpas Water LLC Water Entitlement is based on Water Right License 13868A, the District shall not curtail use under the Permit for any reason that is based solely on insufficiencies of, or limitations in, California American Water's water rights.

2. The Water Use Permit and subsequent Water Permit shall not relieve or reduce any obligation of the holder of the Permit to pay customary fees, Connection Charges, User fees, surcharges, taxes, utility taxes and/or other customary monetary obligation which may be imposed by the California Public Utilities Commission, Cal-Am, or the District upon Water Users of the same class within the Cal-Am service area, including but not limited to fees and charges due and payable to the District by reason of Rule 24 nor shall such Permit limit the authority of Cal-Am or the District to terminate water use for non-payment of such fees and changes.
3. Notwithstanding any other provision of this Rule:
  - a. The Malpas Water LLC Water Entitlement allocated to the Benefited Properties as a whole shall not exceed 85.6 Acre-Feet of production water per Water Year. Actual water deliveries shall be reduced by standard production and conveyance loss factors.
  - b. The water usage under the Malpas Water LLC Water Entitlement on any Benefited Property shall not exceed the amount of the Water Entitlement allocated to such Benefited Property, measured in accordance with the Water Use Factors specified at the time of connection in the MPWMD Rules, as amended from time to time; and
  - c. For purposes of collecting Connection Charges and fees, the projected water usage of the Benefited Properties shall be calculated in the manner set forth in Rule 24, as it may be amended from time to time.
4. Further, notwithstanding any other provision of this Rule, once a new water Connection or Intensified Water Use is established pursuant to a

Water Use Permit for use of all or a portion of a Malpaso Water LLC Water Entitlement:

- a. Use of water through such Connection shall not be entitled to preferential access to water over any other Water User of the Cal-Am Water Distribution System; and
  - b. The fixtures on the Benefited Property served by that Connection shall be subject to verification of Water Use Capacity in the manner specified in the MPWMD Rules, as amended from time to time; and
  - c. The use of water on the Benefited Property served by that Connection shall be accounted for by MPWMD in the manner specified at the time of Connection in the MPWMD Rules, as amended from time to time; and
  - d. The restrictions of use set forth above shall be enforced as determined by MPWMD to be necessary.
5. The suspension of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of prior Expansion or Extension of the Cal-Am Water Distribution System through any Connection previously made pursuant to such Water Use Permit, except that actual use of water may be reduced pursuant to the provisions of subparagraphs C-1 through C-4.
  6. Water Use Permits issued pursuant to this Rule shall represent a vested property interest upon issuance and shall not be subject to Revocation or cancellation except as expressly set forth in subparagraph D below.
  7. The portion of the Malpaso Water LLC Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to MPWMD Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the Cal-Am Water Distribution System, nor shall it otherwise be subject to diminishment or Revocation.

**D. WATER USE PERMIT PROVISIONS**

1. Each Water Use Permit issued by the General Manager shall identify with respect to each Benefited Property:

- a. the nature (Non-Residential/Residential) of the water use to be applied to each Benefited Property;
  - b. the number and nature of Connections projected for each Benefited Property; and
  - c. the amount of the Water Entitlement dedicated to, conveyed with, or separately conveyed to, the Benefited Property.
2. Each Water Use Permit issued by the General Manager shall contain a term providing that the Water Use Permit may be used only on the Benefited Property specified in the Water Use Permit. The Water Use Permit shall also contain a condition specifying that the Water Use Permit shall be conveyed and assigned to successors-in-interest to the Benefited Property upon conveyance of the Benefited Property and may not be conveyed or assigned to any other Person.

**E. REVOCATION, TERMINATION, OR MODIFICATION OF WATER USE PERMITS**

1. Each Water Use Permit which on or after January 1, 2075, embodies an annual Water Entitlement in excess of requirements for planned land uses on a Benefited Property or which purports to authorize usage in excess of the constitutional limitation to reasonable and beneficial use shall be subject to modification, Revocation, or termination in the sole discretion of MPWMD, such that the water usage authorized thereby shall not exceed such requirements and limitations.
2. Prior to any modification, termination or Revocation pursuant to this subparagraph E, the holder of the Water Use Permit shall be entitled to notice and a hearing, and any termination, Revocation, or modification shall be subject to appeal to the Board pursuant to Rule 70 of the MPWMD Rules and Regulations.

**F. CAL-AM SYSTEM EXPANSION/EXTENSION PURSUANT TO WATER USE PERMITS**

1. Each Water Use Permit shall entitle the Owner of the Benefited Property to Potable water service to be provided by the Cal-Am Water Distribution System for such Benefited Property
2. Upon the filing of the information and payment of the fees required pursuant to Rule 23, the General Manager shall issue a Water Permit

authorizing the Expansion/Extension of the Cal-Am Water Distribution System consistent with this Rule 23.7. Customary fees and Connection Charges shall be calculated based upon the Water Use Capacity for proposed or planned development upon Benefited Properties and calculated in the manner described in Rule 24. The water use represented by such Expansion/Extensions of the Cal-Am Water Distribution System shall not exceed the Water Entitlement evidenced by such Water Use Permit. In the event that an Owner of any Benefited Property requests an Expansion/Extension of the Cal-Am Water Distribution System with respect to less than all of the Water Entitlement evidenced by such Water Use Permit, the General Manager shall make a record of the respective amounts deducted from and remaining under the pertinent Water Entitlement (as evidenced in the Water Use Permit).

3. The Owner of any Benefited Property to which the Owner has previously applied a portion of a Water Entitlement through prior Expansions/Extensions of the Cal-Am Water Distribution System shall be entitled to increase the annual water use on such Benefited Property upon presentation of the information and payment of the fees set forth in this subsection E, provided that such increase does not cause the water use on the Benefited Property to exceed the Water Entitlement owned by such Owner.
4. The actions required to be taken by the General Manager pursuant to the foregoing provisions of this subsection E shall be ministerial, non-discretionary acts which shall not be affected by any water moratorium, water emergency, Allocation decision or other curtailment on the setting of new water meters for the Cal-Am Water Distribution System and shall be enforceable by court order.
5. Nothing in the foregoing is intended to or shall affect the ability of MPWMD to curtail or eliminate the actual use of water through any Connection previously made pursuant to a Water Use Permit to the extent that such curtailment or elimination is authorized by other laws, ordinances, or regulations as are generally applicable to all similarly situated users (Residential or Non-Residential Users within the Cal-Am Water Distribution System with lots classified by MPWMD as the same size) actually using water from the Cal-Am Water Distribution System, nor is it intended to provide or imply that any Water Use Permit holder shall not be subject to such generally applicable laws, ordinances, and regulations. For example, Persons using water from the Cal-Am Water Distribution System are required to reduce their water usage in the various

stages in MPWMD's Expanded Water Conservation and Standby Rationing Plan, and may be penalized or their water service may be terminated for failing to reduce water usage as required. Similarly, such Persons must pay the rates and charges imposed for such water service, or their water service may be terminated. However, except as may be occasioned by a physical shortage of water, because the Malpaso Water LLC Water Entitlement is based on Water Right License 13868A, MPWMD shall not make such curtailment or elimination of any actual use of water through any Connection made under a Water Use Permit issued pursuant to this Rule 23.7 for any reason that is based solely on insufficiencies of, or limitations in, California American Water's water rights.

### **Section 7: 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 Eight: Effect Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 30<sup>th</sup> day following adoption. This ordinance shall not have a sunset date.

On motion of Director \_\_\_\_\_ and second by Director \_\_\_\_\_, the foregoing ordinance is adopted upon this \_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

I, \_\_\_\_\_, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing ordinance was duly adopted on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

\_\_\_\_\_, Secretary to the Board

## **WATER SUPPLY PLANNING COMMITTEE**

### **ITEM: ACTION ITEM**

#### **4. CONSIDER RECOMMENDATION TO THE BOARD TO CONDUCT FIRST READING OF PACIFIC GROVE ORDINANCE**

**Meeting Date:** March 17, 2015

**From:** David J. Stoldt,  
General Manager

**Prepared By:** Arlene Tavani  
Suresh Prasad

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**SUMMARY:** Attached for your review is **Exhibit [4-A](#)** is a draft ordinance that would amend MPWMD Rules 11, 21, 23.1, 33 and add Rule 23.8 to establish a Pacific Grove recycled water supply entitlement and procedures for issuing water use permits. Staff will review this draft ordinance with the committee.

**RECOMMENDATION:** Staff recommends that the committee determine if this draft ordinance should be submitted to the Board for first reading.

#### **EXHIBIT**

**[4-A](#)** Draft Ordinance Amending Rules 11, 21, 23.1, 33 and Adding Rule 23.8 to Establish a Pacific Grove Recycled Water Supply Entitlement and Procedures for Issuing Water Use Permits

**EXHIBIT 4-A**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
AMENDING RULES 11, 21, 23.1, 33 AND ADDING RULE 23.8  
TO ESTABLISH A PACIFIC GROVE RECYCLED WATER SUPPLY  
ENTITLEMENT AND PROCEDURES FOR ISSUING WATER USE PERMITS**

**FINDINGS**

1. The Monterey Peninsula Water Management District (MPWMD or District) is charged under the Monterey Peninsula Water Management District Law with the integrated management of all ground and surface water resources in the Monterey Peninsula area.

2. The Monterey Peninsula Water Management District Law grants MPWMD general and specific powers to cause sufficient water to be available for present and future beneficial use or uses of lands or inhabitants within the District. MPWMD Rule 30 requires the District to establish a specific Allocation for each Jurisdiction and provides that the District also may establish Water Entitlements as necessary to manage water supplies throughout the District.

3. The City of Pacific Grove (City) committed to construct the Pacific Grove Local Water Project (Project) within the City. The Project shall create non-potable recycled water supply of 125 acre-feet per year (afy) to meet irrigation needs on the City-owned Pacific Grove Golf Links and El Carmelo Cemetery and will thereby reduce potable water metered demand on the California American Water Company (Cal-Am) water system by 125 afy. The Project includes a new Satellite Reclaimed Water Treatment Plant facility with a design flow capacity of 0.25 million gallons per day (MGD), and will recycle a portion of the City's municipal wastewater at the Point Pinos Wastewater Treatment Plant. Potable water freed by reason of Project operations shall be available for re-use; a remainder will be conserved and suspended from use during the period that Cal-Am is diverting water from the Carmel River system without a valid basis of right.

4. The City certified an Environmental Impact Report (EIR) for the Project on November 19, 2014, in accord with the California Environmental Quality Act (CEQA). In certifying this EIR, the City made specific findings which, by this reference, are made an integral part of this ordinance, as if set forth in full.

5. A key purpose for the Project is to assist the City, the District and Cal-Am to meet requirements of State Water Resources Control Board (SWRCB) Order WR 95-10, whereby the SWRCB concluded Cal-Am was diverting approximately 10,730 acre-feet per year of water from the Carmel River system without a valid basis of right. Order WR 95-10 directed Cal-Am



to terminate unlawful diversions from the Carmel River system. The Project reduces metered demand and Cal-Am production requirements from the Carmel River system. The Project is scheduled to be fully on line and delivering 125 afy on or before December 31, 2016.

6. This ordinance suspends use of a portion of the potable water previously diverted by Cal-Am and used by the City to irrigate its Golf Links and El Carmelo Cemetery, during that period before Cal-Am is able to cease diverting water from the Carmel River system without a valid basis of right.

7. This ordinance establishes a Water Entitlement for the City by which Cal-Am may convey water through its distribution system to City subscribers based upon a Water Use Permit, and adds water to Jurisdictional Allocations under Rule 33. This ordinance also establishes procedures under which City subscribers may apply to the District for Water Use Permits receive and use water diverted by Cal-Am.

8. This ordinance amends Rules 11 (Definitions), 21 (Applications), 23.1 (Action on Application for a Water Use Permit on a Benefited Property), 33 (Jurisdictional and Reserve Water Allocations) and adds Rule 23.8 (Permits) for Water the Rules and Regulations of the Monterey Peninsula Water Management District.

9. Significant portions of the water made available by the Project shall assist Cal-Am's efforts to comply with SWRCB Order WR 95-10, and Cease & Desist Order 2009-060.

10. The MPWMD is a responsible agency under CEQA. As a CEQA responsible agency, the MPWMD may rely on the City's CEQA compliance for this ordinance. Based on this EIR, the MPWMD makes the following findings:

**[insert MPWMD's CEQA findings].**

NOW THEREFORE, be it ordained as follows:

**Section One: Short Title**

This ordinance shall be known as the Pacific Grove Recycled Water Supply Entitlement Ordinance of the Monterey Peninsula Water Management District.

**Section Two: Purpose**

The purpose of this ordinance is to confirm and quantify replacement of existing potable water use with recycled water by reason of the Pacific Grove Local Water Project, to quantify the portion of replaced water supply retired from use during the period before Cal-Am is able to

cease diverting water from the Carmel River system without a valid basis of right, and to confirm the remainder portion of water that may be re-used by the City of Pacific Grove and other jurisdictions via deliveries from Cal-Am of water from its various sources, including water from the Carmel River system.

### **Section Three: Amendment of Rule 11, Definitions**

The following definitions in Rule 11 shall be amended as shown in bold italics (***bold italics***) and strikeout (~~strike through~~).

ASSIGNMENT DOCUMENT - “Assignment Document” shall refer to either (1) the document titled, “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 39 Water Entitlement and Water Use Permit” issued and recorded by the Pebble Beach Company, or (2) ~~to~~ “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 132 Water Entitlement and Water Use Permit” issued and recorded by the City of Sand City, ***or to “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. \_\_\_\_ Water Entitlement and Water Use Permit” issued and recorded by the City of Pacific Grove,*** and (4) to “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. \_\_\_\_ Water Entitlement and Water Use Permit” issued and recorded by Malpas Water LLC.<sup>1</sup>

BENEFITED PROPERTY – “Benefited Property” shall mean either (1) those properties located in the unincorporated portion of the Del Monte Forest described on Exhibit “A” to Monterey Peninsula Water Management District Ordinance No. 109, or (2) Sand City Sites located within the jurisdictional limits of the City of Sand City pursuant to Monterey Peninsula Water Management District Ordinance No. 132, ***(3) Pacific Grove Sites located within the jurisdictional limits of the City of Pacific Grove pursuant to Monterey Peninsula Water Management District Ordinance No. \_\_\_\_,*** or (4) those properties that are subject to a subscription agreement with Malpas Water for beneficial water use on that property pursuant to Monterey Peninsula Water Management District Ordinance No. \_\_\_\_.<sup>2</sup>

WATER USE PERMIT -- “Water Use Permit” means a writing from MPWMD which evidences the dedication of the Water Entitlement as a present vested property right enuring to the use and benefit of one or more of the Benefited Properties. A Water Use Permit shall by non-discretionary ministerial action, cause the present Connection to or

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<sup>1</sup> [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpas Water Entitlement Ordinance.]

<sup>2</sup> [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpas Water Entitlement Ordinance.]

modification of the California American Water Distribution System for Benefited Properties upon designation of the location of use and upon payment of applicable Connection Charges and fees, and issuance of a Water Permit as provided in Rule 23.5, ~~or 23.6, 23.7,~~ **or 23.8.**<sup>3</sup>

#### **Section Four: Amendment of Rule 21, Applications**

Section E. of MPWMD Rule 21 shall amended as shown in bold italics (***bold italics***) and strikeout (~~strike through~~):

**E. APPLICATION FOR WATER USE PERMIT FOR “BENEFITED PROPERTIES” AS THAT TERM IS DEFINED IN RULE 11, 23.5, ~~AND 23.6, 23.7 AND 23.8~~**

Each application for a Water Use Permit shall follow the process set forth in Rule 23.1. A proper Applicant for a Water Use Permit may be the property owner or any agent thereof. The application for a Water Use Permit shall be deemed complete when the Applicant submits all of the following:

1. A completed Water Use Permit application,
2. A copy of the recorded Assignment Document which is either (1) “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 39 Water Entitlement and Water Use Permit,” or (2) “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 132 Water Entitlement and Water Use Permit” (3) “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. \_\_\_\_ Water Entitlement and Water Use Permit” specific to the application Site, or (4) ***“An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. \_\_\_\_ Water Entitlement and Water Use Permit”*** specific to the application Site.<sup>4</sup>
3. Processing fees.

#### **Section Five: Amendment of Rule 23.1, Action on Application for a Water Use Permit on a Benefited Property.**

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<sup>3</sup> [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpaso Water Entitlement Ordinance.]

<sup>4</sup> [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpaso Water Entitlement Ordinance.]

Rule 23.1 shall be revised as shown in bold italics (***bold italics***) and strikeout (~~strike through~~)

The Application and Process for Water Use Permits issued after May 24, 2007 shall be controlled by this Rule in conjunction with either Rule 23.5, ~~or~~ Rule 23.6, Rule 23.7, ***or Rule 23.8.***<sup>5</sup>

**A. PROCESS**

1. Action on Application for a Water Use Permit

- a. The General Manager shall review the application and determine whether the Applicant has met the criteria for a Water Use Permit. If additional information is required to complete the application, the Applicant shall be notified in writing within thirty (30) days of the initial application.
- b. The General Manager shall ensure that the Assessor's Parcel Number of the Benefited Property shown on the Assignment Document matches the APN(s) shown on the spreadsheet of water purchasers provided to the District by ~~either the Pebble Beach Company, or the City of Sand City,~~ ***the City of Pacific Grove,*** or Malpas Water LLC.<sup>6</sup>
  - (1) When the APN(s) shown on the Assignment Document does not match the spreadsheet of water purchasers, the General Manager shall contact the appropriate Water Entitlement holder to verify the validity of the Assignment Document.
  - (2) When the APN shown on the Assignment Document is found to be incorrect, the Applicant shall submit a corrected and recorded Assignment Document from the Water Entitlement holder prior to issuance of a Water Use Permit. The Water Entitlement holder shall notify the District in writing of any correction.

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<sup>5</sup> [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpas Water Entitlement Ordinance.]

<sup>6</sup> [Note (not for inclusion in the published ordinance): This text presumes the Board shall adopt the Malpas Water Entitlement Ordinance.]

- c. The General Manager shall prepare and execute a Water Use Permit for the APN(s) shown on the Assignment Document.
- d. The original Water Use Permit shall be mailed to the Applicant.
- e. The District shall retain one copy of the Water Use Permit and the copy of the Assignment Document.

A. **AMENDMENT OF WATER USE PERMIT**

- 1. A Water Use Permit may be amended to reflect a Change of Ownership of a Parcel.
- 2. A Water Use Permit may be amended to reflect assignment of water previously held collectively by two or more Parcels under a Water Use Permit. A written request for assignment shall be submitted to the District, along with processing fees and ownership information sufficient to prepare a new Water Use Permit.
- 3. A Water Use Permit may be amended to reflect newly-assigned Assessor's Parcel Numbers when a Benefited Property is subdivided into two or more Parcels. A written request for amendment shall be submitted to the District, along with processing fees, evidence of the subdivision approval by the land use Jurisdiction and ownership information sufficient to prepare a new Water Use Permit.

**Section Six: Allocation of Water Pursuant to Rule 33 - JURISDICTIONAL AND RESERVE WATER ALLOCATIONS**

Upon creation of the Pacific Grove Water Entitlement pursuant to Rule 23.8, the District shall place 35 acre feet of metered water demand into the Jurisdictional Allocations set by Rule 33A, and shall distribute the increment of water, pro rate, in accord with the allocations referenced in Rule 33.

**Section Seven: Addition of Rule 23.8, Permits for Water from Cal-Am Water Distribution System Dedicated for Use in Connection With Pacific Grove Water Entitlement**

The following text shall be added as Rule 23.8 – Permits for Water from the Pacific Grove Water Entitlement:

**RULE 23.8 – PERMITS FOR WATER FROM THE PACIFIC GROVE WATER ENTITLEMENT**

**A. WATER ENTITLEMENT**

1. The Pacific Grove Water Entitlement confers on the City of Pacific Grove a vested property right to take up to 60 Acre-feet of water per Water Year (afy) delivered from the Cal-Am Water Distribution System (CAW System). For so long as the Pacific Grove Water Entitlement continues, City subscribers, or for interim use by California American Water; Cal-Am shall divert sufficient water to meet 60 afy of metered water demand per Water Year into the CAW System and deliver this amount of water to City of Pacific Grove subscribers or Cal-Am customers. The amount of the Pacific Grove Water Entitlement during each Water Year shall equal the amount of water diverted by Cal-Am Water, conveyed through the CAW System to Pacific Grove Water Entitlement subscribers or Cal-Am customers.
2. During the period before Cal-Am is able to cease diverting water from the Carmel River system without a valid basis of right, 35 afy of metered water demand per Water Year previously used by the City to irrigate its Golf Links and El Carmelo Cemetery shall be suspended from use. Effective upon the date all Cal-Am diversions of water from the Carmel River system are made upon a valid basis of right (e.g Cal-Am has complied with limits set by SWRCB Orders WR 95-10 and 2009 060), the 35 afy of suspended water use shall be freed for use, and added to the Pacific Grove Water Entitlement set forth in Paragraph A 1 of this Rule.
3. Pacific Grove is authorized to separately sell, transfer and convey to owners of Benefited Properties, for such consideration and upon such terms and conditions as Pacific Grove in its discretion may determine, portions of the Pacific Grove Water Entitlement as it may choose. Any portion of the Pacific Grove Water Entitlement conveyed to the owner of a Benefited Property shall vest in the owner of the Benefited Property, and appurtenant to title to the particular Benefited Property, at the time the Water Use Permit is issued as evidence of such conveyance.
4. The Pacific Grove Water Entitlement shall be separate and distinct from any other Allocations provided in Rule 30. The existence of the Pacific Grove Water Entitlement shall not affect any existing use of water in the

County of Monterey or any City, or any existing or future Allocation to the County of Monterey or any City.

**B. APPLICATIONS FOR AND ISSUANCE OF WATER USE PERMITS**

1. Any person that has an Assignment Document for a portion of the Pacific Grove Water Entitlement may file an Application for Water Use Permit pursuant to Rule 21, Section E, and Rule 23.1.
2. Upon compliance with Rule 21, Section E, and Rule 23.1, including payment of all applicable fees, each holder of an Assignment Document for a portion of the Pacific Grove Water Entitlement shall be entitled to issuance of a Water Use Permit by the General Manager. The Water Use Permit shall authorize use only through a Residential or a Non-Residential connection, only on the Benefited Property described in the Water Use Permit, and only for up to the amount of the Pacific Grove Water Entitlement that is described in the Assignment Document.
3. Each Water Use Permit issued pursuant to this Rule 23.8 shall be appurtenant to the title of the Benefited Property listed in the Water Use Permit and shall vest in the owner of the Benefited Property a property interest for the use and benefit of the quantity of Potable water (in Acre-Feet) per year specified in the Water Use Permit, produced by the CAW System.
4. Upon issuance of a Water Use Permit to the owner of a Benefitted Property, the General Manager shall simultaneously make a record of the quantity of the Pacific Grove Water Entitlement conveyed to the owner of the Benefited Property and a commensurate reduction in the remaining amount of the Pacific Grove Water Entitlement, if any, that thereafter still is held by Pacific Grove Water.

**B. WATER USE PERMIT LIMITATIONS**

Water Use Permits issued under this Rule 23.8 shall be subject to the following limitations:

1. The Water Use Permit and subsequent Water Permit shall not limit the power of the District to curtail water use in the event of any emergency caused by drought, or other threatened or existing water shortage, as defined in Section 332 of the Monterey Peninsula Water Management Act

or other provision of law, including without limitation the power of the District to terminate water service as a consequence of a violation of water use restrictions.

2. The Water Use Permit and subsequent Water Permit shall not relieve or reduce any obligation of the holder of the Permit to pay customary fees, Connection Charges, User fees, surcharges, taxes, utility taxes and/or other customary monetary obligation which may be imposed by the California Public Utilities Commission, Cal-Am, or the District upon Water Users of the same class within the Cal-Am service area, including but not limited to fees and charges due and payable to the District by reason of Rule 24 nor shall such Permit limit the authority of Cal-Am or the District to terminate water use for non-payment of such fees and changes.
3. Notwithstanding any other provision of this Rule:
  - a. The Pacific Grove Water Entitlement allocated pursuant to Rule 23.8 A 1 to Benefited Properties as a whole shall not exceed 60 Acre-Feet of metered water demand per Water Year. The Pacific Grove Water Entitlement allocated pursuant to Rule 23.8 A 2 to Benefited Properties as a whole shall not exceed 35 Acre-Feet of metered water demand per Water Year.
  - b. The water usage under the Pacific Grove Water Entitlement on any Benefited Property shall not exceed the amount of the Water Entitlement allocated to such Benefited Property, measured in accordance with the Water Use Factors specified at the time of connection in the MPWMD Rules, as amended from time to time; and
  - c. For purposes of collecting Connection Charges and fees, the projected water usage of the Benefited Properties shall be calculated in the manner set forth in Rule 24, as it may be amended from time to time.
4. Further, notwithstanding any other provision of this Rule, once a new water Connection or Intensified Water Use is established pursuant to a Water Use Permit for use of all or a portion of a Pacific Grove Water Entitlement:



- a. Use of water through such Connection shall not be entitled to preferential access to water over any other Water User of the Cal-Am Water Distribution System; and
  - b. The fixtures on the Benefited Property served by that Connection shall be subject to verification of Water Use Capacity in the manner specified in the MPWMD Rules, as amended from time to time; and
  - c. The use of water on the Benefited Property served by that Connection shall be accounted for by MPWMD in the manner specified at the time of Connection in the MPWMD Rules, as amended from time to time; and
  - d. The restrictions of use set forth above shall be enforced as determined by MPWMD to be necessary.
5. The suspension of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of prior Expansion or Extension of the Cal-Am Water Distribution System through any Connection previously made pursuant to such Water Use Permit, except that actual use of water may be reduced pursuant to the provisions of subparagraphs C-1 through C-4.
  6. Water Use Permits issued pursuant to this Rule shall represent a vested property interest upon issuance and shall not be subject to Revocation or cancellation except as expressly set forth in subparagraph D below.
  7. The portion of the Pacific Grove Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to MPWMD Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the Cal-Am Water Distribution System, nor shall it otherwise be subject to diminishment or Revocation.

**D. WATER USE PERMIT PROVISIONS**

1. Each Water Use Permit issued by the General Manager shall identify with respect to each Benefited Property:

- a. the nature (Non-Residential/Residential) of the water use to be applied to each Benefited Property;
  - b. the number and nature of Connections projected for each Benefited Property; and
  - c. the amount of the Water Entitlement dedicated to, conveyed with, or separately conveyed to, the Benefited Property.
2. Each Water Use Permit issued by the General Manager shall contain a term providing that the Water Use Permit may be used only on the Benefited Property specified in the Water Use Permit. The Water Use Permit shall also contain a condition specifying that the Water Use Permit shall be conveyed and assigned to successors-in-interest to the Benefited Property upon conveyance of the Benefited Property and may not be conveyed or assigned to any other Person.

**E. REVOCATION, TERMINATION, OR MODIFICATION OF WATER USE PERMITS**

1. Each Water Use Permit which on or after January 1, 2095, embodies an annual Water Entitlement in excess of requirements for planned land uses on a Benefited Property or which purports to authorize usage in excess of the constitutional limitation to reasonable and beneficial use shall be subject to modification, Revocation, or termination in the sole discretion of MPWMD, such that the water usage authorized thereby shall not exceed such requirements and limitations.
2. Prior to any modification, termination or Revocation pursuant to this subparagraph E, the holder of the Water Use Permit shall be entitled to notice and a hearing, and any termination, Revocation, or modification shall be subject to appeal to the Board pursuant to Rule 70 of the MPWMD Rules and Regulations.

**F. CAL-AM SYSTEM EXPANSION/EXTENSION PURSUANT TO WATER USE PERMITS**

1. Each Water Use Permit shall entitle the Owner of the Benefited Property to Potable water service to be provided by the Cal-Am Water Distribution System for such Benefited Property

2. Upon the filing of the information and payment of the fees required pursuant to Rule 23, the General Manager shall issue a Water Permit authorizing the Expansion/Extension of the Cal-Am Water Distribution System consistent with this Rule 23.8. Customary fees and Connection Charges shall be calculated based upon the Water Use Capacity for proposed or planned development upon Benefited Properties and calculated in the manner described in Rule 24. The water use represented by such Expansion/Extensions of the Cal-Am Water Distribution System shall not exceed the Water Entitlement evidenced by such Water Use Permit. In the event that an Owner of any Benefited Property requests an Expansion/Extension of the Cal-Am Water Distribution System with respect to less than all of the Water Entitlement evidenced by such Water Use Permit, the General Manager shall make a record of the respective amounts deducted from and remaining under the pertinent Water Entitlement (as evidenced in the Water Use Permit).
3. The Owner of any Benefited Property to which the Owner has previously applied a portion of a Water Entitlement through prior Expansions/Extensions of the Cal-Am Water Distribution System shall be entitled to increase the annual water use on such Benefited Property upon presentation of the information and payment of the fees set forth in this subsection E, provided that such increase does not cause the water use on the Benefited Property to exceed the Water Entitlement owned by such Owner.
4. The actions required to be taken by the General Manager pursuant to the foregoing provisions of this subsection E shall be ministerial, non-discretionary acts which shall not be affected by any water moratorium, water emergency, Allocation decision, or other curtailment on the setting of new water meters for the Cal-Am Water Distribution System and shall be enforceable by court order.
5. Nothing in the foregoing is intended to or shall affect the ability of MPWMD to curtail or eliminate the actual use of water through any Connection previously made pursuant to a Water Use Permit to the extent that such curtailment or elimination is authorized by other laws, ordinances, or regulations as are generally applicable to all similarly situated users (Residential or Non-Residential Users within the Cal-Am Water Distribution System with lots classified by MPWMD as the same size) actually using water from the Cal-Am Water Distribution System, nor is it intended to provide or imply that any Water Use Permit holder shall not be subject to such generally applicable laws, ordinances, and

regulations. For example, Persons using water from the Cal-Am Water Distribution System are required to reduce their water usage in the various stages in MPWMD's Expanded Water Conservation and Standby Rationing Plan, and may be penalized or their water service may be terminated for failing to reduce water usage as required. Similarly, such Persons must pay the rates and charges imposed for such water service, or their water service may be terminated. However, except as may be occasioned by a physical shortage of water, because the Pacific Grove Water Entitlement, MPWMD shall not make such curtailment or elimination of any actual use of water through any Connection made under a Water Use Permit issued pursuant to this Rule 23.8 for any reason that is based solely on insufficiencies of, or limitations in, Cal-Am water rights.

**Section Eight: 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 Nine: Effect Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 30<sup>th</sup> day following adoption. This ordinance shall not have a sunset date.

On motion of Director \_\_\_\_\_ and second by Director \_\_\_\_\_, the foregoing ordinance is adopted upon this \_\_\_\_ day of \_\_\_\_\_, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

I, \_\_\_\_\_, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing ordinance was duly adopted on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

\_\_\_\_\_  
Secretary to the Board