

WDS Memorandum #8 prepared July 30, 2013

**MPWMD RESOLUTION 2013-12 CHANGES REQUIREMENTS FOR FRACTURED
ROCK WELLS THAT SERVE ONE PARCEL**

SUMMARY:

At its July 22, 2013 meeting, the Monterey Peninsula Water Management District (MPWMD or District) Board of Directors adopted Resolution 2013-12 (*attached*) which changes how MPWMD implements its Water Distribution System (WDS) Permit program for onsite Fractured Rock Wells that serve only one Parcel. For this situation only, Resolution 2013-12 directs MPWMD staff to:

- a) Suspend System Limits (production and connection limits);
- b) Suspend requiring hydrogeologic testing above and beyond the standard testing required by the Monterey County Health Department;
- c) Suspend other MPWMD staff activities relevant to setting a System Limit as described in the current WDS Implementation Guidelines; and
- d) Confirm whether a Well is in Fractured Rock if it is located within 1,000 feet of the Carmel Valley Alluvial Aquifer, or within 1,000 feet of Tularcitos, Hitchcock Canyon, Garzas, Robinson Canyon or Potrero Creeks.

This action does not suspend the WDS Permit process; it only suspends certain conditions of approval and testing procedures for Fractured Rock Wells that serve one Parcel, as explained below. The Resolution applies to both Exemption Requests and WDS Permits that are pending approval in addition to any new Pre-Applications and Applications received during the term of the Resolution. It is not retroactive to WDS Permits and Confirmation of Exemptions that have been already approved and recorded.

The resolution will be in effect for one year unless it is amended or rescinded by a new resolution or ordinance. As directed by the Board at its Strategic Planning Workshop in April 2013, District staff plans to comprehensively review the Rules & Regulations guiding the WDS Permit process by the end of 2013. This is part of a broader effort to review, streamline and amend both the WDS Rules and Regulations and the Water Permit Process, and determine whether it may be in the public's interest to streamline or reduce these permit processes.

QUESTIONS AND ANSWERS:

Q: What Is "Fractured Rock?"

A: District Rules define "Fractured Rock" as "non-fluvial source water located outside of the Carmel Valley Alluvial Aquifer or the Seaside Groundwater Basin." If the water source is unclear, District staff will evaluate Well drilling logs and other available hydrogeologic data to make a determination.

Q: What Situations Does the Resolution Cover?

A: The Resolution only covers the situation where one or more Fractured Rock Wells on one Parcel serve only that Parcel. Other situations, such as a Fractured Rock Well on one Parcel that serves another Parcel, would not be covered by the Resolution and would need to follow all existing District Rules.

Q: What Does this Mean to Applicants who Meet the Resolution Criteria?

A: Applicants should be able to save some time and money because they will not be required to carry out certain Well testing, data collection and evaluations. Also, the District will not set a production limit on the Well as a condition of approval for a WDS Permit. All other requirements and conditions will apply. Specifically, qualified applicants **will not** need to:

- retain a consulting hydrogeologist to oversee Well testing and evaluations above and beyond that already required by Monterey County (e.g., a 72-hour test at a minimum of 3 gallons per minute);
- work with Neighboring Well Owners to monitor their Wells during the Well testing pursuant to MPWMD Ordinance No. 150;
- submit an assessment report to MPWMD on the capability of the well and the impact on Neighboring Wells or Sensitive Environmental Receptors (note that MPWMD will require that the Applicant provide proof that the well complies with Monterey County minimum production standards);
- stay within a specific annual production limit.

Fractured Rock Well owners are cautioned to be aware of the limitations of their Well. The low volumes of groundwater in storage can limit the long-term sustainability of the supply, particularly during periods of deficient recharge. In addition, water waste is prohibited by District Rules and the State Water Code.

Q: Why Did MPWMD Adopt this Resolution Now?

A: Reasons for action now include: (1) District Counsel recently advised the General Manager that the District does not have authority to set WDS limits for Fractured Rock Wells in the absence of a declared overdraft or other physical or legal constraints; (2) no overdraft has been declared in Fractured Rock and District monitoring of Fractured Rock Wells for the past two years has not indicated the presence of adverse effects on Neighboring Wells or the Carmel Valley Alluvial Aquifer; (3) the Well testing season for new Fractured Rock Wells is scheduled to begin on August 1, 2013, and extra steps required by the District for setting production limits add additional costs to process a WDS Permit; (4) a new ordinance to comprehensively amend the District's WDS Permit process will take many months to enact; and (5) Monterey County review procedures to issue a Well Construction Permit include an assessment of potential impacts to Neighboring Wells and instream flow of specified creeks or rivers. More detailed information is provided in the July 22, 2013 Board meeting agenda materials.

Q: What about Fractured Rock Wells that Serve More than One Parcel?

A: Additional legal review will be conducted on various multiple-Parcel situations in Fractured Rock as part of the future comprehensive ordinance to amend WDS Rules and Regulations. This is a One-Year Strategic Goal set by the MPWMD Board of Directors at their April 2013 planning workshop.

Q: What about Exemption Requests?

A: Requests for a Confirmation of Exemption are still processed the same as before except a baseline production limit will not be set for the Fractured Rock situation covered by Resolution 2013-12.

Q: Is the District Still Managing Water Resources?

A: Yes. The Rules and Regulations that govern WDS Permits are still in effect (with the exception of the specific circumstances covered by Resolution 2013-12). Steps to obtain a WDS Permit include submitting a Pre-Application form, Application form, and WDS Permit-related documentation in order for District staff to make a Staff Determination and prepare Findings and Conditions of Approval, etc. All stream flow, groundwater and Well monitoring and reporting programs remain in effect to serve as an "early warning system" to assess if any adverse changes are occurring.

FOR MORE INFORMATION:

Information on Water Wells is available on the District website at:

<http://www.mpwmd.dst.ca.us/pae/wds/wds.htm>.

The agenda materials describing the Resolution rationale are provided on the District website at:

<http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2013/20130722/13/item13.htm>.

The MPWMD Rules & Regulations are provided on the District website at:

<http://www.mpwmd.dst.ca.us/rules/2011/20111222/TOC.htm> (click on desired rule). Rule 11 provides definitions of terms. The key WDS rules are Rule 20, 21, 22 and 40. The MPWMD ordinances are provided at: <http://www.mpwmd.dst.ca.us/ordinances/ordinances.htm>.

The agenda materials for the District's adopted Strategic Plan Update are available at:

<http://www.mpwmd.dst.ca.us/asd/board/boardpacket/2013/20130415/13/item13.htm>.

Attachment: Final Resolution No. 2013-12 adopted July 22, 2013



RESOLUTION NO. 2013-12

RESOLUTION OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT TEMPORARILY SUSPENDING SETTING OF SYSTEM LIMITS FOR SINGLE PARCEL FRACTURED ROCK WELLS

FINDINGS

1. The MPWMD is a public agency, authorized in 1977 by the California Legislature (Chapter 527 of the Statutes of 1977, as amended, found at West's Water Law Appendix, Section 118-1, et seq.). The District holds comprehensive authority to integrate management of the ground and surface water resources in the Monterey Peninsula area.
2. The Water Management District enacted a comprehensive framework to review and regulate the creation and expansion of Water Distribution Systems. That framework was first enacted on February 11, 1980, by Ordinance No. 1, and has since been amended from time to time, most recently with Ordinance No. 150 adopted on May 12, 2012.
3. The Board's Strategic Plan Update, adopted on April 15, 2013, included a goal to evaluate and revise the Water Distribution System regulations, including: assess District interests and overall goals; identify benefits to the District and to customers; explore alternative programs; assess which target areas need most regulation; recommend amendments to rules; and consider more exemptions. The Board desired a more streamlined and "user-friendly" process.
4. The process to evaluate current MPWMD Rules and Regulations, prepare an ordinance that proposes comprehensive revisions, conduct environmental review and adopt a final ordinance takes many months, and will likely not be completed before December 2013.
5. The Well-testing season for domestic Wells in Fractured Rock runs from August 1 through October 31 of each year. MPWMD regulations, as currently written, can result in several thousands of dollars incurred for evaluations beyond standard testing required by the Monterey County Health Department.
6. Recently, applicants have questioned why this extensive testing is necessary and questioned the District's authority to set System Limits (i.e., annual production limits and connection limits) on Water Distribution Systems in Fractured Rock
7. In May 2013, District Counsel advised the District that MPWMD does not have the authority to set baseline production limits for exempt, non-alluvial Wells within the District in the absence of evidence of overdraft. In July 2013, District Counsel advised

the District that MPWMD does not have the authority to establish System Limits for non-exempt, non-alluvial Wells in the absence of evidence of some physical or legal constraint affecting a specific water body. If a water source is uncertain, the District has the authority to require additional hydrogeologic data pertinent to the application. These conclusions were partially based on the correlative water rights doctrine, which gives equal standing among property owners overlying the water source.

8. An overdraft has not been declared for the non-alluvial, non-Seaside Groundwater Basin areas in which Fractured Rock Wells are located. District staff has been monitoring Fractured Rock Wells over the past two years and has not observed adverse effects to Neighboring Wells, the Carmel River, named tributaries to the river, or the Carmel Valley Alluvial Aquifer. The District plans to continue its monitoring program in order to assess hydrogeologic changes.
9. District staff recently confirmed that registered geologists at the Monterey County Water Resources Agency, working as consultants to the Monterey County Environmental Health Bureau, perform assessments of the potential of a Well to (a) adversely affect another Neighboring Well, and (b) adversely affect instream flow of specified streams and creeks. This evaluation is performed as part of the permit process to receive a Well Construction Permit from MCEHB in compliance with Monterey County General Plan Policy 3.3. Monterey County is drafting an ordinance to codify this evaluation process.
10. Based on the above legal, technical and regulatory information, the MPWMD Board of Directors concludes that current MPWMD rules are too stringent for Fractured Rock Wells that serve a single Parcel. Additional research is needed regarding various multi-Parcel situations in Fractured Rock.
11. The MPWMD Board of Directors concludes action is now needed to avoid unnecessary expenses for applicants testing Fractured Rock Wells on single Parcels in the 2013 testing season beginning on August 1, 2013.

NOW, THEREFORE, BE IT RESOLVED,

1. The MPWMD Board of Directors determines each Finding set forth above to be true and correct, and by this reference incorporates each as an integral part of this Resolution. This Resolution shall be read in conjunction with and complement the District's Rules and Regulations. All definitions used in the District Rules and Regulations shall apply to this Resolution.
2. The MPWMD Board of Directors directs its General Manager, for Fractured Rock Well(s) that serve only the one Parcel on which the Well(s) is located, to suspend: (a) setting System Limits (production and connection limits), (b) requiring hydrogeologic testing above and beyond the standard testing required by the Monterey County Health Department, and (c) other MPWMD staff activities relevant to setting a System Limit as described in the current MPWMD Implementation Guidelines for Water Distribution Systems. This order applies to both exemptions and Water Distribution System Permits

that are pending approval by District staff in addition to any new Pre-Applications and Applications received during the term of this Resolution.

3. To confirm each subject Well is a Fractured Rock Well, District staff is directed to evaluate Well logs submitted with the Pre-Application Form for any Well within 1,000 feet of the Carmel Valley Alluvial Aquifer, or within 1,000 feet of Tularcitos, Hitchcock Canyon, Garzas, Robinson Canyon or Potrero Creeks.
4. The action required by this Resolution is not a "project" under the California Environmental Quality Act (CEQA) because (a) it does not result in a direct or reasonably foreseeable indirect physical change to the environment, and (b) the current permitting process would remain in effect. The pending ordinance revising District Rules and Regulations shall be subject to CEQA review.
5. If any subdivision, paragraph, sentence, clause or phrase of this Resolution 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 Resolution. 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.
6. This Resolution shall take immediate effect following its passage and adoption. The term of this Resolution shall be one year (365 days). This Resolution may be amended, or rescinded, from time to time, by separate Resolution or Ordinance.
7. The General Manager is directed to execute all documents and perform all tasks necessary to implement the effect and purpose of this Resolution.

On motion of Director Byrne, and second by Director Lewis, the foregoing Resolution is duly adopted this 22nd day of July, 2013, by the following vote:

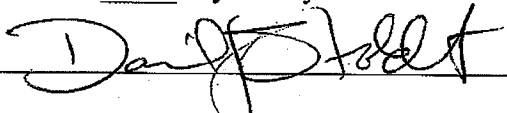
AYES: Directors Byrne, Lewis, Lehman, Pendergrass and Potter

NAYS: Director Markey

ABSENT: Director Brower

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a full, true and correct copy of a Resolution duly adopted on the 22nd day of July 2013.

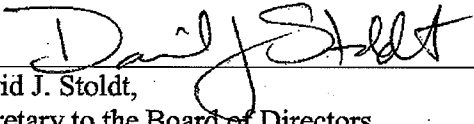
Witness my hand and seal of the Board of Directors this 27 day of July 2013.



David J. Stoldt, Secretary to the Board

COPY CERTIFICATION

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 Resolution No. 2013-12 duly adopted on the 22nd day of July 2013.



David J. Stoldt,
Secretary to the Board of Directors

7-27-13
Date