

Presented by staff at 6/19/12  
Board meeting. Redlined  
version. Revised second  
reading version.

Item 4

**ORDINANCE NO. 152**

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

**FINDINGS**

1. The Monterey Peninsula Water Management District ("District") is organized and exists under the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977, and published at Water Code Appendix, Section 118-1, et seq.) ("District Law").
2. Pursuant to Section 325 of the District Law, and except as otherwise limited by the District Law, the District has the power to do any and every lawful act necessary in order that sufficient water may be available for any present or future beneficial use or uses of the lands or inhabitants within the district, including, but not limited to, irrigation, domestic, fire protection, municipal, commercial, industrial, recreational, and all other beneficial uses and purposes.
3. Section 326 of the District Law authorizes the District to fix, revise, and collect rates and charges for the services, facilities, or water furnished by it, and authorizes the District to collect its rates and charges via the tax roll or other billing methods. Section 308 of the District Law authorizes the District, by resolution or ordinance, to fix and collect rates and charges for the providing of any service it is authorized to provide.
4. The District engages in a variety of activities that supply water to properties within the District via a distribution system owned by California American Water (CAW).
5. The District delivers water via the CAW distribution system because shared use of this system is a far more cost-effective means of delivery than construction and operation of a parallel, District-owned, distribution system and no public purpose would be served by imposing rates sufficient to fund duplicative infrastructure.
6. Water made available by District supply activities is beneficially used by the properties served in this manner, and such water, though commingled with water from CAW

13. The District accepted written protests against the Supply Charge as set forth in its Resolution No. 2012-3. Following the close of public testimony at the Hearing, the Board continued its consideration of the matter to June 19, 2012 to give District staff time to tabulate protests.
14. The District received 15,709 raw protests. Of these, 207 lacked required information or were submitted with respect to property clearly outside of the boundaries of the District; 2,114 were duplicates of valid protests; and an additional 3,045 were submitted with respect to parcels not subject to the Supply Charge. Therefore, valid protests were received with respect to 10,343 parcels subject to the Supply Charge. All protests are now public records of the District and have been considered by the Board.
15. 30,509 parcels are subject to the Supply Charge. A majority protest against the Supply Charge would therefore require 15,255 valid written protests. Therefore, a majority protest against the Supply Charge does not exist. Because this Supply Charge is a property rated fee for water service, as that term is defined by law, no election is required pursuant to Article XIII D, § 6(c) of the California Constitution and the District's compliance with Proposition 218 is complete.
16. The rate of the Supply Charge is supported by a Technical Memorandum dated April 12, 2012 prepared by the District's rate-making consultant, Bartle Wells and Associates, ("Technical Memorandum") which has been reviewed by the Board and is available for public inspection in the Office of the District.
17. The Supply Charge will fund only a portion of the District's actual costs to provide water supply services. Therefore, the Supply Charge does not exceed the funds required to provide those services.
18. Supply Charge proceeds will be expended only to fund water supply services and for no other purpose.
19. The Supply Charge is a charge upon real property. The amount of the Supply Charge imposed upon the parcel will not exceed the proportional cost of supply services attributable to the parcel for the reasons stated in the Technical Memorandum and elsewhere in the record of this rate-making.
20. Only parcels that receive water via the segments of the CAW water system that carry District-supplied water are subject to the Supply Charge. Parcels that are not connected to the system via an active meter are not subject to the Supply Charge. Parcels connected to the system via an active meter but not occupied are subject to a reduced charge to

## ORDINANCE

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

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

### **Section Two: Findings**

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

### **Section Three: Purposes**

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

~~Proceeds of this the fee charge imposed by this Ordinance may only be used to fund District water supply activities, including capital acquisition and operational costs for Aquifer Storage and Recovery (ASR) and Groundwater Replenishment (GWR) purposes, as well as studies related to pProject(s) necessary to ensure sufficient water is available for present beneficial water use in the main Cal Am CAW system. In addition to direct costs of the pProjects, proceeds of this annual water use fee may also be expended to ensure sufficient water is available for present beneficial use or uses, including water supply management, water demand management, water augmentation program expenses such as planning for, acquiring and/or reserving augmented water supply capacity, including engineering, hydrologic, legal, geologic, financial, and property acquisition. Unexpended fee revenue in any single year may be placed in a reserve for later use to fund expenses for the same purposes, and for reserves to meet the cash-flow needs of the District and to otherwise provide for the cost to provide services for which the fee is imposed.~~

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

The owner of each parcel of real property connected to the main CAW Water Distribution System, excluding the Bishop, Hidden Hills, Ambler, and Toro sub-units (which will not receive the service for which the fee is imposed), shall pay the District an annual water service charge. The amount of the fee on each parcel shall be calculated as set forth in Section 5 of this

6"  
8"

n/a  
n/a

\$632.21  
\$1,011.54

\$1,128.40  
\$1,805.43

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

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

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

- (1) The name and address of the claimant;
- (2) The address to which the person presenting the claim desires notices to be sent;
- (3) The circumstances which gave rise to the claim;
- (4) The street address(es) and Assessor's Parcel Number(s) (APN) of each property to which the claim may be applicable;
- (5) The facts to demonstrate that (i) an error has been made in the allocation of the fee imposed by this ordinance, (ii) it is appropriate to reclassify a parcel to a different use category, (iii) unique circumstances require adjustment of the fee so that it is proportionate to the cost of providing the service attributable to the parcel, (iv) the specific fee charged is (i) not reasonable, fair, or equitable, or (ii) is not and proportionately representative of the cost of service attributable to the parcels incurred by the District, or (iii) does not bear a fair or reasonable relationship to the payor's burdens or benefits from the activities of the District, or (iv) that water service upon for which the fee is based imposed is not actually used by or immediately available to the property in question.
- (6) The verified signature of each claimant (or the signature of each claimant's guardian, executor, conservator, or administrator) together with a contemporaneous statement that the information on the claim has been provided under penalty of perjury;
- (7) Any claim filed on behalf of more than one person shall be verified by each person on behalf of whom the claim is filed or by claimant's guardian, conservator, executor or administrator;

~~incurred by the District, or (iii) do not bear a fair or reasonable relationship to the payer's burdens or benefits from the activities of the District, or (iv) that water service upon which the fee is based is not actually used by or immediately available to the property in question~~the adjustment under the standards of subparagraph B.(5) of this section.

**H. Administrative Hearing.** For those circumstances where the Initial Review does not resolve the claim, the General Manager or his or her designee shall convene a hearing, following 15 days written notice to the claimant, to review facts and issues supporting the claim. After the hearing, the General Manager shall take the matter under submission and thereafter render a written decision, based on substantial evidence presented at the hearing, to adjust the fee in full or in part, or to deny the claim. Written notice of this decision shall be delivered to the claimant. Notice shall be mailed to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice to be sent. If no such address is given, notice may be mailed to any address the claimant sets forth in the claim or otherwise known to the District.

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

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

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

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

on which the fee is imposed. If the purpose ~~expires~~ fully accomplished, the fee shall be required to sunset. If the purpose for the fee is determined to continue, but amounts needed to fund that purpose are permanently decreased, the fee shall be reduced to that lesser amount. In the event aggregate annual fee collections are insufficient to fund all appropriate purposes to which the fee may be expended, the Board may determine, in its sole discretion, the extent to which any purpose or purposes shall be funded provided that the charge does not exceed the proportionate cost of the service attributable to each parcel on which the fee is imposed.

**Section Ten: Delegation**

The General Manager is directed to execute all documents and perform all tasks necessary to implement the effect and purpose of this Ordinance. The delegation of authority extends to billing and collection of the fee enacted herein, together with collection of charges and penalties for non-payment. The delegation of authority also authorizes the General Manager to tender payment on any claim for money previously paid to the District filed in accord with this ordinance, if approved according to the terms provided herein.

**Section Eleven: Severability**

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

On motion by Director \_\_\_\_\_, and second by Director \_\_\_\_\_, the foregoing Ordinance is adopted upon this ~~12<sup>th</sup>~~-19<sup>th</sup> day of June 2012, by the following vote:

AYES:

NAYS:

ABSENT:

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the ~~12<sup>th</sup>~~-19<sup>th</sup> day of June 2012.