

Presented by staff at
6/19/12 Board meeting.
No redline. Revised
Second reading version
Item 4

**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

sources, is not purchased by CAW from the District. Accordingly, it is appropriate that the users of that water fund the costs to provide it.

7. The District has previously collected a charge from water users via a surcharge on CAW's bills.
8. State Water Resources Control Board Order No. WR 95-10 dated July 6, 1995, (the "Carmel Valley Water Ruling") determined that CAW does not have the right to divert as much water from the Carmel River system as it did historically and is presently doing. Recognizing that the loss of a substantial portion of the water supply to the Monterey Peninsula, the SWRCB authorized CAW to continue these diversion levels until 2017, at which point alternative water supplies must be made available to avoid significant threats to the health, safety and welfare of residents, businesses, visitors and property owners on the Monterey Peninsula. The urgent need to provide additional water supply to meet the needs of the people of this region is complicated by the listing of the California red-legged frog and the steelhead trout as threatened species under the federal Endangered Species Act and limitation on production from the Seaside Groundwater Basis pursuant to the Superior Court's judgment in *California American Water Company v. City of Seaside*.
9. The District no longer has access to CAW bills, and, as a result of the Carmel Valley Water ruling faces an urgent need to supplement its water supplies to continue to serve properties that rely on District water supplies.
10. The purpose of this Ordinance is to replace and augment the former charge collected by CAW on its bills to water customers with a supply charge collected from owners of parcels that receive from the District through CAW's distribution system.
11. On June 12, 2012, the District's Board of Directors held a public hearing with respect to the supply charge imposed by this Ordinance ("Hearing"). The Hearing was well attended and all persons desiring to provide oral or written testimony to the Board had opportunity to do so.
12. As required by Article XIII D, Section 6 of the California Constitution, on April 26, 2012 notice of the Hearing was mailed to the record owner of each parcel upon which the Supply Charge will be imposed. That notice stated: (i) a rate table setting forth the amount of the proposed Supply Charge, (ii) the basis upon which the amount of the Supply Charge was calculated, (iii) the reason for the Supply Charge, (iv) the date, time, and location of the Hearing and (iv) information about how to submit a written protest against the Supply Charge.

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 a 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

reflect the diminished service received by such properties. Consequently, supply services are actually used by, or immediately available to, the owner of each parcel that will be charged a Supply Charge.

21. This Ordinance imposes a charge for ongoing services to the existing territory of the District. Consequently, its adoption is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080(b)(8) and 14 CCR 15273.

22. Although proceeds from the Supply Charge may fund capital projects that might physically affect the environment, such capital projects will be subject to CEQA review on a project-by-project basis. Accordingly, CEQA review of the use of the proceeds of the Supply Charge would be unduly speculative at this time and therefore this action is not a "project" as the term is defined in Public Resources Code Section 21065 and 15 CCR 15002(d), 15378 and 15061(b)(3).

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This Ordinance shall be known as the 2012 Water Use Fee Ordinance of the Monterey Peninsula Water Management 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

Proceeds of the 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 project(s) necessary to ensure sufficient water is available for present beneficial water use in the main CAW system. In addition to direct costs of the projects, 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, 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 ordinance. This is a fee charged by the District to parcels on the CAW system that receive water via the CAW system that is sourced, in whole or in part, from the District's water supply activities. The fee for each fiscal year shall be due and payable on July 1 of that fiscal year. The Board of Directors may, by ordinance or resolution, change the method of collection for the fee by (i) providing that the annual fee be collected in installments over time, (ii) providing that the fee will be collected along with property taxes on the property tax roll, or (iii) providing the fee will be billed by the District or included on the bill of any utility that consents to such inclusion. The District may set penalties for nonpayment as permitted by District Law section 326(g).

Section Five: Table of Annual Water Use Fees by Use Category

The annual water use fee for each parcel by user category is calculated as follows:

$$\text{Annual Water Use Fee} = \text{Meter Fee Based on Meter Size} + \left[\text{Water Usage Fee Per Unit} \times \text{\# of Units} \right]$$

That is, the annual fee is the sum of the parcel user's meter fee based on the size of the meter (from Table 1,) and the water usage fee per unit multiplied by the number of units for that parcel use (from Table 2.) Meter size is a measure of potential demand on a water system (i.e., the volume of service a utility must be prepared to supply) and water volume is a measure of actual demand (i.e., the volume of service a utility actually supplies). Both measures are appropriately used to make charges proportionate to the cost of service attributable to a parcel. Because the fee is to be collected on the property tax roll, it is not feasible to use metered data to calculate the volume of water served to each property; accordingly, industry-standard estimates based on the use of each parcel are employed.

Table 1: Meter Fee Based on Meter Size

Meter Size	Single-Family	Multi-Family Meter Fee	Non-Residential Meter Fee
	Residence Meter Fee		
5/8 x 3/4"			
Small house (less than 1,200 sq ft)	\$14.31		
Medium house (1,200 to 2,000 sq ft)	\$16.84		
Medium/large house (2,000 to 4,000 sq ft)	\$19.36		
Large house (4,000 sq ft+)	\$19.36		
5/8 x 3/4" multi-family or commercial		\$12.64	\$22.57
3/4"	\$25.27	\$18.97	\$33.85
1"	\$42.10	\$31.62	\$56.42
1 1/2"	\$84.19	\$63.22	\$112.84
2"	\$134.70	\$101.15	\$180.54
3"	\$252.57	\$189.66	\$338.52
4"	\$420.95	\$316.11	\$564.20
6"	n/a	\$632.21	\$1,128.40
8"	n/a	\$1,011.54	\$1,805.43

Table 2: Water Usage Fee per Unit

Description	Water Usage Fee per Unit	Unit
Small house (less than 1,200 sq ft)	\$24.75	per single family home
Medium house (1,200 to 1,999 sq ft)	\$38.50	per single family home
Medium house (2,000 to 3,999 sq ft)	\$77.00	per single family home
Large house (4,000 sq ft+)	\$154.00	per single family home
Vacant house	50%	Of non-vacant fee
Multifamily Property	\$20.90	per multifamily unit
Business/Govt 1 to 10 employees	\$52.80	per location/each business
Business/Govt 11 to 20 employees	\$105.60	per location/each business
Business/Govt 21 to 30 employees	\$158.40	per location/each business
Rate Increases for Business/Govt	\$52.80	increase per every 10 employees
Hotel/Motel	\$32.17	per room
Bed and Breakfast	\$21.54	per room
Supermarket	\$261.42	per location/each business
Medical Office	\$45.11	per licensed physician
Dental Office	\$61.09	per licensed physician
Rest Home	\$20.03	per bed of licensed capacity
General Hospital	\$118.65	per bed of licensed capacity
Animal Hospital	\$138.98	per location/each business
Restaurant 1 meal/day	\$2.43	per seat
Restaurant 2 meals/day	\$3.79	per seat
Restaurant 3 meals/day	\$7.28	per seat
Restaurant w/bar	\$9.71	per seat
Bar	\$79.91	per location/each business
Nightclub	\$233.45	per location/each business
Takeout Food - small	\$82.39	1 cash register or checkout lane
Takeout Food - medium	\$211.66	2 or 3 cash registers or checkout lanes
Takeout Food - large	\$372.03	4+ cash registers or checkout lanes
Bakery	\$101.81	per location/each business
Theater	\$109.24	per screen
Bowling Center	\$491.59	per location/each business
Gym	\$52.80	per 500 members
Mortuary	\$128.06	per location/each business
School Minimum	\$52.80	per location
School (Grades 0-6)	\$0.91	per student
School (Grades 7- college)	\$1.82	per student
Boarding School	\$23.21	per student
Instructional Facility	\$52.80	per location/each business
Church (0 to 100 members)	\$52.80	per location
Church (over 100 members)	\$105.60	per location
Photo Developer	\$52.80	per location
Laboratory	\$52.80	per 10 employees
Printer	\$52.80	per 10 employees
Service Station	\$52.80	per 10 employees
Auto Painters/Body Shop	\$52.80	per location
Rate Increases for Previous 4 Categories	\$52.80	increase per every 10 employees
Dry Cleaner	\$67.49	per location/each business
Laundromat	\$21.24	per each washing machine
Mobile Home	\$32.17	per living unit
Golf Course/City Parks/Cemeteries/Other Irrigated Area	\$105.60	per acre
Vacant Commercial	\$26.40	per location/each business
Temporarily Suspended (no active meter)	\$0	per location/each business
Special Users (determined individually)	\$52.80	Fee proportional to average business user, not to exceed \$2500.

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 cost 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 fee charged is not reasonable, fair, and proportional to the cost of service attributable to the parcel, or (v) that water service for which the fee is 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;
- (8) Any claim to recover money previously paid to the District may be filed by any person or the person's guardian, executor, conservator or administrator only if the payment, at the time it was first tendered, had been accompanied by a written statement, signed by the claimant or claimant's guardian, executor, conservator or administrator which states that the payment was made under protest, or other basis, providing notice to District that the

payment was contested. This provision shall not be construed to relieve any person of the obligation to make full payment of any money due to the District.

C. Class or Representative Claims. No claim may be filed on behalf of a class of claimants, or on behalf of any person other than the person filing the claim, unless the membership of the class is identified with particularity; and unless the verified signature of each member of the class (or the signature of each class member's guardian, executor, conservator, or administrator) is appended to the claim; and that any claim filed on behalf of a class of claimants shall be further limited to persons who have tendered payments under written protest during the 365 days immediately preceding the filing of the class claim.

D. Untimely Claims. No refund of any fee shall be allowed unless the amount paid was tendered together with written protest filed with the District by claimant or by claimant's guardian, executor, conservator. No refund of any fee shall occur for fees paid more than 365 days prior to the date of the claim.

E. Time of Presentation and Receipt. A claim for recovery of any money paid under protest shall be filed in writing with the District by claimant or by claimant's guardian, executor, conservator, or administrator no later than 365 days after the date the payment was made.

F. Notice of Insufficiency. If, the General Manager, or his or her designee, determines that a claim, as presented, fails to comply substantially with the requirements of this chapter, the General Manager or his or her designee may, at any time within 30 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omission therein. Failure of the District to provide notice of insufficiency shall not operate as a waiver of any defenses the District may have based on the sufficiency of the claim.

G. Initial Review. Each claim shall be screened by the General Manager or his or her designee within 30 days after the claim has been determined to be sufficient. At this initial review and without conducting a hearing, the General Manager or his or her designee may act to adjust the fee in full or in part, as warranted, upon determining facts support 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 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 authorize payment of untimely claims.

Section Seven: Collection of Delinquent Payment, Costs and Penalties

A. Dependent upon the collection method(s) selected by the District Board, which may be enabled by District resolution or ordinance and which may be modified from time to time, payment schedules may be available for the annual water use fee enabled by this Ordinance.

B. Except when allowed pursuant to an authorized installment payment schedule, if all or part of the fee is not paid on its due date, (a) the District may discontinue any or all services or facilities for which the bill is rendered; (b) a basic penalty of 10 percent shall be imposed for delinquent payment; (c) a penalty of one-half of 1 percent per month shall be imposed for nonpayment of the charges and the basic penalty; and (d) collection of the charge and penalties the District may be made as a lien upon the real property and collectible at the same time and in the same manner as taxes and assessments are so collected upon such real property in accord

with District law. In addition, the fee imposed by this ordinance, together with penalties and interest at the legal rate thereon, constitute a debt owed to the District by the owner and occupants, jointly and severally, of the property to which the service is provided and the District may sue on that debt in any court of competent jurisdiction. Remedies for collection and enforcement are cumulative, and may be pursued alternatively or consecutively by the General Manager. The District may, from time to time, adopt by resolution or ordinance such other penalties and delinquency collection mechanisms allowed by law.

Section Eight: Publication and Application

This Ordinance shall not cause amendment or republication of the permanent Rules and Regulations of the Monterey Peninsula Water Management District. This Ordinance shall be read in conjunction with and complement those provisions of the District's Rules and Regulations. All definitions used in the District Rules and Regulations shall apply to this Ordinance.

Section Nine: Effective Date; Review Requirement; Sunset

This Ordinance shall take effect at 12:01 a.m. on July 1, 2012. This Ordinance shall not have a sunset date, provided however, that fees set by this Ordinance shall not be collected to the extent proceeds exceed funds required to achieve the Purposes of this Ordinance, as set forth in Section Three or as described in the Findings referenced in Section Two.

So long as this annual water use fee is collected, the Board of Directors shall hold a public hearing each calendar year in connection with review of the annual District budget. At that time, the Board shall review amounts collected and expended in relation to the purposes for which the fee is imposed. The District shall require the annual water use fee to sunset in full or in part unless the Board determines that the purpose of the fee is still required, and the amount of the fee is still appropriate and less than the proportionate cost of the service attributable to each parcel on which the fee is imposed. If the purpose is 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 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 19th 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 19th day of June 2012.

Witness my hand and seal of the Board of Directors this _____ day of June 2012.

David J. Stoldt, Secretary to the Board