



RESOLUTION NO. 2011-09

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT ORDERING CALIFORNIA AMERICAN WATER TO COLLECT AND REMIT THE WATER DISTRIBUTION SYSTEM USER FEE IN ACCORD WITH DISTRICT ORDINANCE 123

WHEREAS, The Monterey Peninsula Water Management District (MPWMD or MPWMD) first established its User Fee in 1983. On June 20, 2005, the MPWMD Board approved the District's 2005-06 budget and set the California American Water (Cal-Am) Water Distribution System (WDS) User Fee at 8.325%. Ordinance 123 was approved at second reading on August 15, 2005 and the Notice of Exemption was subsequently filed with the Monterey County Clerk. The present MPWMD WDS User Fee of 8.325% of the Cal-Am water bill went into effect on October 14, 2005; and,

WHEREAS, Ordinance 123 requires Cal-Am to collect from its water users a fee factored upon actual water use and variable as to the amount of water consumed; and,

WHEREAS, Cal-Am may elect to pay this User fee to the District in installments during the fiscal year, provided that full payment is tendered during that fiscal year; and,

WHEREAS, The WDS User Fee provides funds for the MPWMD Mitigation Program that is legally required to address the environmental impacts of Cal-Am operations on both the Carmel River and Seaside Groundwater Basins in accord with California Environmental Quality Act (CEQA), Public Resources Code §§21000 – 21178. These impacts have been determined to significantly affect the Carmel River populations of steelhead and red-legged frog, which are listed as threatened species under the federal Endangered Species Act. State Water Resources Control Board (SWRCB) Order 95-10 (Order 95-10) and Order WR 2009-0060 recognize the MPWMD Mitigation Program. Specifically, Ordering Paragraph 11 of Order 95-10 provides that Cal-Am is to implement all measures in the Mitigation Program for the MPWMD Water Allocation Program if those measures are "not implemented by MPWMD" and Ordering Paragraph 9 of Order 2009-0060 requires Cal-Am to comply with all requirements of Order 95-10, except as provided therein; and,

WHEREAS, Cal-Am, the CPUC Division of Ratepayer Advocates (DRA), and the Water Management District agreed both the Mitigation Program and ASR Program are non-duplicative, reasonable, and prudent; and,

WHEREAS, In September, 2009 Cal-Am entered into an agreement with MPWMD to continue full payment to MPWMD to fund MPWMD's Carmel River Mitigation Program (Mitigation Program) and its Aquifer Storage and Recovery (ASR) Project; and,

WHEREAS, On September 24, 2009, Cal-Am entered into a Reimbursement Agreement that called for Cal-Am to reimburse MPWMD for the costs of its Mitigation and ASR Programs, but Cal-Am provided notice of its intent to terminate the Reimbursement Agreement effective May 23, 2011;

WHEREAS, Cal-Am's decision to discontinue its past practice of collecting and remitting to MPWMD the full 8.325% user fee set by District Ordinance 123, shall compromise efforts of the District to achieve the purposes required by the MPWMD Mitigation and ASR programs. Cal-Am's failure to remit the full user fee to MPWMD shall interfere with mitigations required by CEQA, and significantly and adversely affect Carmel River populations of steelhead and red-legged frog, in contravention of Order 95-10 and Order WR 2009-0060.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Monterey Peninsula Water Management District orders Cal-Am to collect and remit the 8.325% user fee as required by Ordinance 123 in installments during the fiscal year, provided full payment is tendered during that fiscal year.

BE IT FURTHER RESOLVED AND ORDERED that Cal-Am continue to set and remit the User Fee at 8.325% of each Cal-Am water bill factored upon actual water use and variable as to the amount of water consumed, as required by District Ordinance 123.

On a motion by Director Markey and second by Director Potter the foregoing resolution is duly adopted this 26th day of May 2011 by the following votes.

Ayes: Directors Brower, Potter, Lewis, Lehman, Markey, Doyle, and Pendergrass
Nays: None
Absent: None

I, Darby Fuerst, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a resolution duly adopted on the 26th day of May 2011.

Witness my hand and seal of the Board of Directors this 27th day of May 2011.



Darby Fuerst, Secretary to the Board

COPY CERTIFICATION

I, Darby Fuerst, 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. 2011-09 duly adopted on the 26th of May 2011.



Darby Fuerst, Secretary to the Board



Date