

## **EXHIBIT 4-D**

### **RULE 23 - ACTION ON APPLICATION FOR PERMIT TO EXPAND OR EXTEND A WATER DISTRIBUTION SYSTEM**

#### **A. APPLICATIONS TO INTENSIFY WATER USE**

An expansion/extension permit shall be required from the District for each Intensified Water Use (defined by Rule 11). Intensification of Water Use without a permit shall provide cause for revocation by the District of all water use by any person on that Site. Each application for a permit to expand or extend a water distribution system and each application for an amended expansion/extension permit shall follow the process set forth in Rule 23. The District may issue the permit when the following applies:

1. The District shall issue an expansion/extension permit for a project when:
  - a. the District has first received and approved a complete application which includes evidence of each Discretionary Approval required for the proposed use, a complete and final set of construction drawings, and (if required by the Jurisdiction) a final landscape plan, and
  - b. the District has first received payment in full for all applicable District fees and charges based upon the incremental increase in the potential water use capacity for that individual project.
  - c. the District has first received a Water Release Request from the applicable Jurisdiction (the city, county or the airport district) pertaining to the Parcel on which the water use shall occur, and
  - d. the total quantity of water reserved for all projects within a Jurisdiction does not exceed that Jurisdiction's total water allocation.
  - e. the District has not determined to temporarily delay the issuance of permits by reason of a declared Water Supply Emergency.
2. As an alternate to the process set forth in (1) above, the District may issue an expansion/extension permit for an application without a Water Release Request because of one of the following reasons:
  - a. the proposed Intensified Water Use has been authorized by the District to derive some or all of its capacity for water use from the District Reserve allocation, or
  - b. the application requests a permit to Intensify Water Use which derives from a water supply other than the Monterey Peninsula Water Resource System, or
  - c. the application has been determined to not cause an Intensified Water Use, or causes an increase as specified pursuant to subparagraph (6) below (Rule 23 A (6)).

- d. the application requests a permit based on a prior Water Use Credit, which applies to that Site.
  - e. the application requests a permit to use water for a project which shall not permanently Intensify Water Use as it requires only a short term need for water and the application shall be processed pursuant to Rule 23 B.
3. In the absence of special circumstances or undue hardship, the District shall not issue an expansion/extension permit, which results in the installation of a new water meter, which shall serve water to more than one user. Multiple users shall apply for separate permits pursuant to this rule. This provision, however, shall not prevent the issuance of a permit, which shall allow a single user to extend incidental water use (e.g. a single bar sink).

This provision shall be construed to enable the issuance of permits for Intensified Water Use which are required by reason of a change in occupancy or use of an existing structure without a requirement to install separate water meters for each separate use or user provided no substantial structural modifications are necessary to facilitate the changed use. Any such extension shall nonetheless be processed in accord with Rule 24 (Connection Charges).

- 4. The District shall not issue an expansion/extension permit if the District Board has determined that the water distribution system affected by that permit has exceeded its expansion capacity limit.
- 5. The District shall not issue an expansion/extension permit when any portion of the expansion or extension lies outside of the affected water distribution system service area.
- 6. The District shall not issue an expansion/extension permit until all fees and connection charges are paid in full by, or on behalf of, the applicant. At the time of first use or occupancy of the project, the General Manager may adjust the charge and the water debited from the Jurisdiction's Allocation, and cause a partial refund or the imposition and collection of an additional connection charge in accord with the provisions of Rule 24. In the event the adjusted connection charge is not paid in full within a reasonable period, the water use permit shall be revoked.
- 7. The District shall not issue an expansion/extension permit which allows the use of potable water for green-belt irrigation when alternate sub-potable water is reasonably available to the Site (see Rules 23 C, 131 and 132).
- 8. Staff determinations under this rule, either issuing or refusing to issue a permit, may be appealed to the Board pursuant to Rule 70.

#### **B. TEMPORARY EXPANSION/EXTENSION PERMITS**

Notwithstanding any provision of Rule 23 (A), the General Manager may issue a tempo-

rary expansion/ extension permit to applicants who do not possess a valid municipal or county building permit as provided in Rule 23 (A), provided the applicant has demonstrated that the expansion is reasonably necessary to satisfy the near-term water needs of the applicant. Each temporary expansion/extension permit issued by the General Manager shall be subject to the following conditions:

1. The temporary permit shall not confer a property interest upon the grantee to obtain or use water after expiration and/or revocation of the permit.
2. The temporary permit is subject to revocation during its term without cause, without hearing, upon thirty (30) days notice.
3. The temporary permit shall terminate on the date specified on the permit, and if no date is specified, shall terminate one (1) year after the temporary permit is issued.
4. Any use of water through the connection or water meter installed pursuant to the temporary permit following expiration and/or revocation of that permit shall be unauthorized.
5. The applicant for the temporary permit shall acknowledge in writing that the temporary permit does not confer a right to obtain or use water upon expiration and/or revocation of the temporary permit.
6. The applicant for the temporary permit shall consent to the physical removal of the connection and/or water meter upon the expiration and/or revocation of the temporary permit.
7. The terms and conditions of the temporary permit shall be recorded in the office of the Monterey County Recorder against the real property which is by the connections, and shall operate as a covenant running with the land.
8. The applicant shall pay any applicable fee pursuant to Rule 24 and Rule 60.

The General Manager may place further conditions upon the grant of the temporary permit, as he/she deems proper. Determinations of the General Manager under this Rule, either issuing, conditioning, or refusing to issue a temporary permit, may be appealed to the Board pursuant to Rule 70.

### **C. CRITERIA TO PROCESS APPLICATIONS TO INTENSIFY WATER USE**

The following procedure and criteria shall apply to any application for new or Intensified Water Use.

1. Water Release Request (Water From a Jurisdiction Allocation). Before a permit shall be issued by the District to allow new or Intensified Water Use (including applications for changed use through an existing water meter) the District shall first receive a Water Release Request from the Jurisdiction, which has land use

planning authority over the Parcel on which that water use shall occur. The District may nonetheless receive and process applications without a Water Release Request under the criteria set forth in Rule 23 A (2) -

- a. use authorized from the District Reserve allocation, or (b) use from a water supply other than the Monterey Peninsula Water Resource System, or (c) no intensification of water use in an existing connection, or (d) use based on a prior water use credit for that Site, or (e) use for a temporary purpose.

2. Water from the District Reserve Allocation. The District Reserve Allocation constitutes a special allocation, which may be used to make water available to Regional Projects of special benefit to avoid the individual drawdown of a Jurisdiction's allocation, which would otherwise occur, or for drought or other reserve purposes. Release and use of this water is at the sole and exclusive discretion of the District.

Regional Projects, which may qualify for water from the Reserve Allocation, shall be non-profit, provide for the health, safety and/or welfare of the community, and provide regional non-denominational benefit to residents of the greater Monterey Peninsula area. Examples of such Regional Projects include regional health care, homeless or transitional shelters, and protection from natural disasters (but not local police protection).

A project sponsor or a Jurisdiction seeking water from the District Reserve Allocation shall make a written request to the District. The District may refer that request to TAC or PAC for recommendation, or may act on the request directly. The District in its sole and exclusive discretion may deny, approve, or approve in part the request. Water use shall be debited from the District Reserve allocation in the same manner used for each Jurisdiction's Allocation.

3. Water Connection Permit. An expansion/extension permit from the District shall be required prior to any new or Intensified Water Use. To obtain that permit, a complete application shall be submitted to and approved by the District. A complete application must include the record of each Discretionary Approval required for the proposed use, a complete and final set of construction drawings, a complete landscape plan where such a plan is required by the Jurisdiction, and payment in full of all applicable District fees and charges based upon the potential water use capacity for that individual project. The term "Discretionary Approval" shall mean each land use planning and zoning approval required for the project, a use permit if one is required, and prior completion of all applicable design review or approval.
4. Quantity of Water Permitted for Use. Upon receipt of the complete application for the expansion/extension permit, District staff shall calculate the water use capacity for the project, verify release of water by the Jurisdiction, and based on water use capacity quantify the amount of water actually permitted. The District shall issue a permit, which allows installation of a new water meter

connection, only when the projected water use capacity equals or is less than the Water Release Request. If a new connection has capacity for water use in excess of the quantity in the Water Release Request, a permit for the new water meter connection will be issued by the District only upon receipt of an amended Water Release Request from the Jurisdiction.

5. Residential Water Demand. Each authorization for interior water demand for residential water connections shall be based on the fixture units planned for that Site. Water use capacity for remodeling or replacement of an existing residence, or for any new residence shall be based on the increase in fixture units on the Site. A single standard shall apply to the calculation of fixture units regardless of where the property is located. This method shall not include an increment of water for open space or landscape use. Instead, landscape water demand for each residential use shall be calculated by the District independent from the fixture unit criteria. The Board of Directors shall adopt guidelines to guide staff's implementation of the landscape water use criteria and calculation process provided by this Rule.
6. Adjustment of Allocation Upon Issuance of Permit. Water capacity allowed by each permit shall be deducted from that Jurisdiction's Allocation. Each project, which allows new water use capacity through an existing connection due to Intensified Water Use, shall require an expansion/extension permit and also have the quantity of water allowed by permit debited from that Jurisdiction's Allocation. A permit for water use, which derives wholly from the District Reserve Allocation, however, shall be deducted from the District Reserve allocation. A pro-rata split shall be made for those permits, which are based on water from both a Jurisdiction's Allocation and the District Reserve, or two or more Jurisdictions, which may participate, in a joint project.
7. Process. The General Manager shall review each application, and if he determines the application to be incomplete, he shall request the applicant to submit additional information. When the application is complete, the General Manager (or the Board of Directors for those applications not acted upon by the General Manager) shall:
  - a. Classify any proposed connection as "Residential, Commercial/ Governmental, or Industrial" as defined in these rules. If such proposed connection cannot be adequately categorized pursuant to existing data, the General Manager or the Board of Directors by exercise of discretion may require additional information, or define such connection as either residential, commercial/governmental, or industrial based upon connection. Determination of connection categorization by the General Manager may be appealed pursuant to Rule 70.
  - b. For each application, which proposes to use potable water the General Manager or the Board of Directors shall determine whether or not, an alternate supply of water, including sub-potable water, is reasonably

available to that applicant. Facts to support this decision may be derived from existing data, or from a scope of work required of the applicant. The decision regarding reasonable availability of sub-potable water shall conform to the findings set forth in Rule 131. The burden of establishing the non-availability of any alternate water supply, including sub-potable supplies, shall rest with the applicant.

- c. Each permit may have conditions placed upon the use of water allowed by that connection in accord with Subdivision C of this rule. Conditions may be devised to minimize non-essential uses of potable water.
- d. After each connection is categorized, the non-availability of alternate supplies has been determined, and appropriate conditions have been drafted, and when the General Manager is authorized to act on the application pursuant to Subdivision A of this rule, the General Manager shall issue the permit within thirty (30) days.
- e. When the General Manager is not authorized to act on an application, or when the General Manager does not act within thirty (30) days, action on the application shall be referred to the Board of Directors for action in accord with this subdivision.

#### **D. CONDITIONS AND CONDITIONAL WATER PERMITS**

The Board, or the General Manager on those applications acted upon by the General Manager, may place conditions upon the grant of any expansion/extension permit. For any permit, which would allow the use of potable water for greenbelt irrigation, the following condition shall be imposed:

- 1. The holder of this permit, or the holder's successor in interest, shall not use water derived from this connection to irrigate any greenbelt the Monterey Peninsula Water Management District has declared by resolution that sub-potable water as defined by the District's Rules and Regulations is reasonably available for such use.
- 2. A category of water permits known, as Conditional Water Permits shall be available to a limited group of water permit applicants under restricted circumstances and only with the jurisdiction's endorsement. A Conditional Water Permit creates a record that specifically quantifies the increment of water assigned for use at the location designated by the jurisdiction and debits the jurisdiction's water allocation. Conditional Water Permits are available to those projects that are unable to meet all of the criteria of Rule 23-A-1 (a) and meet the requirements of Rule 23-D-2.
  - A. The following categories of projects may obtain a Conditional Water Permit:

1. Large Projects - Commercial projects with a projected water demand of over one acre-foot annually.
  2. Government Projects - Projects owned and operated, or financed by a governmental agency.
  3. Projects with Complex Financial Underwriting - Determined at the discretion of the Board of Directors.
- B. The Conditional Water Permit may be issued when the following criteria have been met:
1. There is no water supply emergency;
  2. There is sufficient water supply in the jurisdiction's allocation;
  3. The governing body of a jurisdiction submits a written request that a Conditional Water Permit be issued to a project;
  4. A completed Water Release Form for the project is submitted which includes the authorizing signature of the jurisdiction to debit its water allocation;
  5. Payment of all connection charges and processing fees has been received by the District.
- C. A Conditional Water Permit must be finally approved by the General Manager, following review of the proposed conditions by the District's legal counsel. The notarized signature of the project applicant is required before the General Manager's signature is obtained.
- D. A Conditional Water Permit shall be numbered with the next sequential alpha and numeric number beginning with C-001, C-002, and etcetera. A final water permit bearing the final water permit number referenced in the conditional water permit shall be maintained, unsigned in the District's file. An amount of water approved for use by the jurisdiction for the project will be debited from the jurisdiction's water allocation at the time the conditional water permit is issued.
- E. A Conditional Water Permit does not allow the setting of any water meter or the start of any new or expanded water use until the conditions of the permit have been met.
- F. A condition shall be included in all Conditional Permits, which requires the adjustment of the connection charge to accurately reflect the cost-per-acre-foot at the time the final water permit is issued. Any difference in the connection charge between the time the Conditional Water Permit is



issued and the final Water Permit is issued must be paid in full.

- G. Each Conditional Water Permit is time limited. The Conditional Water Permit shall expire on December 31st of the year following issuance.
- H. A written request for extension of the Conditional Water Permit may be requested and shall require Board authorization for extension. Requests for extension must be received no later than forty-five (45) days prior to expiration and must include an explanation for the request and the jurisdiction's agreement that the Board should grant an extension.

#### **E. VERIFICATION OF WATER USE CAPACITY**

To implement Regulation II, the General Manager or his agent acting in accord with the provisions of Section 363 of the District Law may enter on to any property for purposes consistent with this Regulation II and for the purpose of making investigations relating to water use capacity at that site. For such purposes, the authorized representative of the District, upon presentation of credentials and with permission of the occupant, or if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, shall have the right of entry to any premises to verify and inspect the water use capacity and type of water use fixtures within that structure.

If access is denied which prevents inspection of water fixtures or fixture retrofit construction required by a District permit, or if permit violations have been noted by and have not been corrected within a reasonable period, the District may record a notice of violation against that property, impose a lien against that property for additional fees and charges which may be due, and/or may revoke (or suspend) the permit for that property until such time as the violation has been corrected.

*Rule added by Ordinance No. 1 (2/11/80); amended by Ordinance No. 2 (3/11/80); Ordinance No. 3 (7/11/80); Ordinance No. 5 (4/13/81); Ordinance No. 6 (5/11/81); Ordinance No. 7 (7/13/81); Ordinance No. 8 (1/14/81); Ordinance No. 9 (2/14/83); Ordinance No. 11 (11/14/83); Ordinance No. 16 (8/13/84); Ordinance No. 26 (9/8/86); Ordinance No. 40 (4/10/89); Ordinance No. 44 (10/9/89); Ordinance No. 60 (6/15/92); Ordinance No. 64 (10/5/92); Ordinance No. 71 (12/20/93); Ordinance No. 77 (8/21/95); Ordinance No. 115 (05/17/2004)*

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