

**DRAFT
ORDINANCE NO. 131**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ADDING TO AND AMENDING ITS PROCESS FOR THE
ADMINISTRATIVE ENFORCEMENT OF
DISTRICT RULES AND REGULATIONS**

FINDINGS

1. The Water Management District is charged under the Monterey Peninsula Water Management District Law with the integrated management of the ground and surface water resources in the Monterey Peninsula area.
2. The Water Management District has general and specific power to cause and implement water conservation activities as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.
3. The Board of Directors for the Monterey Peninsula Water Management District has determined that a need exists to modify the manner in which it may enforce the Rules and Regulations of the District.
4. Enforcement issues have become increasingly varied and complex over the years.
5. Staff and District resources will be conserved and better utilized by adoption of streamlined enforcement.
6. Administrative review of enforcement matters will facilitate improved and more consistent rule compliance, reduce obstacles and time delays that result from criminal or civil enforcement, and result in more uniform application of the District's rules and procedures.
7. This ordinance shall amend District Rule 11, Definitions, to add new definitions.
8. This ordinance amends District Regulation XI, Enforcement, to provide a comprehensive administrative enforcement process.
9. This ordinance shall amend Rule 110, General Enforcement, to add nuisance abatement Cease and Desist Order process.
10. This ordinance adds Rule 110.5, Administrative Remedies, to provide an administrative compliance process for violation of District Rules and Regulations.
11. This ordinance moves the existing text of Rule 111, Charges and Penalty Assessments, to Rule 110-B.

12. This ordinance renames Rule 111, Administrative Citation, and adds sections A through C to address violations which are minor or transient in nature.
13. This ordinance adds Rule 111.5, Administrative Compliance Order, to address violations which are serious, continuing or recurring.
14. This ordinance adds Rule 111.7, Notices, to identify how violation notice must be provided.
15. This ordinance renames Rule 112, Hearing Officer Panel, to establish the panel.
16. This ordinance adds Rule 112.1, Hearing Officer Panel Appointment; Removal, to define the appointment process, term, and removal procedure for Hearing Officers.
17. This ordinance adds Rule 112.2, Hearing Officer Presiding Officer, to establish the process to select a presiding officer.
18. This ordinance adds Rule 112.3, Hearing Officer Panel Meetings, to require compliance with the Ralph M. Brown Act for all panel meetings.
19. This ordinance adds Rule 112.4, Hearing Officer Panel Rules and Procedures, which allows the panel to establish its hearing rules and procedures upon advice of the District General Counsel.
20. This ordinance adds Rule 112.5, Hearing Officer Selection, which describes the process of random lot selection of Hearing Officers for hearings.
21. This ordinance moves the existing text of Rule 113, Liens, to Rule 119.3.
22. This ordinance adds Rule 113.1, Administrative Citation Fines, to establish the payment period for fines.
23. This ordinance adds Rule 113.2, Advance Deposit Hardship Waiver, to provide a hardship process for the advance deposit of fines.
24. This ordinance moves the existing text of Rule 114, Permit Rule Noncompliance, to Rule 110-D.
25. This ordinance adds Rule 114.1, Hearing Request, to describe the process to request a hearing to contest a violation.
26. This ordinance adds Rule 114.2, Administrative Compliance Hearing, to describe the process to initiate a hearing, if required.

27. This ordinance adds Rule 114.3, Notice of Hearing, to describe the requirements for notice of hearing.
28. This ordinance adds Rule 114.4, Compliance Hearing; Findings, to describe the conduct of the hearing, the types of evidence which can be received, the necessity for findings supported by evidence, and issuance of a determination.
29. This ordinance adds Rule 114.5, Administrative Order, which provides direction to Hearing Officers upon determination that a violation has occurred.
30. This ordinance adds Rule 115.1, Administrative Penalties, to describe the range of fines which may be imposed, to provide for a schedule of fines established from time to time by Board Resolution, and to identify factors for the Hearing Officer to consider in setting the administrative penalty. Provision is also made for suspension of penalties.
31. This ordinance adds Rule 115.2, Administrative Costs, which allows recovery of administrative costs against a violator. Provision is also made for recovery against the Water Management District upon proof that no violation occurred or compliance was timely. A waiver provision is made available to the Hearing Officer.
32. This ordinance adds Rule 115.3, Interest, which requires a violator to pay interest at the rate of ten (10) percent per annum, pro-rata, from the date the amount first became delinquent until the date payment is received.
33. This ordinance adds Rule 116, Failure to Comply with a Compliance Order, which gives the General Manager the power to enforce payment of assessed administrative penalties and/or costs as a personal obligation of the violator or, if the violation is against real property, a lien upon the real property.
34. This ordinance adds Rule 116.5, Recovery of Administrative Penalties and Costs, which provides the General Manager with all available legal means to collect these administrative costs and penalties.
35. This ordinance adds Rule 117, Report of Compliance with Administrative Order, describing the reporting process to document compliance with an order.
36. This ordinance adds 117.5, Compliance Dispute, to provide a process for any Person who believes that compliance has been achieved. A compliance hearing is held before a Hearing Officer upon proper notice with a determination based on findings.
37. This ordinance adds Rule 118, Judicial Review, to provide review of an Administrative Order in the Superior Court by filing a petition for writ of mandate.
38. This ordinance adds Rule 119.1, Late Payment Charges, to allow recovery of late payment charges on fines imposed but not timely paid.

39. This ordinance adds Rule 119.2, Recovery of Administrative Citation Fines and Costs, to utilize all available legal means to recover past due fines or late payment charges.
40. This ordinance adds Rule 119.3, Lien Procedure, by incorporating the existing text of Rule 113 and adding a process to lien real property on which a violation occurred. A process is created which requires the General Manager to file a report with the Board on the amount due, fix a time, date and place for hearing before the Board on the report and any protests or objections, and provide notice of the hearing.
41. This ordinance adds Rule 119.4, Lien Hearing and Protests, to describe the process to protest a lien with resolution by the Board confirming, discharging or modifying the amount of the lien.
42. This ordinance adds Rule 119.5, Recording of Lien, to describe the time and manner of recording liens.
43. This ordinance adds Rule 119.6, Satisfaction of Lien, to describe the process of satisfying liens once full payment has been received.
44. This ordinance is not a project within the CEQA definition 21065 and Guidelines 15060 (c) (2) and 15378 (b) (2) and (5) because it is not an activity which may cause either direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

NOW, THEREFORE, be it ordained as follows:

ORDINANCE

Section One: **Short Title**

This ordinance shall be known as the **Administrative Enforcement Ordinance**.

Section Two: **Purpose**

This ordinance sets forth an Administration Citation, Administrative Compliance Order, and nuisance abatement Cease and Desist Order enforcement process as allowed Government Code Section 53069.4.

Section Three: **Amendment of Rule 11 (Definitions)**

- A. Unless the context specifically indicates otherwise, the following terms shall be given the definition set forth below and shall be permanently added to Rule 11, Definitions, of the Rules and Regulations of the District. Revised text is shown in bold italics

(***bold italics***) and ~~strikeout (strikethrough)~~. Numbering is provided for ease of review.

1. ***Administrative Citation- “Administrative Citation” shall mean a written notice of violation of District Rules and Regulation which are minor or transient in nature. Examples may include water waste, water rationing, permit condition and minor or non-recurring violations. Administrative Citations are in addition to all other legal remedies, criminal or civil, which may be pursued by the Water Management District.***
2. ***Administrative Compliance Order – “Administrative Compliance Order” shall mean a written compliance order issued by the General Manager to any Person responsible for serious, continuing or recurring violations. Administrative Compliance Orders are in addition to all other legal remedies, criminal or civil, which may be pursued by the Water Management District.***
3. ***Administrative Order – “Administrative Order” shall mean an order issued by a Hearing Officer at the conclusion of a hearing on a violation.***
4. ***Cease and Desist Order – “Cease and Desist Order” shall mean an order issued by the General Manager prohibiting a Person from continuing a particular course of conduct which creates or fosters a Public Nuisance. Cease and Desist Orders are in addition to all other legal remedies, criminal or civil, which may be pursued by the Water Management District.***
5. ***Enforcement Officer – “Enforcement Officer” shall mean any employee or agent of the Water Management District with the authority to enforce any provision of the District Rules and Regulations.***
6. ***Hearing Officer – “Hearing Officer” shall mean an individual nominated by a seated Director and confirmed by a majority of the District Board to conduct an administrative hearing.***
7. ***Hearing Officer Panel – “Hearing Officer Panel” shall mean a group of seven members selected to hear administrative violations.***
8. ***Presiding Officer – “Presiding Officer” shall mean the Chair of the Hearing Officer Panel who serves at the pleasure of the Board Chair.***
9. ***Public Nuisance – “Public Nuisance” shall mean the maintenance or use of water or property in the Water Management District in a manner that jeopardizes or endangers the health, safety or welfare of persons on the property or in the surrounding area.***

Section Four: Amendment of Rule 110 (General Enforcement)

- A. The existing text of Rule 110 shall be labeled as Rule 110 A.
- B. The existing text of Rule 111 shall be moved to Rule 110 B.
- C. The following text shall be added as Rule 110 C:

C. Cease and Desist Order.

- 1. If General Manager determines that water or property in the District is being used or maintained in a manner that creates or fosters the creation of a Public Nuisance, the General Manager shall issue a nuisance abatement Cease and Desist Order to the owner of the subject property, the occupant of the subject property and/or to any other Person(s) responsible for creating or fostering the creation of the Public Nuisance.***
- 2. The nuisance abatement Cease and Desist Order shall:***
 - a. Describe the nature of the Public Nuisance being created maintained or fostered by or on the subject property; and***
 - b. Specify a compliance date by which the Public Nuisance shall cease.***
- 3. A nuisance abatement Cease and Desist Order shall be deemed to be prima facie evidence that the activities, behaviors, conditions or situations described in the order are creating or fostering the creation of a Public Nuisance unless and until the Board or a court of competent jurisdiction determines otherwise.***

- D. The existing text of Rule 114 shall be moved to Rule 110 D.

Section Five: Addition of Rule 110.5 (Administrative Remedies)

The following text shall be added as Rule 110.5:

RULE 110.5 ADMINISTRATIVE REMEDIES

The General Manager is authorized to use any administrative remedy set forth in this Regulation to achieve enforcement of District Rules and Regulations, in addition to any other legal remedy, criminal or civil, which may be pursued by the District to address a violation of these Rules and Regulations. Use of administrative remedies provided by this Regulation shall be at the sole discretion of the District.

Section Six: Amendment of Rule 111 (Charges and Penalty Assessments)

Rule 111 is renamed Administrative Citation.
The following text shall be added as Rule 111:

RULE 111 ADMINISTRATIVE CITATION

A. Administrative Citations generally address violations of the District Rules and Regulations that the District, in its sole discretion, deems to be minor or transient in nature. The District adopts the Administration Citation enforcement process, set forth in this Regulation pursuant to California Government Code Section 53069.4, which provides for de novo review of Administrative Citations in court if a Person wishes to challenge an administrative decision upholding an Administrative Citation. For example, and not by exclusion, Administrative Citations may be used to enforce water waste, water rationing, permit condition and minor or non-recurring violations of the District's Rules and Regulations.

B. Whenever the General Manager determines that a violation of the Rules and Regulations has occurred, the General Manager shall have the authority to issue an Administrative Citation to any Person responsible for the violation. The Board of Directors, by Resolution, shall adopt guidelines to guide staff's implementation of Administrative Citation process provided by this Rule.

C. Each Administrative Citation shall be served in accord with the provisions of Rule 111.7, and shall contain the following information:

- 1. The date of the violation or, if the date of the violation is unknown, then the date the violation is identified;*
- 2. The address or a definite description of the location where the violation occurred;*
- 3. Reference to the section of the Rules and Regulations, or to the provisions of any ordinance, violated and a description of the circumstances pertaining to the violation;*
- 4. The amount of the fine for the Rules and Regulations violation determined in accord with this Regulation;*
- 5. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;*
- 6. An order prohibiting the continuation or repeated occurrence of the Rules and Regulations violation described in the Administrative Citation;*
- 7. A description of the Administrative Citation review process, including the time within which the Administrative Citation may be contested and the place from which a request for hearing form to contest the Administrative Citation may be obtained; and*
- 8. The name and signature of the General Manager or his delegated agent acting as Enforcement Officer.*

Section Seven: Addition of Rule 111.5 (Administrative Compliance Order)

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The following text shall be added as Rule 111.5:

RULE 111.5 ADMINISTRATIVE COMPLIANCE ORDER

A. Administrative Compliance Orders generally address violations of District Rules and Regulations and ordinances that the General Manager, in his or her sole discretion, deems not suitable for the Administrative Citation process contemplated by this Regulation. For example, and not by exclusion, Administrative Compliance Orders be used for serious, continuing or recurring violations, or similar matters.

B. Whenever the General Manager determines that a violation of any provision of these Rules and Regulations or of any District ordinance has occurred or exists, the General Manager may issue a written compliance order to any Person responsible for the violation. The Board of Directors, by Resolution, shall adopt guidelines to guide staff's implementation of Administrative Compliance Order process provided by this Rule.

C. The Administrative Compliance Order sets forth a description of the observed violation(s), a description of what the Responsible Party is required to do to bring the water use or property into compliance, and the date by which compliance must be achieved. The Administrative Compliance Order provides notice as to administrative penalties that shall accrue if compliance with the order is not achieved by the date listed on the order. The Administrative Compliance Order may be contested through an administrative hearing process. The decision may contain an order to correct any violations determined to exist, together with an order to pay administrative penalties and costs.

D. An Administrative Compliance Order pursuant to this Rule shall be served in accord with the provisions of Rule 111.7, and shall contain the following information:

- 1. The date of the violation or, if the date of the violation is unknown, then the date the violation is identified;*
- 2. The address or a definite description of the location where the violation occurred;*
- 3. Reference to the section of the Rules and Regulations, or to the provisions of any ordinance, violated and a description of the circumstances pertaining to the violation;*
- 4. The amount of the fine for the Rules and Regulations violation determined in accord with this Regulation;*
- 5. The actions required to correct the violation;*
- 6. The penalty related to the violation, if compliance is not achieved;*
- 7. An order prohibiting the continuation or repeated occurrence of the Rules and Regulations violation described in the Administrative Compliance Order;*

8. *A description of the Administrative Compliance Order process, including the time within which the Administrative Compliance Order may be contested and the place from which a request for hearing form may be obtained and an explanation of the consequences of noncompliance with this Regulation; and*
9. *The name and signature of the General Manager or his delegated agent acting as Enforcement Officer.*

Section Eight: Addition of Rule 111.7 (Notices)

The following text shall be added as Rule 111.7:

RULE 111.7 NOTICES

- A. *All notices required by this Regulation shall be served by personal delivery to the Person to be notified or by deposit in the United States Mail, in a sealed envelope postage prepaid, addressed to such Person to be notified at his last-known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office.*
- B. *Proof of giving any notice may be made by the certificate of any officer or employee of the District, or by affidavit of any Person over the age of eighteen years, which shows service in conformity with this Rule or other provisions of law applicable to the service of process.*
- C. *Where real property is involved, written notice shall be mailed to the property owner at the address as shown on the last equalized county assessment roll.*
- D. *Where Personal service or service by mail upon the property owner is unsuccessful, a copy of the order shall be conspicuously posted at the property which is the subject of the order.*
- E. *The failure of any Person to receive any notice required under this Regulation shall not affect the validity of any proceedings taken under this Regulation.*

Section Nine: Amendment of Rule 112 (Administration of Rationing Penalties)

Rule 112 is renamed Hearing Officer Panel.

The following text shall be added as Rule 112:

RULE 112 HEARING OFFICER PANEL

A Hearing Officer Panel consisting of seven (7) members appointed by the Board of Directors of the District shall be created and empanelled.

The appointment, performance evaluation, compensation and/or benefits provided to any member of the Hearing Officer Panel shall not be directly or indirectly conditioned upon the amount of fines imposed by the Hearing Officer.

Section Ten: Addition of Rule 112.1 (Hearing Officer Panel Appointment; Removal)

The following text shall be added as Rule 112.1:

RULE 112.1 HEARING OFFICER PANEL APPOINTMENT; REMOVAL

A. Members of the Hearing Officer Panel shall be nominated by seated Directors, and confirmed by a majority of the District Board. Each appointee to the Hearing Officer Panel shall serve for a two-year term, provided however, that four members of the panel shall be appointed to terms ending on January 31st in even-numbered years, and three members of the panel shall be appointed to terms ending on January 31st in odd-numbered years. Any vacancy on the Hearing Officer Panel shall be filled for the unexpired remainder of that term by the same appointment process.

B. Any member of the Hearing Officer Panel may be removed prior to the expiration of his or her term by a majority vote of the Board, in the Board's discretion.

Section Eleven: Addition of Rule 112.2 (Hearing Officer Presiding Officer)

The following text shall be added as Rule 112.2:

RULE 112.2 HEARING OFFICER PRESIDING OFFICER

The Chair of the District Board shall select one member of the Hearing Officer Panel to be the Presiding Officer. The Presiding Officer shall serve in that capacity at the pleasure of the Board Chair. Should the Presiding Officer be absent or unavailable, a majority of the remaining members of the Hearing Officer Panel shall appoint an acting Presiding Officer to perform the duties of the Presiding Officer.

Section Twelve: Addition of Rule 112.3 (Hearing Officer Panel Meetings)

The following text shall be added as Rule 112.3:

RULE 112.3 HEARING OFFICER PANEL MEETINGS

The Presiding Officer shall act as the Chair of the Hearing Officer Panel at any meeting of that panel. All meetings of the Hearing Officer Panel shall be open and noticed in accord with the requirements of the Ralph M. Brown Act.

The Presiding Officer, any member of the Hearing Officer Panel, the General Manager, or District General Counsel may place for review and discussion before that Panel any final Administrative Citation, final Administrative Compliance Order, or a final nuisance abatement Cease and Desist Order issued pursuant to this regulation. This review, however, shall be limited to training purposes only and shall not cause modification of any citation or order.

Section Thirteen: Addition of Rule 112.4 (Hearing Officer Panel Rules and Procedures)

The following text shall be added as Rule 112.4:

RULE 112.4 HEARING OFFICER PANEL PROCEDURES

The Hearing Officer Panel may establish and modify, taking into consideration the advice of District General Counsel, procedures that shall govern the conduct of any hearing to review an Administrative Citation, Administrative Compliance Order, or a nuisance abatement Cease and Desist Order. All such rules and procedures shall be provided to any participant in that hearing. District General Counsel shall provide periodic training to the Hearing Officer Panel to promote adherence to due process and ethical hearing practices.

Section Fourteen: Addition of Rule 112.5 (Hearing Officer Selection)

The following text shall be added as Rule 112.5:

RULE 112.5 HEARING OFFICER SELECTION

The Presiding Officer of the Hearing Officer Panel shall, by random lot, designate one member of the Hearing Officer Panel to be the Hearing Officer for each hearing. The Presiding Officer may be chosen as a Hearing Officer. Should a selected Hearing Officer be disqualified for cause, or should that Hearing Officer otherwise be unable to conduct the hearing, the Presiding Officer shall by random lot designate a successor Hearing Officer from available members of the Hearing Officer Panel.

Section Fifteen: Addition of Rule 113.1 (Administrative Fines)

The following text shall be added as Rule 113.1:

RULE 113.1 ADMINISTRATIVE FINES

A. Any fine required pursuant to an Administrative Citation, Administrative Compliance Order, or nuisance abatement Cease and Desist Order shall be paid to the District within thirty (30) days from the date of the citation or order unless a deposit waiver has been issued in accord with Rule 113.2.

B. Any paid fine shall be refunded in accordance with Section 114.4-I if it is determined, after a hearing, that the Person charged in the citation or order was not responsible for the violation or that there was no violation as charged.

C. Payment of a fine under this Regulation shall not excuse or discharge any continuation or repeated occurrence of the violation.

Section Sixteen: Addition of Rule 113.2 (Advance Deposit Hardship Waiver)

The following text shall be added as Rule 113.2:

RULE 113.2 ADVANCE DEPOSIT HARDSHIP WAIVER

A. Any Person who intends to request a hearing to contest that there was a violation of these Rules and Regulations or that he or she is the Responsible Party and who is financially unable to make the advance deposit of the fine as required in Rule 113.1 may file a request for an advance deposit hardship waiver.

B. The request shall be filed with the General Manager within fifteen (15) days of the date of the citation or order.

C. The requirement to deposit the full amount of the fine as described in Rule 113.1 shall be stayed unless or until the General Manager makes a written determination not to issue the advance deposit hardship waiver.

D. The General Manager may waive the requirement of an advance deposit set forth in Rule 113.1 and issue the advance deposit hardship waiver only if the cited party submits to the General Manager a sworn affidavit, together with any supporting documents or materials, demonstrating to the satisfaction of the General Manager the Person's actual financial inability to deposit with the District the full amount of the fine in advance of the hearing.

E. If the General Manager determines not to issue an advance deposit hardship waiver, the Person shall remit the deposit to the District within ten (10) days of the date of that decision or thirty (30) days from the date of the citation or order, whichever is later.

F. The General Manager shall issue a written determination listing the reasons for his or her determination to issue or not issue the advance deposit hardship waiver. The written determination of the General Manager shall be final.

G. The written determination of the General Manager shall be served upon the Person who applied for the advance deposit hardship waiver.

Section Seventeen: Addition of Rule 114.1 (Hearing Request)

The following text shall be added as Rule 114.1:

RULE 114.1 HEARING REQUEST

A. Any recipient of an Administrative Citation, Administrative Compliance Order, or a nuisance abatement Cease and Desist Order may contest that there was a violation of these Rules and Regulations, or that he or she is the Responsible Party, or that a penalty should not be imposed by completing a request for hearing form and returning it to the District within thirty (30) days from the date of the Administrative Citation, Administrative Compliance Order, or a nuisance abatement Cease and Desist Order together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed pursuant to Rule 113.2.

B. A request for hearing form may be obtained from the General Manager.

Section Eighteen: Addition of Rule 114.2 (Administrative Compliance Hearing)

The following text shall be added as Rule 114.2:

RULE 114.2 ADMINISTRATIVE COMPLIANCE HEARING

A. If the General Manager determines that all violations have been corrected within the time specified in the Administrative Citation or Administrative Compliance Order, no further action shall be taken. Notice of this action shall be forwarded to any party requesting a hearing.

B. If full compliance as to each violation is not achieved within the time specified in the Administrative Citation or Administrative Compliance Order, the General Manager shall advise the Presiding Officer of the Hearing Officer Panel. Each request for a Hearing Officer shall also be forwarded to the Presiding Officer of the Hearing Officer Panel. The Presiding Officer of the Hearing Officer Panel shall designate a Hearing Officer in accord with Rule 112.5.

C. The selected Hearing Officer shall cause a written notice of hearing to be served on the violator and, where real property is involved, a notice of hearing shall be served on the property owner at the address as it appears on the last equalized county assessment roll available on the date the notice is prepared.

Section Nineteen: Addition of Rule 114.3 (Notice of Hearing)

The following text shall be added as Rule 114.3:

RULE 114.3 NOTICE OF HEARING

A. Every notice of hearing on an Administrative Citation, or Administrative Compliance Order, or a nuisance abatement Cease and Desist Order shall comply with Rule 111.7 and shall contain the date, time and place at which the hearing shall be conducted by the Hearing Officer in accord with Rules 114.1 through 114.5.

B. Each hearing shall be set for a date not less than fifteen (15) days nor more than sixty (60) days from the date of the notice of hearing unless the General Manager determines that the matter is urgent or that good cause exists for an extension of time.

C. This hearing serves to provide the full opportunity of a Person subject to a Administrative Citation, Administrative Compliance Order, or a nuisance abatement Cease and Desist Order to object to the determination that a violation has occurred and/or that the violation has continued to exist and/or that a public nuisance exists. The failure of any Person subject to an Administrative Citation, Administrative Compliance Order or nuisance abatement Cease and Desist Order, pursuant to this Regulation, to appear at the hearing shall constitute a failure to exhaust administrative remedies.

Section Twenty: Addition of Rule 114.4 (Compliance Hearing; Findings)

The following text shall be added as Rule 114.4:

RULE 114.4 COMPLIANCE HEARING; FINDINGS

A. At the place and time set forth in the notice of hearing, the Hearing Officer shall conduct a hearing on the citation or order issued pursuant to Rules 110, 111, or 111.5, and in accord with procedures as may be promulgated by the Hearing Officer Panel.

B. The Hearing Officer shall consider written or oral evidence pursuant to rules and procedures set by the Hearing Officer Panel pursuant to Rule 112.4. Evidence regarding the alleged violation or compliance actions may be presented by any party, including the alleged violator, the owner or occupant any real property affected by the alleged violation, and/or by the District.

C. The Hearing Officer shall further consider any objectively reasonable efforts made by a Person who is subject to an Administrative Citation, Administrative Compliance Order, or nuisance abatement Cease and Desist Order to comply with that order prior to the compliance date. The Hearing Officer may take into consideration any condition or situation beyond the control of a Person subject to a nuisance abatement Cease and Desist Order that prevents compliance with that order.

D. The citation or order, and any additional material, submitted by the District Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents. A report on the alleged violation shall set forth a detailed recommendation as to relevant findings and conclusions that flow from the facts presented and a recommended decision based upon those findings and conclusions. This report shall meet the standards for

administrative findings set forth in Topanga Assn. for a Scenic Community v. County of Los Angeles, 11 Cal.3d 506 (1974).

E. The Hearing Officer may question witnesses and/or request additional information from the Enforcement Officer or any party prior to closing the hearing.

F. Within a reasonable time following the conclusion of the hearing, the Hearing Officer shall make findings and issue a determination, as to each alleged violation, regarding:

- 1. The existence of the violation and/or Public Nuisance;*
- 2. Whether a nuisance exists that requires abatement;*
- 3. The identity of each responsible Person;*
- 4. The failure of the violator or owner to take required corrective action within the required time period;*
- 5. The absence, or extent, of mitigating conditions or situations beyond the control of the Person subject to the order.*

G. Findings shall be supported by evidence received at the hearing.

H. If the Hearing Officer finds by a preponderance of the evidence that a violation has occurred and that the violation was not corrected within the time period specified in the order, the Hearing Officer shall issue an Administrative Order in accord with this Regulation and may order reimbursement to the District for the District's administrative costs incurred in the proceeding pursuant to Rule 115.2-A.

I. If the Hearing Officer finds that no violation has occurred or that the violation was corrected within the time period specified in the order, the Hearing Officer shall issue a finding as to those facts and may order reimbursement to the alleged violator for reasonable and necessary costs incurred to defend that proceeding pursuant to Rule 115.2-B.

J. If the Hearing Officer finds a nuisance requires abatement, the Hearing Officer shall also issue an abatement order and may impose any or all of the following:

- 1. An order to discontinue the use of or certain activity at the subject property, temporarily or permanently, as needed to protect the health, safety or welfare of Persons or property on or near the subject property or to eliminate, lessen or prevent the continuation, exacerbation or reoccurrence of the detrimental impacts created by the Public Nuisance; and*
- 2. An order imposing conditions on the continued use of or certain activity at the subject property, as needed to protect the health, safety or welfare of Persons or property on or near the subject property or to eliminate, lessen or prevent the continuation, exacerbation or recurrence of the detrimental impacts created by the nuisance; and*
- 3. Where the implementation of conditions requires a permit or an amendment to an existing permit, an order conditioned upon the property owner applying for and*

obtaining the permit or modification of an existing permit applicable to the subject property.

Section Twenty-One: Addition of Rule 114.5 (Administrative Order)

The following text shall be added as Rule 114.5:

RULE 114.5 ADMINISTRATIVE ORDER

If the Hearing Officer determines, by a preponderance of the evidence, that a violation or Public Nuisance occurred which was not corrected within the time period specified in the order, the Hearing Officer shall issue an Administrative Order that imposes any or all of the following:

- A. An order to correct, including a schedule for correction where appropriate;*
- B. Administrative penalties as provided in Rule 115.1;*
- C. Administrative costs as provided in Rule 115.2.*

Section Twenty-Two: Addition of Rule 115.1 (Administrative Penalties)

The following text shall be added as Rule 115.1:

RULE 115.1 ADMINISTRATIVE PENALTIES

A. In accord with this Regulation, the Hearing Officer may impose administrative penalties for the violation of any provision of these Rules and Regulations, or for allowing an unabated Public Nuisance, in an amount not to exceed a maximum of two thousand five hundred dollars (\$2,500.00) per day for each ongoing violation, except that the total administrative penalty shall not exceed one hundred thousand dollars (\$100,000.00) exclusive of administrative costs, interest and restitution for compliance re-inspections, for any related series of violations.

B. Penalty fines for violation of the District Rules and Regulations, and the fine for any citation or order, shall be set forth in the schedule of fines established, and periodically amended, by Resolution of the District Board. The schedule of fines shall specify an increased penalty fine for repeat violation of the same provision by the same Person within thirty-six (36) months from the date of an Administrative Citation. The schedule of fines shall specify the amount of any late payment charges imposed for the payment of a fine after its due date.

C. In determining the amount of the administrative penalty, the Hearing Officer may take any or all of the following factors into consideration:

- 1. The duration of the violation(s) and/or Public Nuisance;*

2. *The frequency, recurrence and number of violations, related or unrelated, by the same violator or at the same Site;*
3. *The seriousness of each violation;*
4. *The good faith efforts of the violator to come into compliance;*
5. *The economic impact of the penalty on the violator;*
6. *The impact of the violation on the community;*
7. *Such other factors as justice may require.*

D. Administrative penalties shall accrue from the date specified in the citation or order and shall cease to accrue on the date the violation is corrected as determined by the Hearing Officer.

E. The Hearing Officer, in his or her discretion, may suspend the imposition of applicable penalties for any period of time during which:

1. *The violator has filed for necessary permits; and*
2. *Such permits are required to achieve compliance; and*
3. *Such permit applications are actively pending before the District or other appropriate Governmental agency.*

F. Administrative penalties shall be due by the date specified in the Administrative Order.

G. Administrative penalties are a debt owed to the District and, in addition to all other means of enforcement, if the violation is located on real property, may be enforced by means of a lien against the real property on which the violation occurred.

H. If the violation is not corrected as specified in the Hearing Officer's order to correct, administrative penalties shall continue to accrue on a daily basis until the violation is corrected, subject to the maximum amount set forth above in this Rule.

I. If the violator gives written notice to the General Manager that the violation has been corrected and if the General Manager finds that compliance has been achieved, the General Manager shall deem the date the written notice was postmarked or personally delivered to the General Manager or the date of the final inspection, whichever first occurred, to be the date the violation was corrected. If written notice is not provided to the General Manager, the violation will be deemed corrected on the date of the final inspection.

Section Twenty-Three: Addition of Rule 115.2 (Administrative Costs)

The following text shall be added as Rule 115.2:

RULE 115.2 ADMINISTRATIVE COSTS

A. The Hearing Officer shall assess administrative costs against the violator when it finds that a violation has occurred and that compliance has not been achieved within the time specified in the order.

B. The Hearing Officer shall assess administrative costs against the District when it finds that evidence available to the District before the hearing was convened that reasonably established that a violation had not occurred or that compliance had been achieved within the time specified in the order.

C. The administrative costs shall include reasonable and necessary costs incurred in connection with the matter before the Hearing Officer including, but not limited to, costs of investigation, costs incurred to prepare for the hearing and for the hearing itself, and costs for all re-inspections necessary to enforce the order.

D. The Hearing Officer may waive the assessment of administrative costs against either party where unique circumstances are present, or in the interests of justice.

Section Twenty-Four: Addition of Rule 115.3 (Interest)

The following text shall be added as Rule 115.3:

RULE 115.3 INTEREST

Any Person who fails to remit payment to the District of any fee, fine, penalty, cost or any other charge required to be paid to the District pursuant to this Regulation on or before the date it is due shall, in addition to the amount of the fee, fine, penalty, cost, and charge, pay interest on the amount due at the rate of ten (10) percent per annum, pro-rata, from the date on which the amount due first became delinquent until the date that payment is received by the District.

Section Twenty-Five: Addition of Rule 116 (Failure to Comply with a Compliance Order)

The following text shall be added as Rule 116:

RULE 116 FAILURE TO COMPLY WITH AN ORDER

Failure to pay the assessed administrative penalties and/or administrative costs specified in the Administrative Order, or failure to pay additional administrative costs incurred due to non-compliance with a compliance order itself, shall be enforced by the General Manager as:

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1. *A Personal obligation of the violator; and/or*
2. *If the violation is in connection with real property, a lien upon the real property. The lien shall remain in effect until all of the administrative penalties, interest and administrative costs are paid in full.*

Section Twenty-Six: Addition of Rule 116.5 (Recovery of Administrative Penalties and Costs)

The following text shall be added as Rule 116.5:

RULE 116.5 RECOVERY OF ADMINISTRATIVE PENALTIES AND COSTS

The General Manager shall collect administrative penalties and administrative costs by use of all available legal means, including recordation of a lien pursuant to Rule 119.5.

Section Twenty-Seven: Addition of Rule 117 (Report of Compliance with Administrative Order)

The following text shall be added as Rule 117:

RULE 117 REPORT OF COMPLIANCE WITH ADMINISTRATIVE ORDER

When the General Manager determines that compliance has or has not been achieved in compliance with an order issued by a Hearing Officer, the General Manager shall file a report with the Hearing Officer Panel indicating whether or not compliance has been achieved.

Section Twenty-Eight: Addition of Rule 117.5 (Compliance Dispute)

The following text shall be added as Rule 117.5:

RULE 117.5 COMPLIANCE DISPUTE

A. If the General Manager does not file a report pursuant to Rule 117, above, or in the event an error is alleged in a report so filed, any Person who believes that compliance has been achieved may request a compliance hearing before the Hearing Officer by filing a request for a hearing with the Presiding Officer of the Hearing Panel.

B. The hearing on the compliance dispute shall be noticed and conducted in the same manner as a hearing on an order provided in this Regulation.

C. The Hearing Officer shall determine if compliance has been achieved and, if so, when it was achieved. Based on this finding, the Hearing Officer may issue an order to provide relief, or may impose further enforcement remedies.

Section Twenty-Nine: Addition of Rule 118 (Judicial Review)

The following text shall be added as Rule 118:

RULE 118 JUDICIAL REVIEW

Any Person aggrieved by the final determination of any Hearing Officer under this Regulation, may obtain review of the Administrative Order in the Superior Court by filing with the court a petition for writ of mandate pursuant to the provisions and timelines set forth in Rule 16 of these Rules and Regulations and in accord with the California Government Code Section 53069.4.

Section Thirty: Addition of Rule 119.1 (Late Payment Charges)

The following text shall be added as Rule 119.1:

RULE 119.1 LATE PAYMENT CHARGES

Any Person who fails to pay to the District any fine imposed pursuant to the provisions of this Regulation on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the schedule of fines.

Section Thirty-One: Addition of Rule 119.2 (Recovery of Administrative Citation Fines and Costs)

The following text shall be added as Rule 119.2:

RULE 119.2 RECOVERY OF ADMINISTRATIVE FINES AND COSTS

The District may collect any past due fines or late payment charges assessed in accord with this Regulation by use of all available legal means.

Section Thirty-Two: Addition of Rule 119.3 (Lien Procedure)

The following text shall be added as Rule 119.3:

RULE 119.3 LIEN PROCEDURE

The existing text of Rule 113 shall be added as Rule 119.3 A.

The following text shall be added as Rule 119.3 B through G, respectively:

B. Whenever the amount of any administrative penalty and/or administrative cost imposed pursuant to this Regulation in connection with real property has not been satisfied in full within ninety (90) days and/or has not been successfully challenged by a timely writ of mandate, this obligation may constitute a lien against the real property on which the violation occurred.

C. The lien provided herein shall have no force and effect until recorded with the County Recorder. Once recorded, the Administrative Order shall have the force and effect and priority of a judgment lien governed by the provisions of Sections 697.340 of the Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive, of the Code of Civil Procedure.

D. Interest shall accrue on the principal amount of the judgment remaining unsatisfied pursuant to law.

E. Prior to recording any such lien, the General Manager shall prepare and file with the Board a report stating the amounts due and owing.

F. The General Manager shall fix a time, date and place for hearing before the Board on the report and any protests or objections thereto.

G. The General Manager shall cause written notice to be served on the property owner not less than ten (10) days prior to the time set for the hearing. Such notice shall be served as provided in this Regulation.

Section Thirty-Three: Addition of Rule 119.4 (Lien Hearing and Protests)

The following text shall be added as Rule 119.4:

RULE 119.4 LIEN HEARING AND PROTESTS

A. Any Person whose real property is subject to a lien pursuant to Rule 119.3 may file a written protest with the General Manager and/or may protest orally at the Board meeting.

B. Each written protest or objection must contain a description of the property in which the protesting party is interested and the grounds of such protest or objection.

C. The Board, after the hearing, shall adopt a resolution confirming, discharging or modifying the amount of the lien.

Section Thirty-Four: Addition of Rule 119.5 (Recording of Lien)

The following text shall be added as Rule 119.5:

RULE 119.5 RECORDING OF LIEN

Thirty (30) days following the adoption of a resolution by the Board imposing a lien, the General Manager shall file the same as a judgment lien in the Office of the County Recorder of Monterey County, California. The lien may carry such additional administrative charges as set forth by resolution of the Board.

Section Thirty-Five: Addition of Rule 119.6 (Satisfaction of Lien)

The following text shall be added as Rule 119.6:

RULE 119.6 SATISFACTION OF LIEN

If payment in full is received by the District for outstanding penalties and costs, the General Manager shall either record a notice of satisfaction or provide the property owner or financial institution with a notice of satisfaction so they may record this notice with the Office of the County Recorder. Such notice of satisfaction shall cancel the District's lien.

Section Thirty-Six: Publication and Application

The provisions of this ordinance shall cause the amendment and republication of Rule 11, the amendment of Rules 110, 111, 112 and 114, and the addition of Rules 110.5, 111, 111.5, 111.7, 112, 112.1 through 112.5, 113.1 to 113.2, 114.1 through 114.5, 115.1 through 115.3, 116, 116.5, 117, 117.5, 118, and 119.1 through 119.6.

Section Thirty-Seven: Effective Date

This ordinance shall be given effect at 12:01 a.m. on the _____.
[Insert the date for the thirty first day after enactment].

Section Thirty-Eight: Sunset

This ordinance shall not have a sunset date.

Section Thirty-Nine: Severability

If any subdivision, clause, or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management 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 of Director _____, and second by Director _____, the foregoing ordinance is adopted upon this ____ day of _____, 2007, by the following vote:

AYES:

NAYS:

ABSENT:

I, David A. Berger, 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 ____ day of _____, 2007.

Witness my hand and seal of the Board of Directors this ____ day of _____, 2007.

David A. Berger, Secretary to the Board

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