

ORDINANCE NO. 106

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT REVISING THE PERMIT PROCESSING FEES FOR WATER DISTRIBUTION SYSTEM APPLICATIONS

FINDINGS

1. The Water Peninsula Water Management District (MPWMD or 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 is authorized to establish a written permit system for regulation of water distribution systems, regardless of the number of connections served or the source of the water supply.
3. The board of directors finds that regulating all water distribution systems, including mobile water distribution systems, is necessary to protect District water resources and to assure that sufficient water will be available for present and future beneficial use by all District inhabitants and lands.
4. The board of directors finds, in light of State Water Resources Control Board (SWRCB) Order WR 95-10, and the listing of the California red-legged frog and steelhead as threatened species under the federal Endangered Species Act (ESA), that the public trust resources of the Carmel River must be protected, while respecting the historic agricultural nature of the Carmel Valley.
5. The Water Management District has enacted, by ordinance, a set of Rules and Regulations to implement its statutory authority. District Rule 11 defines the terms used in the regulation of water distribution systems and mobile water distribution systems. District Rules 20, 22, 40, 54-56 and 173 further define procedural and substantive rules that regulate these systems. Although these rules have been amended from time to time, the fundamental scope of these regulations was first enacted in the early 1980s. Definitions for the terms "water distribution system" and "water-gathering facility" were enacted on February 2, 1980 by Ordinance No. 1. The definition of "Source of Supply" was enacted on July 11, 1980 by Ordinance No. 3. The term "mobile water distribution system" was defined on July 13, 1981 by Ordinance No. 7. Significant refinements, changes and additions to the rules and regulations governing water distribution systems were adopted as part of Ordinance No. 96 on March 19, 2001 and as part of Ordinance No. 105 on December 16, 2002.

6. The Water Management District has enacted a comprehensive scheme to review and regulate the creation and expansion of water distribution systems. That scheme was first enacted on February 11, 1980, by Ordinance No. 1, and has since been amended from time to time, most recently with Ordinance No. 96 adopted on March 19, 2001 and with Ordinance No. 105 adopted on December 16, 2002.
7. The Water Management District Board of Directors reaffirms the need to address the concerns enumerated in the Ordinance No. 96 Findings such as: (i) the cumulative impact of water distribution systems have upon the water resource, (ii) the demand burden on other systems that can result from failure of small systems, (iii) the adequacy of fire suppression afforded by small systems, (iv) water quality issues, (v) cross-contamination of water supplies and water systems, (vi) public utility service area limits, (vii) the need for clear identification of water rights for water systems, and (viii) the pressure to create new water systems due to lack of California-American Water Company (Cal-Am) supply as a result of State Water Resources Control Board (SWRCB) Order WR 95-10.
8. Since Ordinance No. 96 became effective in April 2001, six water distribution system applications have been submitted to the Water Management District; four have been approved, one was denied without prejudice pending additional information, and one is in process as of January 2003. Based on this experience, the District has determined that staff and legal expenses associated with processing each application are greater than the revenues received from permit processing fees. Recommended refinements to permit processing fees and suggested changes to the Rules and Regulations were suggested.
9. The Water Management District Board of Directors has reviewed recommended permit processing fee concepts and provided opportunity for public comment at the December 16, 2002, January 30, 2003 and February 27, 2003 regular Board meetings, as well as the Administrative Committee meeting held on January 21, 2003.
10. At its meeting of January 30, 2003, the Water Management District Board of Directors determined that this Ordinance No. 106 is exempt from California Environmental Quality Act (CEQA) as it is solely fiscal in nature, and does not meet the definition of a "project" under CEQA. A Notice of Exemption was filed on March 7, 2003 based on Board direction at its meetings of January 30 and February 27, 2003.
11. This ordinance is adopted to enhance the District's ability to protect water quality and quantity, to prevent diminution of waters within the District, to protect environmental values, and is consistent with the District's authority to reasonably regulate in-stream, surface, and subterranean water supplies within District boundaries.
12. This ordinance shall amend Regulation VI, Rule 60 of the Rules and Regulations of the Water Management District.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: **Short Title**

This ordinance shall be known as the Water Distribution System Application Fee Ordinance of the Monterey Peninsula Water Management District. Separate Implementation Guidelines associated with regulation of water distribution systems will be refined to carry out this ordinance in an orderly and consistent manner, based on Board direction at a public meeting and the text contained herein.

Section Two: **Purpose**

This ordinance shall revise the permanent Rules and Regulations of the Water Management District to clarify the permit processing fees and associated procedures that affect creation or amendment of water distribution systems and mobile water distribution systems.

Section Three: **Amendment of Rule 60 (Permit Fees)**

District Regulation VI, Rule 60 shall be amended by deleting the following provisions shown in strikeout text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (*bold face*).

RULE 60. PERMIT FEES

Every applicant shall pay such non-refundable (*unless otherwise stated*) administrative processing fees at time of application as follows *in accordance with written Implementation Guidelines*:

A. Administrative fee for each Permit to Create/Establish a Water Distribution System:

~~\$1,400 for up to twenty (20) hours of staff time~~

1. MPWMD Staff Rate: MPWMD staff time is charged at a rate of \$70.00 per hour. There is no charge for the first hour of consultation prior to submitting an application.

2. Application Consultation Deposit Fee: A \$560 deposit for up to eight (8) hours of cumulative MPWMD staff time is required for application-related consultation with MPWMD staff after the first hour and prior to submitting a written application form. Unused funds may be applied to the application fee described in subsection A-3.

3. Application Fee: A fee of \$2,450 is payable at the time a written application form is submitted for up to thirty-five (35) hours of MPWMD staff time.

4. Deposit for Unusually Complex Projects: "Unusually complex projects" are defined as projects requiring MPWMD staff time in excess of the hours stated in subsections A-2 and A-3 above. When the hours stated in subsections A-2 and A-3 are used up, the applicant must pay

an additional deposit for MPWMD staff time anticipated to complete the permit process, as determined on a case-by-case basis by the General Manager.

5. Charge for Legal Fees: Any legal work performed by MPWMD Counsel associated with the application is charged to the applicant at actual cost, based on the hourly rate of retained MPWMD legal counsel at the time services are rendered.

6. Charge for Direct Costs: The applicant will be charged for direct costs associated with the permit application. Examples include notices of public hearings and filing fees charged by the Monterey County Clerk.

7. Unpaid Fees: Unpaid fees will result in termination of the permit process and/or withheld issuance of an otherwise valid permit.

8. Unused Funds: Unused deposits or application fee, described in subsections A-2, A-3 and A-4, will result in a refund of unused funds to the applicant.

B. Plan Check and Processing fee for Permit to Expand/Extend a Water Distribution System, or to use a Water Use Credit:

1. single-family and duplex residential connections: \$150 per dwelling unit
2. multi-family residential connections:
 - a. 10 or less dwelling units per free-standing structure: \$250 per structure
 - b. more than 10 dwelling units per free-standing structure: \$500 per structure
3. commercial/industrial connections:
 - a. capacity for annual water use of one-half (0.5) acre feet or less: \$250 per structure
 - b. capacity for annual water use greater than one-half (0.5) acre feet but not greater than (1.0) acre feet: \$500 per structure
 - c. capacity for annual water use greater than one (1.0) acre feet: \$750 per structure
4. unusually complex applications: \$70.00 per hour of staff time for all necessary efforts in excess of twenty (20) hours per application.
5. conditional water permits: \$750 per application

C. Fee for Expansion Surcharge - Those fees established annually, on or about July 1, by a resolution of the Board establishing the fees to be paid by new residential, commercial/governmental, and industrial users to pay for the projected costs of the irrigation program for the four wells in lower Carmel Valley.

D. Processing and Plan Check fee for each amendment of an expansion/extension permit:

1. residential connections: \$25 per dwelling unit
2. commercial/industrial: \$125 per free-standing structure
3. unusually complex amendments: ~~\$30.00~~ **\$70.00** per hour of staff time for all necessary efforts in excess of five (5) hours per amendment.

E. *Processing Fee for River Work Permits*

1. administrative fee for each minor river works permit: ~~\$10~~ **\$25**
2. administrative fee for each river works permit: ~~\$25~~ **\$50**
3. administrative fee for each emergency river works permit: ~~\$25~~ **\$50**
4. *unusually complex applications: \$70.00 per hour of MPWMD staff time in excess of five (5) hours per application, including direct costs incurred.*

FH. Administrative fee for each amendment of a water distribution system creation permit:

1. single-*parcel* connection system: ~~\$750~~ **\$1,400 for up to twenty (20) staff hours**
2. multiple-*parcel* connection system: ~~\$1,400~~ **\$2,450 for up to thirty-five (35) staff hours**
3. \$70.00 per hour for more than twenty (20) hours of staff time expended to process ~~(a) or (b)~~ **above a single-*parcel* connection system or thirty-five (35) hours for a multiple-*parcel* connection system.**
4. *application deposit, legal fees, unusually complex projects, direct costs, unpaid fees and unused funds are to be regulated as described in Rule 60-A above.*

GI. Processing and Plan Check fee for the recalculation of final connection fees pursuant to Rule 24 B: ~~\$30.00~~ **\$70.00** per hour of staff time for all necessary efforts in excess of five (5) hours per Site requiring recalculation.

HJ. Administrative fee for each application to transfer a water use credit pursuant to Rule 28:

1. transferred annual water use capacity of one-half (0.5) acre feet or less: \$250 per originating parcel.
2. transferred annual water use capacity greater than one-half (0.5) acre feet but not greater than one (1.0) acre feet: \$500 per originating parcel.

3. transferred annual water use capacity greater than one (1.0) acre feet: \$750 per originating parcel.
4. unusually complex applications for water transfers: ~~\$30.00~~ **\$70.00** per hour of staff time for all necessary efforts in excess of twenty (20) hours per application *as well as payment for direct costs incurred.*

IK. Administrative fee to review and process applications for fixtures added without proper permit: \$50 per unpermitted fixture.

JL. No administrative fee shall be charged for the following activities:

1. meter splits (separation of an existing master meter into separate meters).
2. reinstallation of a meter where there is no intensification on that site (Rule 25.5).

Section Four: **Publication and Application**

The provisions of this ordinance shall cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

Section titles and captions are provided for convenience and shall not be construed to limit the application of the text.

Section Five: **Effective Date and Sunset**

This ordinance shall be given effect at 12:01 a.m. on the *30th day following the date of its adoption on second reading.* This Ordinance shall ~~sunset when California American Water Company complies with Condition #2 of State Water Resources Control Board (SWRCB) Order WR-95-10~~ *shall have no sunset date.*

Section Six: **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 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 Erickson, and second by Director Lindstrom, the foregoing ordinance is adopted upon this 27th day of February, 2003 by the following vote:

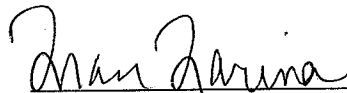
AYES: Directors Edwards, Erickson, Henson, Lehman and Lindstrom

NAYS: Director Pendergrass

ABSENT: Director Potter

I, Fran Farina, 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 27th day of February, 2003.

Witness my hand and seal of the Board of Directors this 28th day of March 2003.



Fran Farina, Secretary to the Board

