

FINAL

**ORDINANCE NO. 118
AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
REFINING THE WATER DISTRIBUTION SYSTEM PERMIT PROCESS, SETTING
FEES, AND AUTHORIZING ENFORCEMENT**

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 is authorized to establish a written permit system to regulate 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 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 11, 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 Ordinance No. 105 on December 16, 2002.
5. 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. 105 adopted on December 16, 2002 (effective January 15, 2003).
6. Since Ordinance No. 105 became effective in January 2003, the District has encountered situations that were not anticipated or explicitly addressed in the Rules and Regulations.

Based on this information, recommended refinements and clarifications to the Rules and Regulations were suggested.

7. This Ordinance is intended to authorize the collection of administrative fees for staff time required to secure compliance with the refinements and clarifications contained herein. Pursuant to California Environmental Quality Act (CEQA) Guidelines section 15273(a)(1) (Rates, Tolls, Fares, Charges), this ordinance is exempt from CEQA as its intent is to meet operating expenses, including employee wage rates and fringe benefits, consultant services, legal services and direct costs associates with each water distribution system application, including permit processing, enforcement and litigation.
8. This Ordinance is intended to authorize the enforcement of these refinements and clarifications in addition to the authority granted in District Rules 110, 111, and 112.
9. The Water Management District Board of Directors has reviewed recommended ordinance concepts and received input from the public at the Rules & Regulations Review Committee meetings of June 22, 2004, August 2, 2004 and October 27, 2004 and at regular board meetings on August 16, 2004, November 15, 2004 and December 13, 2004.
10. At its meeting of November 15, 2004, the Water Management District Board of Directors determined that this Ordinance No. 118 is exempt from CEQA as it can be seen with certainty that there is no possibility that these procedural refinements, fee setting and enforcement authorization may have a significant effect on the environment (CEQA Guidelines section 15063(b)(3)). The MPWMD Board also found that Ordinance No. 118 is exempt from CEQA pursuant to statutory and categorical exemptions described in CEQA Guidelines sections 15273(a)(1) and 15321(a). A Notice of Exemption was filed on December 15, 2004 based on Board direction at its meeting of December 13, 2004.
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 Rules 11, 20, 21, 22, 40 and 60 of the Rules and Regulations of the Water Management District, and shall add a new Rule 20.4 and 114 to those Rules and Regulations.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the Water Distribution System Regulation Refinement Ordinance of the Monterey Peninsula Water Management District.

Section Two Purpose

This ordinance shall revise the permanent Rules and Regulations of the Water Management District to clarify procedures that affect the creation, amendment, expansion or extension of water distribution systems and mobile water distribution systems. This ordinance shall also set fees and authorize enforcement related to the clarified procedures.

Section Three: Addition of Rule 20.4 (Permit Rule Noncompliance)

Monterey Peninsula Water Management District Rule 20.4 shall be added, as follows:

RULE 20.4 PERMIT RULE NONCOMPLIANCE

A. NOTIFICATION

When the General Manager first becomes aware that a water distribution system is operating without a permit, he/she shall provide written notification to the owner and operator, if known, of the water distribution system that District Rule 20 has been violated. Copies of this notice shall be provided to each property owner receiving water from the unpermitted water distribution system, to the extent known. Notice shall be deemed to have been given when the written notification has been deposited in the U.S. mail, postpaid, addressed to the responsible party, or when personally delivered. The owner of the water distribution system shall file an application for a permit in accord with District Rule 21 within sixty (60) days of notification.

B. RECORD NOTICE OF NON-COMPLIANCE

- 1. If the owner of a water distribution system has not filed the application within sixty (60) days of the date required in Section A above, the General Manager shall record Notices of Non-Compliance against all properties receiving water from the unpermitted water distribution system.*
- 2. The General Manager shall cause Notices of Compliance to be recorded only at such time as the water distribution system has received a permit pursuant to District Rules 20 and 22.*

C. AUTHORIZATION TO FILE LAWSUIT & IMPOSE LIENS

If the owner of an unpermitted water distribution system fails to file an application within thirty (30) days of the date a Notice of Non-Compliance is recorded, the General

Manager is authorized to file suit in Monterey County Superior Court to compel compliance with any and all permit requirements applicable to that water distribution system. Causes of action and relief sought may include, but are not limited to, nuisance, temporary restraining order, and injunction. The General Manager shall recover all legal fees, costs and administrative expenses incurred in such action as a fee imposed by the District upon the unpermitted water distribution system. The General Manager shall record a lien against each and every property receiving water from the unpermitted water distribution system if the fee for these costs or expenses is not paid in full within ninety (90) days of invoice mailed to the owner, provided the property upon which a lien is to be filed (i) has received a copy of that invoice, and (ii) that property has received water from the unpermitted water distribution system. Any lien authorized by this section shall not require prior Board approval as may be required for other liens pursuant to District Rule 113.

D. ADDITIONAL AUTHORITY

Creation, establishment, expansion or extension of a water distribution system without a written permit from the District is a misdemeanor punishable as an infraction as provided by Section 256 of the Monterey Peninsula Water Management District Law, Statutes of 1981, Chapter 986. The District may seek criminal prosecution and/or civil enforcement of its rules pursuant to this Section.

Section Four: Amendment of Rule 21 (Applications)

District Rule 21 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 21 APPLICATIONS

A. APPLICATION FOR PERMIT TO ~~CREATE/ESTABLISH~~ ESTABLISH/~~CREATE~~ A WATER DISTRIBUTION SYSTEM

The applicant *for a Permit to Create/Establish a Water Distribution System* shall submit the following:

1. A completed written application, *signed by the system owner*, in the manner and form prescribed by the Implementation Guidelines; and
2. Environmental information as required by the California Environmental Quality Act (CEQA); and
3. Zoning and land use designations for the property; identify land use approvals which may be required for the proposed project by the municipal unit in which proposed system would be located (i.e., tentative map, use permit, etc.), or by other governmental agencies, consistent with state and local regulations that require proof of available water supply; and

4. Identify type of water right claimed to exist with each water-gathering facility and each source of supply for the system (e.g., riparian, pre-1914, appropriative, overlying or other). Provide written verification of legal water rights applicable to type of right claimed. The verification shall include, but shall not be limited to the following forms of documentation: (a) Condition of Title Report, prepared by a Title Company at the applicant's expense, and any and all supporting documentation to indicate whether legal water rights have been subordinated or severed; this documentation may include a judicial declaration of right or a full title opinion prepared by an attorney with expertise in water law; (b) information that describes the legal basis or authority for diversion and extraction of water; (c) if groundwater is being pumped from a groundwater basin that has not been adjudicated, a statement to that effect in addition to a copy of the current deed to the property is sufficient documentation to satisfy this requirement; or (d) if the source of the water is subject to permit requirements under the State Water Resources Control Board, a copy of the SWRCB water rights permit or domestic registration must be included; and
 5. A copy of the application submitted to the Monterey County Environmental Health Department for Creation of a Water Distribution System *for multiple-connection systems only*; and
 6. The name and address of each responsible party; and
 7. The results of well capacity (aquifer pumping) tests for the duration specified by the Implementation Guidelines, the cost of which tests shall be borne by the applicant, and which shall be observed by a District representative or agent; and
 8. The results of water quality tests as specified by the Implementation Guidelines, the cost of which tests shall be borne by the applicant; and
 9. *An evaluation of the hydrogeologic information in the manner and form required in the Implementation Guidelines. This evaluation shall be prepared by a qualified individual or firm as determined by the District. Qualified consultants shall include a certified hydrogeologist, a registered geologist with a specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or a registered civil engineer with a specialty in hydrogeology; these specialists shall be certified in or registered by the State of California. The costs of this evaluation shall be borne by the applicant; and*
- 9-10. The applicable fees prescribed in Rule 60.

Amended and renumbered by Ordinance No. 96 (3/19/2001)

B. APPLICATION FOR PERMIT TO *EXPAND/EXTEND* ~~EXTEND/EXPAND~~ A WATER DISTRIBUTION SYSTEM

The applicant *for a Permit to Expand/Extend a Water Distribution System* shall submit the following:

[NOTE: No changes are proposed for the balance of this Section B.]

C. APPLICATION FOR AMENDMENT TO PERMIT

The applicant shall submit the following:

1. A completed written application in the manner and form prescribed by the General Manager, under Rule 22 or Rule 23 as appropriate to the proposed amendment. *An amendment to a water distribution system permit under Rule 22 E shall require the signature of the system owner. When the application involves the expansion or annexation to an existing water distribution system service area the application shall be processed as an amendment of the Permit to Create/Establish a Water Distribution System. When the application involves expansion of the water distribution system beyond its prior authorized system capacity (annual production) limit or its prior authorized expansion capacity (connection) limit, the application shall be processed as an amendment of the Permit to Create/Establish a Water Distribution System.*
2. *No owner or operator of a water distribution system shall modify, add to or change his/her source of supply, location of uses, change annual production or connection limits, or expand the service area unless that person first files an application to do so with the District and receives an amended creation/establishment permit.*
2. 3. The fee prescribed in Rule 60.
3. 4. The applicable connection charge prescribed in Rule 24, Connection Charges.

[NOTE: No changes are proposed for the balance of Section D, E, or F.]

Section Five: Amendment of Rule 22 (Action on Application for Permit to Create/Establish a Water Distribution System)

District Rule 22 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*).

[NOTE: No changes are proposed to Sections A through D 1.]

D. MANDATORY CONDITIONS OF APPROVAL

2. Every applicant, as a condition to holding a permit pursuant to this rule, shall report annually in the form and manner prescribed by the District: (i) the quantity of water delivered from each source of supply, (ii) *the* total water produced, and (iii) *the* average-daily *maximum* number of connections in the system, and (iv) the number of new connections and disconnections, (v) *provide* a map or maps of the service area, and (vi) *list* the identity and address of each responsible party as of ~~June~~ *September* 30th of the previous year.

E. AMENDMENTS TO PERMIT

No owner or operator of a water distribution system shall modify, add to or change his/her source of supply, location of uses, expand the system beyond the *system capacity (annual production) limit or the expansion capacity (connection) limit*, or expand the service area *including annexations*, unless that person first files an application to do so with the District and receives an amended creation/establishment permit. Such applications shall be made pursuant to Regulation II (Permits), shall comply with each rule therein, and shall be investigated, considered, determined and acted upon on the same terms and conditions as provided for the approval, conditional approval, or denial of a permit, as provided in this rule.

F. CANCELLATION OF APPLICATIONS

In processing an application for a Permit to Create/Establish a Water Distribution System, an applicant who receives an incomplete letter must provide the needed information within the period of time specified in the letter. Failure to comply shall result in cancellation of the application, without prejudice.

G. CANCELLATION OF UNISSUED PERMITS

A successful applicant must execute the indemnification agreement required by Rule 22 D 1 (d), pay all applicable fees as required by Rules 22 D 1 (g) and (l), sign the Acceptance of Permit Conditions pursuant to Rule 22 D 1 (m), and comply with all conditions precedent within sixty (60) days from permit approval. The General Manager shall cancel, without prejudice, any unissued permit that does not meet these requirements.

Section Six: Amendment of Rule 40 (Determination of System Capacity and Expansion Capacity Limits)

District Rule 40 shall be amended by adding the following provisions set forth in italicized and bold face type (*bold face*).

RULE 40 DETERMINATION OF SYSTEM CAPACITY AND EXPANSION CAPACITY LIMITS

A. DETERMINATION OF SYSTEM CAPACITY (PRODUCTION) AND EXPANSION CAPACITY (CONNECTION) LIMITS (“SYSTEM LIMITS”)

[NOTE: No changes are proposed for to Section A.]

B. ANNUAL WATER DELIVERY SYSTEM REPORT

The General Manager shall annually compile a report stating the quantity of water delivered from each source of supply, the total water produced, the average daily number of connections in the system, and the number of new connections in the system, and the number of new connections and disconnections in the previous water year for each water distribution system in the District. The General Manager shall compile this report from the reports submitted by the owner/operator of water distribution systems pursuant to Rule 22 and other sources as appropriate. *The General Manager shall identify all water distribution systems that meet all three of the following criteria: (i) have ten (10) or more connections, and (ii) of these connections, at least fifty percent (50%) are active connections, and (iii) the system (production) capacity exceeds the pro rata expansion capacity as defined in Rule 11.* Such report shall be submitted to the Board.

Amended by Ordinance No. 105 (12/16/2002)

C. SYSTEMS EXCEEDING PRO RATA EXPANSION CAPACITY

If the General Manager determines that a water distribution system exceeds its pro rata expansion capacity and meets all other criteria stated in Section B above, the General Manager shall:

- 1. Notify the owner or operator of a water distribution system that (i) the pro rata expansion capacity is not in balance with the system capacity, and (ii) that the owner or operator is required to prepare and implement a plan to bring the system back into balance. Plan measures may include installation of low water-use plumbing fixtures, landscape audits, removal of turf/landscape acreage, modification of rate structure, or other measures deemed acceptable by the General Manager;*
- 2. Require systems with multiple use types to provide a detailed breakdown of consumption reporting by individual use types (e.g., Single-Family Dwellings in each area of the system, Multi-Family Residential, Public Authority, Commercial, and Industrial) together with comparison of trends in average use per connection type over time;*
- 3. Increase system reporting for all times system water use exceeds the pro rata expansion capacity, and for twelve (12) consecutive months after the system water use is less than its pro rata expansion capacity;*

4. *Suspend receipt of expansion or extension applications for any system that exceeded its pro rata expansion capacity within the preceding twelve (12) months;*
5. *For any system that exceeds its authorized pro rata expansion capacity on more than one occasion, the suspension on receipt of expansion or extension applications shall continue after the system again returns to compliance until the General Manager has reviewed and concurs with credible expert analysis that the system can and will remain in compliance; and*
6. *Collect administrative fees as required by Rule 60 for services required to implement these requirements.*

C.D. FINDINGS—HEARINGS

1. *For systems which have not exceeded their system or expansion capacity limit but have exceeded their pro rata expansion capacity limit on more than one occasion, and a credible expert indicates the water distribution system cannot sustain the pro rata expansion capacity, the Board of Directors shall provide notice and hold a public hearing to consider an adjustment to the system limits based on credible evidence and make modifications in accordance therewith.*
2. The Board of Directors shall hold a public hearing to review the annual water delivery system report and other evidence as necessary, and determine if any water distribution system has reached or exceeded its *system or expansion capacity limit or that the system limits require modification*. Where a water distribution system has reached or exceeded its *system or expansion capacity limit or where the system limits have been modified*, the Board shall direct the General Manager or the delegated agent to deny any application for permit to expand or extend that system until the permit is amended.

D.E. NOTIFICATION

The General Manger shall, within thirty (30) days, notify all delegated agents and the owner/operator of the findings of the Board regarding any water distribution system that has reached or exceeded its *system or expansion capacity limit or that the system limits have been modified*. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the responsible party, or when personally delivered to the applicant or his representative.

Added by Ordinance No. 1 (2/11/80), amended by Ordinance No. 3 (7/11/80); formerly Rule 400, renumbered by Ordinance No. 6 (5/11/81)

Section Seven: Amendment of Rule 11 (Definitions)

District Rule 11 shall be amended by adding the following provisions set forth in italicized and bold face type (*bold face*).

PRO RATA EXPANSION CAPACITY—“*Pro Rata Expansion Capacity*” means the projected water use anticipated to meet the needs of each connection as determined by the system capacity. For example, if the system capacity (annual production) limit is 10 acre feet and the expansion capacity is 20 connections, the pro rata expansion capacity shall be 0.50 acre feet/connection.

SYSTEM LIMITS – “*System Limits*” means the system (production) and expansion (connection) capacity of a water distribution system.

Section Eight: Amendment to Rule 60 (Permit Fees)

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

RULE 60 PERMIT FEES

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

1. MPWMD Staff Rate: MPWMD staff time is charged at a rate of \$70.00 per hour *including hours spent to secure compliance both before and after issuance of a water distribution system permit, or an amended permit.* There is no charge for the first hour of consultation prior to submitting an application.

[NOTE: No changes are proposed to Section A 2 through 4.]

5. Charge for Legal Fees: Any legal work performed by MPWMD Counsel associated with the permit application *process* is charged to the applicant at actual cost, based on the hourly rate of retained MPWMD legal counsel at the time services are rendered. *This fee shall include, but not be limited to, efforts expended by District Counsel pursuant to any indemnification agreement.*
6. Charge for Direct Costs: The applicant will be charged for direct costs associated with the permit application *process*. Examples include notices

of public hearings ~~and~~, filing fees *and recording* fees charged by the Monterey County Clerk.

[NOTE: No changes are proposed to Sections A 7 and 8 or B through J]

K. FEES RELATING TO CHALLENGES TO PERMITS

- 1. An Administrative Fee based on MPWMD staff time shall be imposed and collected at a rate of \$70.00 per hour for all activity associated with any challenge to the issuance, validity or denial of any Permit under the District Rules & Regulations, including, but not be limited to, efforts expended by District staff pursuant to any indemnification agreement.*
- 2. A Legal Defense Fee shall be imposed and collected for any legal work performed by MPWMD Counsel associated with responding to any challenge to the issuance, validity or denial of any Permit under the District Rules & Regulations, to the imposition or validity of any condition imposed on such a Permit, or to any defect in process relating to the review and action on the Permit or Permit Conditions. This fee shall be charged at actual cost, based on the hourly rate of retained MPWMD legal counsel at the time services are rendered. This fee shall include, but not be limited to, efforts expended by District Counsel pursuant to any indemnification agreement.*

L. FEES RELATING TO PERMIT MODIFICATION OR ENFORCEMENT

- 1. An Administrative Fee based on MPWMD staff time shall be imposed and collected at a rate of \$70.00 per hour for any Permit violation, Condition compliance, Water Distribution System or expansion capacity limit modification, or other enforcement activity.*
- 2. A Legal Enforcement Fee shall be imposed and collected for any legal work performed by MPWMD Counsel associated with any Permit violation, Condition compliance, Water Distribution System or expansion capacity limit modification, or other enforcement activity. This fee shall be charged at actual cost, based on the hourly rate of retained MPWMD legal counsel at the time services are rendered. This fee shall include, but not be limited to, efforts expended by District Counsel pursuant to any indemnification agreement.*

M. UNPAID FEES & CHARGES

The General Manager shall collect all fees required by this Rule 60. For any permit that has been issued, but for which outstanding fees have not been paid, the General Manager shall record a lien against that property affected by the Permit if the unpaid fee or charge is not paid in full within

ninety (90) days of invoice mailed to the owner, provided the property upon which a lien is to be filed has received a copy of that invoice. Any lien authorized by this section shall not require prior Board approval as may be required for other liens pursuant to District Rule 113.

N. REFUNDS OF FEES & CHARGES

Fees and charges pursuant to Regulation VI are paid to or due the District in consideration of, and as reimbursement for, District incurred costs and expenses relating to the administration and processing of applications, permits, variances, appeals, notices, investigations, and District enforcement activities. These include, but are not limited to, costs and expenses incurred by the District in planning for, acquiring, reserving, protecting, and maintaining capacity in present or future water distribution facilities, water resources, and conservation activities. At the conclusion of any activity (e.g. issuance or cancellation of a permit, conclusion of an enforcement action, or any other final action on a matter) the General Manager may refund remaining fees or charges paid by the applicant to the extent the remainder exceeds costs or expenses incurred by the District for that matter. Requests for refunds shall be in writing, include a clear reference to the water permit number or otherwise identify the matter, and state clearly the reason a refund has been requested. This provision authorizes the General Manager to calculate and issue a refund to the extent that the remainder exceeds costs or expenses incurred by the District for that matter, but shall not confer a right upon any applicant to receive a refund. Any refund shall be determined as a delegated exercise of the General Manager's discretion. Any refund shall be made solely to the party who initially paid the fee or charge.

Section Nine: Addition of Rule 114 (Permit Rule Noncompliance)

Monterey Peninsula Water Management District Rule 114 shall be added, as follows:

Rule 114. PERMIT RULE NONCOMPLIANCE

Creation, establishment, expansion, extension or amendment of a water distribution system without a written permit from the District is a misdemeanor punishable as an infraction as provided by Section 256 of the Monterey Peninsula Water Management District Law, Statutes of 1981, Chapter 986. The District may seek criminal prosecution and/or civil enforcement of its rules pursuant to this Rule.

Section Ten: 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 Eleven: **Effective Date and Sunset**

This ordinance shall be given effect at 12:01 a.m. on the 30th day after it has been enacted on second reading.

This Ordinance shall not have a sunset date.

Section Twelve: **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 by Director Lehman, and second by Director Edwards, the foregoing ordinance is adopted upon this 13th day of December, 2004, by the following vote:

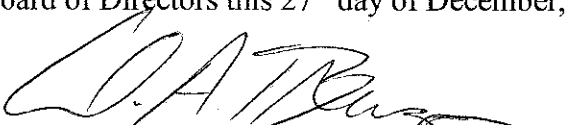
AYES: Directors Edwards, Foy, Knight, Lehman and Markey

NAYS: None

ABSENT: Directors Pendergrass and Potter

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 13th day of December, 2004.

Witness my hand and seal of the Board of Directors this 27th day of December, 2004.


David A. Berger, Secretary to the Board