

FINAL

ORDINANCE NO. 122 AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT CREATING AN IMPACT-BASED SYSTEM FOR WATER DISTRIBUTION SYSTEM PERMITS

FINDINGS

1. The Monterey Peninsula Water Management District (MPWMD, Water Management District, or District) was authorized in 1977 by the California Legislature (Chapter 527 of the Statutes of 1977, as amended, found at West's Water Law Appendix Section 118-1, et seq.), and the voters of the Monterey Peninsula ratified its creation in June 1978. The District holds comprehensive authority to integrate 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. The District's management efforts are 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. The need for these protective efforts has been heightened by the 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), resulting in the need to protect the public trust resources of the Carmel River. Management efforts assess and minimize: (i) the cumulative impact of water distribution systems upon water resources; (ii) the demand burden that can result from failure of small systems; (iii) fire risks presented by small systems; (iv) water quality concerns; (v) cross-contamination of water supplies and water systems; (vi) public utility service area limitations; (vii) lack of clear identification of water rights for water systems; and (viii) other limits associated with California American Water (Cal-Am) supply as a result of SWRCB Order WR 95-10.
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, 21, 22, 40, 54 - 56, 60, 114 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; Ordinance No. 105 on December 16, 2002; Ordinance No. 106 on February 27, 2003; and Ordinance No. 118 on December 13, 2004.

5. The Water Management District has enacted a comprehensive framework to review and regulate the creation and expansion of water distribution systems. That framework 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. 118 adopted on December 13, 2004 (effective January 12, 2005).
6. Based on four years of experience since Ordinance No. 96 was adopted in March 2001, the District believes that there is a need to modify the permit process and reduce the financial burden to applicants requesting approval for water distribution systems that have a low potential to adversely affect the water resources system, dependent habitat or existing water systems. Conversely, the District believes there is a need for more rigorous review of water distribution systems that have a higher potential to affect environmental resources of concern or existing water systems, including individual wells. Thus, a new "impact-based" permit process is recommended, where District resources are focused on applications that have the most potential to affect the environment and existing water systems. The District's environmental review is focused on surface and groundwater hydrology, water quality and other water-resource related issues; and not issues such as traffic, visual quality, cultural resources and other elements that are not within the regulatory authority of this agency.
7. This Ordinance is intended to authorize a new, multi-level, impact-based system that governs the review and approval of water distribution system applications submitted to the Water Management District. This Ordinance is intended to be consistent with the required findings, minimum standards of approval, and conditions of approval described in Rule 22.
8. This Ordinance is intended to be consistent with current enforcement procedures as recently clarified via Ordinance No. 118 in December 2004.
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 April 5, 2005 and May 3, 2005; and at regular board meetings on May 16, 2005, July 18, 2005 and August 15, 2005.
10. At its meeting of July 18, 2005, the Water Management District Board of Directors adopted a Negative Declaration stating that Ordinance No. 122 would not have a significant effect on the environment (CEQA Guidelines sections 15074). This determination was based on an Initial Study circulated for public comment for a minimum of 20 days beginning on June 16, 2005. A Notice of Determination was filed by August 19, 2005 based on District Board adoption of Ordinance No. 122 at its second reading on August 15, 2005.

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 all water resources within District boundaries.
12. This ordinance shall amend Rules 11, 20, 21, and 22 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 Impact-Based Water Distribution System Permit Review Ordinance of the Monterey Peninsula Water Management District.

Section Two **Purpose**

This ordinance shall revise the permanent Rules and Regulations of the Monterey Peninsula Water Management District to amend procedures that affect the creation, amendment, expansion or extension of water distribution systems and mobile water distribution systems.

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

District Rule 11 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***).

ABANDONED WELL

An "abandoned well" is a well that has produced no (zero) water for one year or more, and has not met the requirements to be considered an "inactive well" in compliance with Monterey County regulations.

ACTIVE WELL

An "active well" is a well that has been permitted by the Monterey County Health Department *and constructed* (or a well that was completed prior to year 1973) ~~and constructed~~, and has produced any quantity of water within a Reporting Year (*July October* 1 through ~~June~~ *September* 30). All active wells must be registered, and must report water use annually to the District. All new wells must be metered, inspected and approved by the District, and must report annual production using the Water Meter Method, regardless of the amount of production. Refer to MPWMD Rules 52 through 59 for more information.

AMEND A WATER DISTRIBUTION SYSTEM

"Amend a Water Distribution System" means altering the components, boundary, system limits or other characteristics of a Water Distribution System pursuant to Rule 22.

COMPLETION OF A WATER DISTRIBUTION SYSTEM

"Completion of a Water Distribution System" shall mean the creation, establishment, extension, or expansion of a water distribution system so that the system or expansion is capable of delivering water for consumption through permitted fixtures. This shall include the acquisition of all required permits, installation of any required water meter(s), and approval of construction, when required by law or ordinance.

COMPLETION OF A WELL

"Completion of a well" means the completion of all physical tasks necessary, so that the well is producing or is capable of producing ground water, including an operable pumping facility. This shall include acquisition of a Monterey County Health Department Water Well Construction Permit, installation of any water meter(s) required by MPWMD, and MPWMD inspection and approval of the meter(s).

CREATE A WATER DISTRIBUTION SYSTEM

"Create a Water Distribution System" means the construction and operation of a water distribution system including the addition of new water gathering facilities or the annexation of new service area after June 11, 1981 to existing water distribution systems pursuant to Rule 20.

INACTIVE WELL

An "inactive well" is a well that has produced no (zero) water for one year or more, but has not been abandoned as set forth in Monterey County regulations. In order for a well to be considered "inactive" by MPWMD, the annual production report must be submitted confirming the inactive status, and a proper amended well registration form showing the inactive status must be filed with the District.

LEVEL 1 (CATEGORICAL) PERMIT

A "Level 1 (Categorical) Permit" refers to a discretionary permit for a Water Distribution System application that is subject to CEQA review. A Level 1 (Categorical) Permit shall be processed if all of the following criteria are met: (a) well site is located in the Carmel Valley Upland area as shown in maps provided in the Implementation Guidelines; (b) property is comprised of one or two parcels totaling less than 2.5 acres; (c) property is not within the Cal-Am service area as shown in maps provided in the Implementation Guidelines, or is not served by Cal-Am as a remote meter; (d) well site is located more than 1,000 feet from any Sensitive Environmental Receptor defined in Rule 11; (e) well site is located more than 1,000 feet from an existing well that is registered with the District and/or included in the District well database at the time of the application; and (f) a review by District staff determines that the application falls within one of the classes listed for a CEQA categorical exemption as described in CEQA Guidelines Article 19, Categorical Exemptions (15300-15332).

LEVEL 2 (ADMINISTRATIVE) PERMIT

A "Level 2 (Administrative) Permit" refers to a discretionary permit for a Water Distribution System application that is subject to CEQA review. A Level 2 application shall be processed if the criteria specified in Rule 22, Table 22-A, are met. The applicant shall provide a hydrogeologic assessment by a qualified consultant as defined in Rule 21-A-9. Rule 22 specifies that no public hearing is required. Level 2 is the minimum level of review for any application within the main Cal-Am service area (Monterey Peninsula Water Resources System).

LEVEL 3 PERMIT (HEARING OFFICER REVIEW)

A "Level 3 Permit" refers to a discretionary permit for a Water Distribution System application that is subject to CEQA review. A Level 3 application shall be processed if the criteria specified in Rule 22, Table 22-A, are met. A public hearing is conducted by the MPWMD Staff Hearing Officer.

LEVEL 4 PERMIT (MPWMD BOARD HEARING)

A "Level 4 Permit" refers to a discretionary permit for a Water Distribution System application that is subject to CEQA review. A Level 4 application shall be processed if the criteria specified in Rule 22, Table 22-A, are met. A public hearing is conducted by the MPWMD Board of Directors.

PERMIT REVIEW LEVEL

"Permit Review Level" refers to the type of administrative process for a Water Distribution System application; MPWMD staff determines whether the application should be processed as Level 1, Level 2, Level 3 or Level 4 as defined in Rule 11.

PROJECT

A "project" is an activity subject to the California Environmental Quality Act (CEQA). The District adopts the definition of "project" as defined by CEQA Guidelines Sections 15002(d) and 15378.

REACTIVATE A WELL

A reactivated well is an inactive well (~~defined as a well that has not used water for 364 days or more~~) for which a proper amended well registration form has been filed with the District *to enable reporting of production as an active well.*

REPLACE A WELL

An active or inactive well is considered to be replaced when a new well is completed in a separate borehole, or when the same borehole is modified, such as by deepening. A replacement well must be located on the same legal parcel as the original well, and may not be located in the riparian zone, as defined by District Rule 11, unless a river works permit has been applied for and issued by the District. The well that is being replaced must be abandoned and destroyed in conformance with local and state well regulations unless it serves as a properly constructed, maintained and registered monitor well.

SENSITIVE ENVIRONMENTAL RECEPTOR (SER)

A "Sensitive Environmental Receptor (SER)" is any one of the following areas or

locations: (1) the Carmel Valley Alluvial Aquifer (alluvium) as delineated by the State Water Resources Control Board (SWRCB) in Order WR 95-10 as modified by Order 98-04, and as shown on maps at the District office; (2) the five tributaries listed in MPWMD Rule 20, including Tularcitos, Hitchcock Canyon, Garzas, Robinson Canyon and Potrero Creeks; (3) the Seaside Groundwater Basin as delineated by MPWMD, and as shown on maps at the District office; (4) the Pacific Ocean as delineated by the mean high tide line; or (5) other sensitive locations as designated by Resolution of the MPWMD Board of Directors.

WELL

"Well" means any device or method, mechanical or otherwise, for the production of water from ground water supplies within the District excluding seepage pits and natural springs. ~~"Existing Well" means a completed well which is producing or capable of producing ground water on July 9, 1980, or a well which is completed subsequent to such date pursuant to an unexpired well construction permit which had been issued prior to such date. The term "existing well" shall not apply to any well which ceases to produce water for 364 days or to any facility for which a Notice of Abandonment has been filed. "New Well" means a well for which a construction permit is issued (or is required to be issued) by the Monterey County Department of Health after July 9, 1980, and shall also mean the reactivation of any existing well which ceased water production of 364 days or more, or which was abandoned.~~

WELL SOURCE AND PUMPING IMPACT ASSESSMENT

"Well Source and Pumping Impact Assessment" refers to the hydrogeologic information described in Rule 21 that is required to be submitted as part of an application for a Water Distribution System permit. The assessment goal is to determine whether the proposed well or other facility (1) can provide reliable water quality and quantity to meet the proposed uses, and (2) would not adversely affect Sensitive Environmental Receptors, as defined in Rule 11, or existing wells that are registered with the District and/or included in the District well database at the time of the application.

Section Four: **Amendment of Rule 20 (Permits Required)**

District Rule 20 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 20 – PERMITS REQUIRED

A. **PERMIT TO CREATE/ESTABLISH A WATER DISTRIBUTION SYSTEM**

Before any person creates or establishes a water distribution system, such person shall *first* obtain a written *exemption or* permit from the District. Before any person creates or establishes a mobile water distribution system, such person shall obtain a written permit from the District.

[NOTE: No further changes are made to Rules 20-A or 20-B]

C. EXEMPTIONS FOR WATER DISTRIBUTION SYSTEM PERMIT

An MPWMD water distribution system permit is *not* required for the following situations:

1. *For properties that lie outside the District boundary, where both: (a) the property to be served is wholly outside of the boundaries of the Monterey Peninsula Water Management District, and (b) the water source is also located outside of the District boundary.*
2. *For properties that straddle the District boundary, an MPWMD water distribution system permit is not required where both: (a) the portion of the property served by the water distribution system is outside of the District boundary, and (b) the source of supply is outside of the District boundary.*

[NOTE: Renumber subsections C-2 through C-11. No changes are made to Rule 20-D following Rule 20-C.]

3. *[formerly #2] A system that meets all of the following criteria: (a) well site is located outside of the Carmel River Basin and the Seaside Groundwater Basin as shown in maps provided in the Implementation Guidelines; (b) property is comprised of one or two residential parcels totaling less than 2.5 acres in size; (c) property is located outside of the California American Water (Cal-Am) service area as shown in maps provided in the Implementation Guidelines or is not served by Cal-Am as a remote meter; (d) well site is located more than 1,000 feet from any Sensitive Environmental Receptor as defined in Rule 11; and (e) well site is located more than 1,000 feet from an existing well that is registered with the District and/or included in the District well database at the time of the application. A single parcel connection water distribution system unless that system derives its source of supply from within the Carmel River Basin, as shown in the map provided in the Implementation Guidelines; and/or the Seaside Coastal Subareas of the Seaside Groundwater Basin. The Carmel River Basin and Seaside Groundwater Basin Coastal Subareas are defined in Rule 11, Definitions.*

4. [formerly #3] For a single-parcel connection system located within the Carmel River Basin that meets all of the following three criteria: (a) the well location lies outside of the mapped area 1,000 feet from the Carmel Valley alluvial aquifer or 1,000 feet from Tularcitos, Hitchcock Canyon, Garzas, Robinson Canyon or Potrero Creeks; (b) a valid well construction permit by the Monterey County Health Department was issued prior to January 15, 2003; and ~~(3)~~ (c) the applicant makes the well active, registers the well with MPWMD, meters the well, has the well inspected by MPWMD, and receives an approved MPWMD Water Meter Installation Inspection form issued on or before June 30, 2003.

5. [formerly #4] To reactivate, refurbish or replace existing wells that are registered with the District, as defined in Rule 11. To qualify for this exemption, the reactivated, refurbished or replacement well must have substantially the same purpose and capacity of the structure replaced. The replacement structure must be consistent with other MPWMD Rules and Regulations. This exemption from the MPWMD permitting process does not affect in any way the applicant's obligation to comply with permit requirements by other regional, state or federal agencies. *This exemption shall not apply to an abandoned well, or replacement of an abandoned well, or wells that have been inactive for more than 10 years.*

Section Five: **Amendment of Rule 20.4 (Permit Rule Noncompliance)**

District Rule 20.4 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 20.4 – PERMIT RULE NONCOMPLIANCE

A. NOTIFICATION

When the General Manager first becomes aware that a water distribution system is operating without a permit *or is in violation of current permit conditions, particularly the system limits*, 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 *or non-complying* 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

licensed professional geologist with a specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or a registered civil engineer with a specialty in hydrology; these specialists shall be certified in, registered *or licensed* by the state of California. The costs of this evaluation shall be borne by the applicant; and

[NOTE: No further changes are made to Rules 21-A through 21-F]

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

District Rule 22 shall be amended by deleting Rule 22-A, Process, in its entirety, and replacing the text with the following provisions set forth in italicized and bold face type (*bold face*).

A. PROCESS

1. Review of Pre-Application Request Form for All Systems

The General Manager shall review each Pre-Application Request Form to create/establish a water distribution system. If the Pre-Application is determined to be complete pursuant to the Implementation Guidelines, the General Manager shall determine the proper permit review level (i.e., Exempt, Level 1, Level 2, Level 3, or Level 4 as defined in Rule 11, Definitions). The General Manager shall notify the applicant in writing of the permit level determination (to be confirmed by information in the formal Application Form), applicable permit application fee, and provide the proper written Application Form and associated materials pursuant to the Implementation Guidelines. If the Pre-Application Request Form is determined to be incomplete, the General Manager shall notify the applicant concerning the missing or deficient information, and request the applicant to submit that information.

2. Determination of Permit Review Level

Based on the information in the Pre-Application Request Form (as confirmed by the formal Application Form), the General Manager shall determine the permit review level as follows, using the attached Table 22-A as a guide:

Exempt: A system meets all of the criteria identified in Rule 20-C-3.

Level 1 (Categorical) Permit: A system meets all of the following criteria: (a) well site is located in the Carmel Valley Upland area as shown in maps provided in the Implementation Guidelines; (b) property is comprised of one or two residential parcels totaling less than 2.5 acres; (c) property is not within the Cal-Am service area as shown in maps provided in the Implementation Guidelines, or is not served by Cal-Am as a remote meter; (d) well site is located more than 1,000 feet from any Sensitive Environmental Receptor as defined in Rule 11; (e) well site is located more than 1,000 feet from any existing well that is registered with the District and/or included in the District well database at the time of the application; and (f) a review by District staff determines that the application falls within one of the classes listed for a CEQA categorical exemption as described in CEQA Guidelines Article 19, Categorical Exemptions (15300-15332). See also the attached Table 22-A.

Level 2 (Administrative) Permit: A system meets the criteria for a Level 2 Permit as shown in the attached Table 22-A.

Level 3 Permit (Hearing Officer Review): A system meets the criteria for a Level 3 Permit as shown in the attached Table 22-A.

Level 4 Permit (MPWMD Board Hearing): A system meets the criteria for a Level 4 Permit as shown in the attached Table 22-A.

Each application shall be reviewed pursuant to CEQA, except those ministerial actions determined to be exempt from the application of CEQA (Guidelines Section 15268).

3. Protocol for Exempt System

No Application Form or permit processing is required for an exempt system. The General Manager shall provide a written Confirmation of Exemption to the applicant in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. District action is ministerial and is exempt from the requirements of CEQA (Guidelines Section 15268). Notice of the staff action shall be provided to all MPWMD Board members.

4. *Protocol for Level 1 (Categorical) Permit*

The General Manager shall provide an Application Form for a Level 1 system in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. The Application Form shall require written documentation that the system meets all of the Level 1 criteria described in Rule 22-A-2 above. The General Manager shall determine if the submitted Application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the Application is determined to be incomplete, the General Manager shall notify the applicant concerning that information in which the Application is deficient and request the applicant to submit that information, in compliance with Rule 22-F. If the Application is determined to be complete, and all criteria specified in Rule 22-A-2 are met, the General Manager shall issue a Level 1 Permit within thirty (30) days that specifies terms and conditions that are independent of, but consistent with, Rules 22-B, 22-C and 22-D. The Level 1 Permit does not set system limits. A mandatory condition of approval shall state, "There shall be no permanent intertie to any other water system, and there shall be no intertie to the California American Water (Cal-Am) system under any circumstances, including a temporary emergency, until full compliance with SWRCB Order WR 95-10 is achieved." District action is discretionary and the application is subject to CEQA review. Notice of the staff action shall be provided to all MPWMD Board members. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, "Appeals."

5. *Protocol for Level 2 (Administrative) Permit*

The General Manager shall provide an Application Form for a Level 2 system in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. The Application Form shall require written documentation that the system meets the Level 2 criteria described in Rule 22-A-2 above, and enables compliance with Rules 21-A, 22-B and 22-C. The General Manager shall determine if the submitted Application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the Application is determined to be incomplete, the General Manager shall notify the applicant concerning that information in which the

Application is deficient and request the applicant to submit that information, in compliance with Rule 22-F. If the Application is determined to be complete, and complies with Rules 21-A, 22-B and 22-C, the General Manager shall issue a Level 2 Permit. The Level 2 Permit shall include Conditions of Approval in compliance with Rule 22-D. The Level 2 process does not require a public hearing. District action is discretionary and the application is subject to CEQA review. Notice of the staff action shall be provided to all MPWMD Board members. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, "Appeals."

6. Protocol for Level 3 Permit (Hearing Officer Review)

- a. The General Manager shall provide an Application Form for a Level 3 system in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. The Application Form shall require written documentation that the system meets the Level 3 criteria described in Rule 22-A-2 above as well as enable compliance with Rules 21-A, 22-B and 22-C. The General Manager shall determine if the submitted Application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the Application is determined to be incomplete, the General Manager shall notify the applicant concerning that information in which the Application is deficient and request the applicant to submit that information, in compliance with Rule 22-F.*
- b. If the Application is determined to be complete, the general Manager shall act within thirty (30) days following satisfaction of CEQA requirements to set a public hearing on the Application for such permit, and shall notify the applicant in writing and give public notice of the hearing date in the manner and form prescribed in the Implementation Guidelines. District action is discretionary and the application is subject to CEQA review. At the hearing, the General Manager shall sit as the sole Hearing Officer. At the hearing, the applicant shall be entitled to present evidence in support of the Application. Interested persons may present evidence in opposition or support of the Application. The Hearing Officer, in conducting the public hearing, may request*

hydrologic, geologic, legal opinions or other studies necessary to obtain information required for his/her decision. The cost of such studies shall be borne by the applicant. For every Application for which a controversy, based on factual evidence already in the record or introduced into the record, arises concerning the extent or adequacy of water rights, the Hearing Officer may require and will specify additional documentation needed to support each water right claim. The Hearing Officer shall continue the public hearing on the application until the specified information is provided by the applicant.

c. The Hearing Officer may deny, approve, or continue the permit Application based on the minimum standards as set forth in Rule 22-C and its findings pursuant to Rule 22-B. The Hearing Officer may impose such conditions on the permit that he/she deems necessary and proper, which must include the Mandatory Conditions of Approval specified in Rule 22-D. The General Manager shall notify the applicant within thirty (30) days in writing by mail or in person of the Hearing Officer action taken; namely continuance, approval, conditional approval, or denial of the Application. 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 address shown on the application, or when personally delivered to the applicant or the applicant's representative. Notice of the Hearing Officer's action shall be provided to all MPWMD Board members.

d. The Hearing Officer's decision may be appealed to the MPWMD Board of Directors pursuant to Rule 70, "Appeals," upon payment of the fee specified in Rule 60. Permits granted under this provision may be appealed to the Board of Directors for a de novo hearing. That hearing shall convene under the rules of process set in Rule 70, "Appeals."

7. Protocol for Level 4 Permit (MPWMD Board Hearing)

a. The General Manager shall provide an Application Form for a Level 4 system in the form and manner prescribed in the Implementation Guidelines, including the applicable fee

described in Rule 60. The Application Form shall require written documentation that the system meets the Level 4 criteria described in Rule 22-A-2 above as well as enable compliance with Rules 21-A, 22-B and 22-C. The General Manager shall determine if the submitted Application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the Application is determined to be incomplete, the General Manager shall notify the applicant concerning that information in which the application is deficient and request the applicant to submit that information, in compliance with Rule 22-F.

- b. *If the Application is determined to be complete, the Level 4 permit review procedures are identical to those described for Level 3 in Rule 22-A-6 above, except the MPWMD Board of Directors, not the staff Hearing Officer, shall conduct the public hearing. Also, there is no appeal of the MPWMD Board's decision (i.e., Rule 22-A-6-d does not apply). District action is discretionary and the application is subject to CEQA review.*

Section Eight: **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 Nine: **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 Ten: **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 Edwards, and second by Director Lehman, the foregoing ordinance is adopted upon this 15th day of August 2005, by the following vote:

AYES: Directors Edwards, Foy, Knight, Lehman, Pendergrass and Potter

NAYS: None

ABSENT: Director Markey

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 15th day of August 2005.

Witness my hand and seal of the Board of Directors this 13th day of September 2005.


Arlene Tavani, Deputy District Secretary

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