

FINAL

ORDINANCE NO. 123

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
INCREASING WATER USE FEES TO FUND AQUIFER
STORAGE RECOVERY AND RELATED WATER SUPPLY EXPENSES**

FINDINGS

1. The Water Management District was created to address water problems in the Monterey Peninsula area which the Legislature found required integrated management, and was endowed with the powers set forth in the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977, found at West's Water Code – Appendix, Section 118-1, et seq.).
2. The Water Management District has general and specific power to do any and every lawful act necessary in order that sufficient water may be available for present or future beneficial use or uses, and to fix and collect rates and charges for the providing or availability of any service as set forth in Sections 308, 325 and 326 of the Monterey Peninsula Water Management District Law.
3. The Water Management District, based in part upon the April 14, 2005, "Seaside Groundwater Basin: Update on Water Resource Conditions" prepared by Gus Yates, Martin Feeney and Lewis Rosenberg ("Seaside Basin Report"), has determined that the annual quantity of groundwater that can be produced in the Coastal Subarea of the Seaside Groundwater Basin without causing adverse effects, such as seawater intrusion, declining water levels, and land subsidence (characterized as "Sustainable Yield") is 2,220 acre feet per year. During water year 2004, production in the Coastal Subarea of the Seaside Groundwater Basin exceeded Sustainable Yield by 2,651 acre-feet.
4. The Seaside Groundwater Basin is the underground water basin underlying the Seaside Basin Area, corresponding to the Paso Robles aquifer, as illustrated in the Seaside Basin Report at Figure E-1, Figure 1 and as discussed on page 18 of that Report.
5. The Water Management District holds authority to manage and regulate use, reuse and reclamation of surface and groundwater within its jurisdiction. It is charged with conservation and augmentation responsibilities in addition to its responsibility to integrate management of ground and surface water resources. To this end, the Water Management District owns and jointly operates with California American Water (Cal-Am) an Aquifer Storage and Recovery (ASR) project which diverts excess flows from the Carmel River through the Cal-Am water distribution system for injection into the Groundwater Basin through the District's ASR test well, and which enables recovery of that water by Cal-Am for delivery to its customers.

6. The Water Management District has determined that the ASR Phase 1 expansion is needed to address and mitigate potential adverse effects that may result from overproduction from the Seaside Groundwater Basin. ASR Expansion is required to promote and protect the adequacy and integrity of the waters of the Basin. The ASR effort injects water into the Coastal Subarea of the Seaside Groundwater Basin to store such water for reasonable and beneficial use, to artificially replenish groundwater supplies of the Coastal Subarea, and to add non-native water to offset cumulative overproduction from the Seaside Basin.
7. The Water Management District regularly incurs expenses to create, maintain and operate ASR, including but not limited to operations and maintenance costs, and capital improvement costs. ASR expansion costs include planning, specifications and engineering, expansion site planning, completing review of long-term ASR operation pursuant to the California Environmental Quality Act (CEQA), and debt service. Operation and maintenance expenses include costs of staff, consultants, rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly install, operate and maintain ASR, and includes reserves needed to address reasonable yet unanticipated contingencies such as emergencies and disasters.
8. Expenses to maintain, repair, and expand the Water Management District's ASR expansion effort cannot be adequately funded without increasing water use fees pursuant to this ordinance. ASR expansion is necessary to protect District water resources, satisfy water quantity and water quality requirements, meet existing commitments for water demand, and provide sufficient water for present or future beneficial use.
9. Based on reasonable and fair investigation, the Water Management District Board of Directors has determined that an increase in the District's existing water use fee is needed to fund the Phase 1 expansion effort, and proposed future ASR expansion costs. The Board has further determined that debt issuance secured by the increased user fee is the most cost-effective means to finance ASR expansion costs. The Water Management District has budgeted for fiscal year 2005-2006 ASR Phase 1 expansion costs of \$345,000, and anticipates \$2,660,000 in ASR Phase 1 expansion costs in fiscal years 2006-7 and 2007-8, for a total estimated expenditure of \$3,005,000. An increase to the fee applied by the Water Management District to the water use from the Cal-Am Water Distribution System in the amount of 1.2% will generate \$3,090,000, which is the total estimated expenditure for Phase I expansion costs plus \$85,000 in anticipated debt issuance costs. This increase will result in a total use fee applied to Cal-Am water use of 8.325%.
10. The water use fee established by this ordinance is not a user fee or charge for a "property-related service" and is not a "property-related fee or charge" as those terms are defined by California Constitution, Article 13D, section 2. The water use fee instead is a fee imposed upon actual water use, variable by the amount consumed.

11. The Board of Directors finds that the water use fees set by this ordinance shall not collect funds beyond those required to maintain plant, equipment, facilities, supplies and personnel necessary to provide water service, and that the charge to any specific water user shall not exceed the proportional cost to provide or reserve water to that water user.
12. Having made fair investigation into the facts and circumstances requiring this ordinance, each member of the Board of Directors of the Monterey Peninsula Water Management District finds the rates and charges proposed herein are reasonable based on his or her exercise of judgment and discretion.
13. The need for expanded ASR has been heightened by the lack of legal Cal-Am water supplies resulting from 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).
14. This ordinance is exempt from CEQA pursuant to California Environmental Quality Act (CEQA) Guidelines section 15273(a)(1) – Rates, Tolls, Fares, Charges. The Board of Directors determines and declares that water use fee set and authorized by this ordinance are to meet Water Management District operating expenses, including employee wage rates and fringe benefits, consultant services, legal services and direct costs, including permit processing, enforcement and associated litigation expenses. A Notice of Exemption shall be filed.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the ASR Expansion Fee Ordinance of the Monterey Peninsula Water Management District.

Section Two: Purposes

This ordinance shall implement a water use fee collected solely from Cal-Am system water users, factored upon actual water use and variable as to the amount of water consumed. Proceeds of this fee shall fund District water supply activities, including Phase 1 of its Aquifer Storage & Recovery (ASR) effort. In addition to ASR activities, proceeds of this water use fee may also be allocated, by Resolution at the discretion of the District Board of Directors, provided that all such expenses shall confer benefit and/or service to existing Cal-Am Water Distribution System water users. These services may include, but shall not be limited to conservation, rationing, irrigation, erosion control, mitigation, water supply planning, and water augmentation program expenses. Unexpended fee revenue in any single year may be placed a program reserve for later use to fund expenses associated with planning for, acquiring and/or reserving augmented water supply capacity, including but not limited to engineering, hydrologic, legal, geologic, fishery, appraisal, financial, and property acquisition endeavors.

Section Three: Fee Implementation

This Ordinance shall authorize immediate collection of a water use fee in the aggregate amount of 1.2 percent of the Monterey District of the California American Water Company (Cal-Am) from each customer water bill. This increase will result in a total Monterey Peninsula Water Management District use fee applied to Cal-Am water use of 8.325%.

Section Four: Publication and Application

The provisions of this ordinance shall not cause the amendment or republication of the permanent Rules and Regulations of the Monterey Peninsula Water Management District. This ordinance shall be read in conjunction with and compliment those provisions of the District's Rules and Regulations. All definitions used in the District Rules and Regulations shall apply to this ordinance.

Section Five: Effective Date and Sunset

This ordinance shall take 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, provided however, that fees set by this ordinance shall not be collected to the extent proceeds exceed funds required to maintain plant, equipment, facilities, supplies, personnel and reasonable reserves necessary to provide water service.

Section Six: Severability

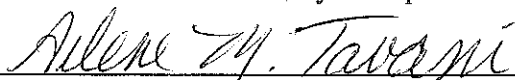
If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions 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 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