

Adopted October 15, 2007 – Effective November 14, 2007

ORDINANCE NO. 130

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ESTABLISHING A CLAIM PROCESS FOR
DAMAGES OR REFUND OF MONEY**

FINDINGS

1. The Water Management District (“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 District has general and specific power, directly or through its agents, to impose and collect taxes, fees, charges, penalties or assessments.
3. The District is authorized by the Government Code to adopt procedures governing the administration of claims that may be brought against it.
4. This ordinance shall establish a uniform method to administer any claim against the District for money or damages.
5. This ordinance shall apply retroactively to any money paid prior to its effective date, but persons who tendered payments before its effective date may file a claim within one hundred eighty (180) days under the provisions of this ordinance.
6. This ordinance shall amend and republish the Rules and Regulations of the Water Management District.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This Regulation shall be known as the Claims Procedure Regulation of the Monterey Peninsula Water Management District.

Section Two: **Purpose**

This Regulation is enacted pursuant to Government Code Section 935 and shall apply to any and all claims against the District for money or damages, which are not expressly governed by a claims procedure set forth in any other statute, ordinance, rule or regulation.

Section Three: **Claim for Recovery Required**

No suit for the recovery of any money or damages by any Person against the District shall be filed in any court of law unless a claim for recovery of such money or damages has first been filed and rejected in accordance with the provisions of this Regulation. In accord with Government Code Sections 935(b) and 945.6, no action against the District may be maintained by a Person who has not complied with applicable claims presentation requirements.

Section Four: **Form of Claim**

Any claim for money or damages from the District, including but not limited to a claim of refund for monies paid to the District or its agents, shall be made in writing and verified by the claimant or by claimant's guardian, conservator, executor or administrator. Any claim filed on behalf of more than one Person shall be verified by each Person on behalf of whom the claim is filed or by claimant's guardian, conservator, executor or administrator.

Section Five: **Basis for Refund to be Stated**

A claim to recover any money previously paid to the District or damages may be filed by any Person or the Person's guardian, executor, conservator or administrator only if the payment has been accompanied by a written statement, signed by the claimant or claimant's guardian, executor, conservator or administrator which states that the payment has been paid under protest, or other basis to contest payment. This provision shall not be construed to relieve any Person of the obligation to make full payment of any money due to the District.

Section Six: **Claims Process**

A claim for recovery of any money paid under protest, or damages, shall be filed in writing with the General Manager by claimant or by claimant's guardian, executor, conservator or administrator no later than three hundred and sixty five (365) days after the date the payment was made. A claimant may apply for leave to present a claim after the one-year statute runs, but the District holds discretion to grant or deny the request.

Each claim shall be deemed to be filed on the date of actual receipt by the General Manager. Each claim shall include the following information:

- (1) Claimant's name and address and, if applicable, the address of claimant's guardian, executor, conservator or administrator;
- (2) The address to which the Person presenting the claim desires notices to be sent;

- (3) The date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- (4) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim with sufficient specificity to enable the District to understand and evaluate the claim;
- (5) The amount claimed if it totals less than ten thousand dollars (\$10,000) as of the date of presentation of the claim, including the estimated amount of any prospective injury, damage, or loss, insofar as it may be known at the time of presentation of the claim, together with the basis of computation of the amount claimed. If the amount claimed exceeds ten thousand dollars (\$10,000), no dollar amount shall be included in this claim. However, it shall indicate whether the claim would be a limited civil case;
- (6) The address(es) and Assessor's Parcel Number(s) (APN) of each property to which the claim payment may be applicable;
- (7) The signature of each claimant (or the signature of each claimant's guardian, executor, conservator, or administrator) together with a contemporaneous statement that the information on the claim has been provided under penalty of perjury.

Section Seven: Class or Representative Claims

No claim may be filed on behalf of a class of claimants, or on behalf of any Person other than the claimant filing the claim, unless the membership of the class is identified with particularity; and unless the signature of each of each member of the class (or the signature of each class member's guardian, executor, conservator, or administrator) is appended to the claim; and further provided that any claim filed on behalf of a class of claimants shall be further limited to Persons who have tendered payments under written protest during the three hundred and sixty five (365) days immediately preceding the filing of the class claim.

Section Eight: Authorization of Refund

Payments to the District shall be refunded to the claimant (or the claimant's guardian, executor, conservator, or administrator) by the General Manager in the following cases:

- (1) Mathematical, computational or other error on the part of the District;
- (2) Overpayment or duplicate payment;
- (3) Where the Applicant for any Permit has not, at any time after the commencement of the period during which the requested Permit would have been effective, commenced or engaged in the activity or performed any act for which the Permit was required; provided, however, that no such refund shall be made if the District made an investigation, inspection, examination or done any similar work as the result of the filing of the application; or if the Permit has expired prior to the date upon which the claim for refund is made;
- (4) In order for any such refund to be granted, the Person claiming such refund must surrender a receipt or other evidence of payment, and thereafter shall take no action in reliance on that Permit.

Section Nine: Claims Process

The Board of Directors shall act on a completed and timely claim in accord with the time and manner provided in Government Code Sections 912.4 and 912.6 as those provisions now exist or shall hereafter be amended, within forty-five (45) days after the claim has been presented. The Board and claimant may extend the time for the Board to act by written mutual agreement. Absent such agreement, if the Board fails or refuses to act within time prescribed the claim shall be deemed rejected on the forty-sixth (46th) day after the claim has been presented. Notice of Rejection shall be provided in accord with Government Code Section 913.

Section Ten: Time-barred Claims

No provision of this Regulation shall be construed to revive or reinstate any cause of action that, on the effective date of the Regulation, is barred by failure to comply with any previously applicable statute, ordinance or regulation requiring the presentation of a claim prior to a suit for recovery of money or damages subject to the District, or by the failure to commence any action thereon within the period described by applicable statute of limitations.

Section Eleven: Effective Date

The provisions of this Regulation shall apply retroactively to any money paid prior to the effective date of this Regulation; provided, however, that a claimant who tendered payments more than eleven (11) months before the effective date of this Regulation shall file a claim within one hundred eighty (180) days after the Regulation's effective date, or such claim shall be barred. Any such claim shall be processed in accord, and meet the filing criteria, of all provisions set forth in this Regulation.

Section Twelve: Timely Commencement of Lawsuit & Limitations

Any legal action brought against the District upon any claim or demand shall conform to the requirements of Section 940 through and including Section 949 of the California Government Code. Any action brought against any employee of the District shall conform to the requirements of Section 950 through and including Section 951 of the California Government Code.

As to any claim allowed in full, if the claimant accepts the amount allowed, no suit may be maintained on any part of the cause of action to which the claim relates. As to any claim allowed in part and the claimant accepts the amount allowed, no suit may be maintained on that part of the cause of action which is represented by the allowed portion of the claim. As to any claim allowed in part, no suit may be maintained on any portion of the cause of action where the District has added a requirement that the claimant accepted the amount allowed in settlement of the entire claim.

Any lawsuit for the recovery of money or damages from the District shall be commenced within one hundred eighty (180) days after the date on which the District Notice of Rejection is

personally delivered or deposited in the mail. If written Notice of Rejection is not issued, the suit must be commenced within two years from the accrual of the cause of action. Recovery shall not be allowed in any such action upon any ground not specified in the claim.

Section Thirteen: Applicability of State Law

References in this Regulation to specific sections of the California Government Code shall refer to those provisions as they now exist or may hereafter be amended.

Section Fourteen: Publication and Application

The provisions of this Regulation shall be published as Regulation XVII of the Rules and Regulations of the Monterey Peninsula Water Management District. The sections shall be added as Rules, as follows:

- Section One shall be set forth as Rule 191.
- Section Two shall be set forth as Rule 192.
- Section Three shall be set forth as Rule 193.
- Section Four shall be set forth as Rule 194.
- Section Five shall be set forth as Rule 195.
- Section Six shall be set forth as Rule 196.
- Section Seven shall be set forth as Rule 197.
- Section Eight shall be set forth as Rule 198.
- Section Nine shall be set forth as Rule 199.
- Section Ten shall be set forth as Rule 200.
- Section Eleven shall be set forth as Rule 201.
- Section Twelve shall be set forth as Rule 202.
- Section Thirteen shall be set forth as Rule 203.

Sections Fourteen through Sixteen shall not be published as Rules.

Section Fifteen: Effective Date and Sunset

This Regulation shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading. This Regulation shall not have a sunset date.

Section Sixteen: Severability

If any subdivision, paragraph, sentence, clause or phrase of this Regulation 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 Regulation, 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 Knight, and second by Director Potter, the foregoing ordinance is adopted upon this 15th day of October, 2007, by the following vote:

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

NAYS: None

ABSENT: None

I, David A. Berger, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing ordinance was duly adopted on the 15th day of October 2007.

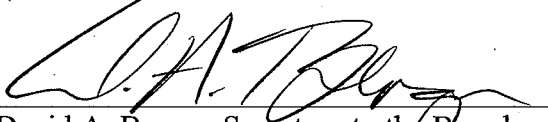
Witness my hand and seal of the Board of Directors this 17th day of December 2007.



David A. Berger, Secretary to the Board

COPY CERTIFICATION

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 Ordinance No. 130 duly adopted on the 15th day of October 2007.



David A. Berger, Secretary to the Board

1-2-08
Date