

Adopted January 24, 2008 -- Effective February 23, 2008

## ORDINANCE NO. 132

### AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT ADDING RULE 23.6 TO ESTABLISH A WATER ENTITLEMENT FOR SAND CITY AND AMENDING RULES 11, 21 AND 23.1 TO REFLECT THE PROCESS FOR ISSUING WATER USE PERMITS

#### FINDINGS

1. The Monterey Peninsula Water Management District ("MPWMD") 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. MPWMD has general and specific power to cause and implement water conservation activities and to cause sufficient water to be available for present and future beneficial use or uses of lands or inhabitants within the District as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.
3. The City of Sand City, a municipal corporation, ("Sand City") has the power to establish a public works for the purpose of furnishing water to its inhabitants as set forth in Article XI, Section 9 of the California Constitution.
4. In 2006, Sand City was granted the right to produce brackish water located in the Aromas Sands Formation of the Coastal Subarea of the Seaside Basin for the purpose of operating its proposed desalination plant by the Superior Court in Monterey County in its final Judgment entered in *California American Water Company v. City of Seaside* (No. M66343).
5. Sand City has proposed the Sand City Water Supply Project for the purpose of furnishing water for present and future beneficial use of lands and inhabitants within the District; including but not limited to new and expanded water uses within Sand City (the "Project").
6. The Project includes the construction of a municipally owned desalination facility in Sand City (the "**Sand City Desalination Facility**"). The Sand City Desalination Facility shall extract brackish water from the Aromas Sands aquifer and remove salts from that brackish water. Potable water produced by the Sand City Desalination Facility shall be delivered through a single connection into the existing California American Water distribution system ("CAW System") pursuant to MPWMD WDS Permit No.'s M07-02-L4 and M07-03-L4 (collectively, the "WDS Permits").
7. Operation of the Sand City Desalination Facility shall be regulated by the California Department of Health Services.

8. This ordinance shall allow water produced by the Sand City Desalination Facility to be delivered through a single connection into the CAW System.

9. This ordinance shall allow the expansion and extension of the CAW System to provide connections to, and potable water service in specific annual quantities (expressed in acre-feet) for the use on and benefit of all property located within the jurisdictional limits of Sand City (the "Sand City Sites"), excluding therefrom lands not presently located within the CPUC-recognized Service Area for the CAW System.

10. In consideration for the delivery of water from the Sand City Desalination Facility to the CAW System, this ordinance shall establish a Water Entitlement in favor of Sand City allowing Sand City and its assignees to take delivery of 206 acre feet of water per year from the CAW System.

11. The Water Entitlement established by this ordinance shall be separate and distinct from the Allocation to Sand City as provided in Rule 30, and shall not affect any existing use of water in Sand City or any existing or future Allocation to Sand City.

12. This ordinance authorizes Sand City, on terms and conditions set forth in this ordinance, to separately sell and convey portions of the Water Entitlement established by this ordinance for use on the Sand City Sites, through which Sand City will attempt to recover its capital costs for the Sand City Desalination Facility.

13. This ordinance shall allow issuance of the Sand City Water Use Permits authorized by this ordinance for new and expanded water uses on the Sand City Sites, in a cumulative amount of no more than 206 acre feet per year.

14. This ordinance provides that water use authorized by Water Permits issued under this ordinance shall be subject to the conservation Rules of MPWMD under its Regulation XIV and the rationing Rules of MPWMD under its Regulation XV.

15. This ordinance shall add Rule 23.6 and amend Rules 11, 21 and 23.1 to the Rules and Regulations of the Monterey Peninsula Water Management District.

16. Sand City certified an Environmental Impact Report for the Project on January 18, 2005 and an Addendum to the Final Environmental Impact Report on September 18, 2007.

17. The California Coastal Commission approved a coastal development permit for the Project, authorizing construction of that portion of the Sand City Desalination Facility located within the California Coastal Zone and production of up to 300 acre-feet of potable water from the Sand City Desalination Facility per year.

18. It is in the public interest to reduce the amount of water diverted from the Carmel River and taken from the Seaside Groundwater Basin by California American Water. The Project will have the environmentally beneficial effect of reducing California American Water's current reliance on its existing sources of water supply. The Project will provide an immediate

benefit to the environment by allowing a 300 acre-foot per Water Year reduction of demand on existing sources of water supply for the CAW System at the time the Project becomes operational. The Sand City Water Entitlement allows a maximum of 206 acre-feet of new or expanded uses to be added to the CAW System for use on the Sand City Sites. The remaining 94 acre-feet of water will be permanently added to CAW's System by the Sand City Desalination Facility and thereby result in a permanent 94 acre-foot reduction in annual pumping demand from the Carmel River and/or the Seaside Groundwater Basin.

19. California American Water has been limited in its ability to deliver potable water by California State Water Resources Control Board ("SWRCB") Order No. WR 95-10, dated July 6, 1995. The SWRCB found that California American Water does not possess the legal right to divert from the Carmel River system in the amount of water historically (and presently) being diverted. Order No. WR 95-10 limited production by California American Water to 11,285 AF (currently) from the Carmel River system, and ordered California American Water to implement actions to terminate its unlawful diversions from the Carmel River, and in the interim to maximize its production from the Seaside Groundwater Basin.

20. The SWRCB has concluded that the Project, including the delivery of water represented by the Water Entitlement to the Sand City Sites, does not violate any provision of Order No. WR 95-10.

21. The Project will allow for the expansion of commercial and residential water uses within Sand City thereby contributing to the economy within MPWMD as well as providing new housing opportunities within the MPWMD.

22. It is in the best interest of MPWMD and the inhabitants thereof to provide for the Water Entitlement and to enable the Sand City Water Use Permits.

23. The Project is consistent with the goals and strategic objectives of MPWMD.

NOW THEREFORE be it ordained as follows:

**Section One: Short Title**

This ordinance shall be known as the Sand City Water Supply Project Entitlement Ordinance of the Monterey Peninsula Water Management District.

**Section Two: Purpose**

A. The primary purpose of this ordinance is to facilitate the Project. The addition of the Sand City Desalination Facility as a Source of Supply to the CAW System shall temporarily decrease demand on existing water sources for the CAW System.

B. The WDS Permits allow California American Water to take delivery into the CAW System of the 300 acre-foot per Water Year of Potable water to be produced by the MPWMD Ordinance No. 132--Adding Rule 23.6 to Establish a Water Entitlement For Sand City and Amending Rules 11, 21 and

23.1 to Reflect the Process for Issuing Water Use Permits

Desalination Facility. This ordinance establishes a Water Entitlement for 206 acre-feet per Water Year of Potable water (the “**Sand City Water Entitlement**”) which allows up to 206 acre-feet of Potable water to be distributed from the CAW System for new or expanded water uses on the Sand City Sites as evidenced by a Water Use Permit.

C. This ordinance authorizes Sand City to convey, for valuable consideration, the entire amount of the Sand City Water Entitlement created by this ordinance solely for dedication to use on the Sand City Sites.

### **Section Three: Rule 23.6 Sand City Water Entitlement**

Rule 23.6 is hereby added to the Rules and Regulations of the Monterey Peninsula Water Management District to read as follows:

#### **RULE 23.6 - SAND CITY WATER ENTITLEMENT**

A. There is hereby established the Sand City Water Entitlement which confers upon Sand City a vested property right to take up to 206 Acre-Fee per Water Year of Potable water from the California American Water Distribution System (CAW System). For so long as the Sand City Water Entitlement continues: (i) Sand City shall own the Sand City Desalination Facility; (ii) Sand City shall cause the Sand City Desalination Facility to produce 300 Acre-Feet of Potable water per Water Year; (iii) Sand City shall cause 300 Acre-Feet of Potable water per Water Year to be delivered to the CAW System through a single Connection as permitted by the District; and (iv) California American Water shall continue to accept delivery from the Sand City Desalination Facility of 300 Acre-Feet of Potable water per Water Year through a single Connection as permitted by the District. The Sand City Water Entitlement shall continue for a period of seventy-five (75) years so long as the Sand City Desalination Facility is properly maintained and continues to be able to reliably produce 300 Acre-Feet of Potable water acceptable for use by the CAW System.

B. Sand City is hereby authorized to separately sell, transfer and convey to owners of Sand City Sites, for such consideration and upon such conditions as Sand City may in its discretion determine, such portions of the Sand City Water Entitlement as it may choose. Any portion of the Sand City Water Entitlement conveyed to the owner of a Sand City Site shall become vested in the owner of the Sand City Site, and appurtenant to title to the particular Sand City Site, at the time a Sand City Water Use Permit is issued as evidence of such conveyance. At the time the Sand City Desalination Facility begins delivery of Potable water to the CAW System, the General Manager shall issue a Water Use Permit to Sand City in the amount of the Sand City Water Entitlement.

C. The Sand City Water Entitlement shall be separate and distinct from the Allocation to Sand City as provided in Rule 30. The existence of the Sand City Water Entitlement shall not affect any existing use of water in Sand City or any existing or future Allocation to Sand City.

D. Nothing in this Rule shall excuse the owner of a Sand City Site from the obligation to comply with the water conservation rules set forth in MPWMD Regulation XIV and the water rationing rules set forth in MPWMD Regulation XV, provided, however, that MPWMD shall not impose a moratorium on the issuance of Water Use Permits authorized by this Rule.

E. Nothing in this Rule shall relieve the owner of a Sand City Site to whom a Water Use Permit has been issued from all or any part of such owner's obligation to pay all fees, connection charges, user fees, surcharges, taxes, utility taxes or other obligation imposed by the California Public Utilities Commission, the MPWMD (including but not limited to fees and charges imposed by MPWMD under its Rule 24), California American Water or any governmental authority acting with jurisdiction on other Users of the CAW System in Sand City. Nothing herein shall prevent the termination of service from the CAW System for non-payment of required fees and charges in the manner authorized by law.

F. Each Water Use Permit issued to the owner of a Sand City Site shall provide that MPWMD shall have such access as may be required to enable it to account for the use of water on the Sand City Site. Water use authorized by the Water Use Permit shall be measured in accordance with the water use factors specified at the time of issuance of the Water Use Permit.

**Section Four: AMENDMENT TO RULE 21-E: APPLICATION FOR WATER USE PERMIT FOR "BENEFITED PROPERTIES" AS THAT TERM IS DEFINED IN RULE 11, 23.5 and 23.6**

Rule 21-E shall be revised as shown in bold italics (*bold italics*) and strikeout (~~strikeout~~):

- E. APPLICATION FOR WATER USE PERMIT FOR "BENEFITED PROPERTIES" AS THAT TERM IS DEFINED IN RULE 11, 23.5 AND RULE 23.6

Each application for a Water Use Permit shall follow the process set forth in Rule 23.1. A proper Applicant for a Water Use Permit may be the property owner or any agent thereof. The application for a Water Use Permit shall be deemed complete when the Applicant submits all of the following:

1. A completed Water Use Permit application,
2. A copy of the recorded Assignment Document, "An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 39 Water Entitlement and Water Use Permit" or "*An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 132 Water Entitlement and Water Use Permit*" specific to the application Site.
3. Processing fees.

**Section Five: Amendment of Rule 23.1, Action on Application for a Water Use Permit on a Benefited Property**

Rule 23.1 shall be revised as shown in bold italics (*bold italics*) and strikeout (~~strikeout~~):

The Application and Process for Water Use Permits issued after May 27, 2004 shall be controlled by this Rule in conjunction with *either* Rule 23.5 or **Rule 23.6**.

**A. PROCESS**

**1. Action on Application for a Water Use Permit**

- a. The General Manager shall review the application and determine whether the Applicant has met the criteria for a Water Use Permit. If additional information is required to complete the application, the Applicant shall be notified in writing within thirty (30) days of the initial application.
- b. The General Manager shall ensure that the Assessor's Parcel Number of the Benefited Property shown on the Assignment Document matches the APN(s) shown on the spreadsheet of water purchasers provided to the District by *either* the Pebble Beach Company *or the City of Sand City*.
  - (1) When the APN(s) shown on the Assignment Document does not match the spreadsheet of water purchasers, the General Manager shall notify the Pebble Beach Company of the discrepancy *contact the appropriate Water Entitlement holder to verify the validity of the Assignment Document*.
  - (2) When the APN shown on the Assignment Document is ~~determined~~ *found* to be *incorrect* ~~an error~~, the Applicant shall submit a corrected and recorded Assignment Document *from the Water Entitlement holder* prior to issuance of a Water Use Permit. *The Water Entitlement holder shall notify the District in writing of any correction*.
  - ~~(3) When the APN shown on the Assignment Document is determined to be correct and the spreadsheet is in error, the spreadsheet of water purchasers shall be revised by the Pebble Beach Company to reflect the correct APN.~~
- c. The General Manager shall prepare and execute a Water Use Permit for the APN(s) shown on the Assignment Document.

- d. The original Water Use Permit shall be mailed to the Applicant.
- e. The District shall retain one copy of the Water Use Permit and the copy of the Assignment Document.

**B. AMENDMENT OF WATER USE PERMIT**

1. A Water Use Permit may be amended to reflect a Change of Ownership of a Parcel.
2. A Water Use Permit may be amended to reflect assignment of water previously held collectively by two or more Parcels under a Water Use Permit. A written request for assignment shall be submitted to the District, along with processing fees and ownership information sufficient to prepare a new Water Use Permit.
3. A Water Use Permit may be amended to reflect newly-assigned Assessor's Parcel Numbers when a Benefited Property is subdivided into two or more Parcels. A written request for amendment shall be submitted to the District, along with processing fees, evidence of the subdivision approval by the *land use Jurisdiction* ~~Monterey County~~ and ownership information sufficient to prepare a new Water Use Permit.

**Section Six: Amendment of Rule 11, Definitions**

- A. Unless the context specifically indicates otherwise, the following words or phrases shall be given the definitions set forth below and shall be permanently added to Rule 11, Definitions, of the rules and Regulations of the district. Revised text is shown in bold italics (*bold italics*). Numbering is provided for ease or review.

1. Assignment Document – “Assignment Document” shall refer to the document “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 39 Water Entitlement and Water Use Permit” issued and recorded by the Pebble Beach Company *or to the document “An Assignment of a Portion of Monterey Peninsula Water Management District Ordinance No. 132 Water Entitlement and Water Use Permit” issued and recorded by the City of Sand City.*

2. *Benefited Property* – “Benefited Property” shall mean those properties located in the unincorporated portion of the Del Monte Forest described on Exhibit “A” to Monterey Peninsula Water Management District Ordinance No. 109 or Sand City Sites located within the jurisdictional limits of the City of Sand City pursuant to Monterey Peninsula Water Management District Ordinance No. 132.

3. *Sand City Desalination Facility* – “*Sand City Desalination Facility*” means and consists of a municipally owned 300 acre-foot per annum reverse osmosis desalination plant which treats water from the shallow, brackish Aromas Sands Formation, extraction and injection wells, pumps, water mixing equipment, and additional pipeline to convey product water to the California American Water pipelines.

4. *Sand City Sites* – “*Sand City Sites*” means those properties located within the jurisdictional limits of the City of Sand City that also lie within the Service Area for the CAW System as recognized in 2007 by the District and the California Public Utilities Commission. The parcel of land identified as APN 011-501-014 is not within the area defined by the term “*Sand City Sites*” and shall not constitute a “*Benefited Property*” under these Rules.

5. Water Use Permit – “Water Use Permit” means a writing from MPWMD which evidences the dedication of the Water Entitlement as a present vested property right enuring to the use and benefit of one or more of the Benefited Properties. A Water Use Permit shall by non-discretionary ministerial action, cause the present Connection to or modification of the California American Water Distribution System for Benefited Properties upon designation of the location of use and upon payment of applicable Connection Charges and fees, and issuance of a Water Permit as provided in Rule 23.5 or Rule 23.6.

#### **Section Seven: 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 Eight: Effective Date and Sunset**

This ordinance shall take effect at 12:01 A.M. on February 23, 2008.

This ordinance shall not have a sunset date.

#### **Section Nine: Severability**

If any subdivision, 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 or unenforceability 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 Edwards, and second by Director Brower, the foregoing ordinance is adopted upon this 24<sup>th</sup> day of January, 2008, by the following vote:

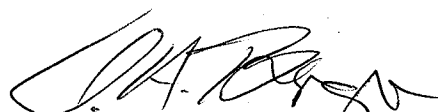
AYES: Brower, Edwards, Pendergrass and Potter

NAYS: Doyle, Lehman and Markey

ABSENT: None

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 24<sup>th</sup> day of January, 2008.

Witness my hand and seal of the Board of Directors this 12th day of February, 2008.

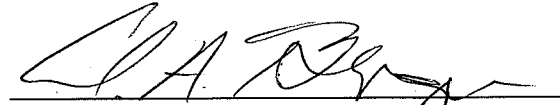


David A. Berger, Secretary to the Board

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**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. 132 duly adopted on the 24th day of January 2008.

  
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David A. Berger, Secretary to the Board

2-15-08  
Date