

Adopted August 18, 2008 – Effective September 17, 2008

**FINAL
ORDINANCE NO. 136**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
ENABLING MODIFICATION OF WATER DISTRIBUTION SYSTEM
CAPACITY OR EXPANSION CAPACITY LIMITS IF JUSTIFIED
BY LIMITATIONS IN AVAILABLE WATER SUPPLIES**

FINDINGS

1. The Monterey Peninsula Water Management District (“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 (“District Law”), set forth in Chapter 527 of the Statutes of 1977, West’s Water Code – Appendix, Section 118-1, et seq.
2. The 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. 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 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, including the amendment caused by Ordinance No. 105 adopted on December 16, 2002, and the amendment caused by Ordinance No. 118 adopted on December 13, 2004.
4. Ordinance No. 118, the Water Distribution System Regulation Refinement Ordinance of the Monterey Peninsula Water Management District, revised the District Rules and Regulations to clarify regulation of water distribution systems by, among other things, adding the definition of “Pro Rata Expansion Capacity” and creating a process under Rule 40 by which the owner or operator of a Water Distribution System exceeding its Pro Rata Expansion Capacity is required to implement a plan to bring the Water Distribution System back into balance with its projected Water Distribution System Capacity. Rule 40 was also amended to enable adjustment of Water Distribution System limits based on credible evidence where a Water Distribution System could not be brought into balance with its Water Distribution

System Capacity. Ordinance No. 118 was enacted to address situations not previously anticipated or explicitly addressed in the Rules and Regulations.

5. This Ordinance is intended address a similar circumstance to that remedied by Ordinance No. 118, where a Water Distribution System has not yet exceeded its System Capacity or its Expansion Capacity, as those terms are defined by District Rule 11, but for which credible evidence establishes that the System Capacity or Expansion Capacity, or both, require modification.
6. The Water Management District Board of Directors determines that this Ordinance is exempt from CEQA pursuant to categorical exemption described in CEQA Guidelines section 15307. A Notice of Exemption shall be filed based on this finding.
7. 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 water supplies within District boundaries.
9. This ordinance shall amend Rule 40 of the Rules and Regulations of the Water Management District, and shall add a new Rule 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 Capacity and Expansion Capacity Modification 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 enable procedures that allow modification of a Water Distribution System Expansion Capacity or System Capacity.

Section Three: **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 change is proposed to Section A.]

B. MODIFICATION OF SYSTEM CAPACITY (PRODUCTION) AND EXPANSION CAPACITY (CONNECTION) LIMITS ("SYSTEM LIMITS")

1. Monitoring. *As to each Water Distribution System with ten (10) or more connections, the General Manager shall monitor the physical ability of that Water Distribution System to supply water within the System Capacity or the Expansion Capacity for that System, as those terms are defined in Rule 11, and as those Capacities are determined by this Rule. The General Manager shall convene a hearing to review the System Capacity or the Expansion Capacity, or both, for each such Water Distribution System for which physical water supplies do not appear sufficient to support either the System Capacity or the Expansion Capacity for that System. The General Manager shall base his or her determination upon credible information presented by 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.*

2. Notice. *If, in accord with paragraph B.1 above, the General Manager determines that physical water supplies do not appear sufficient to support either the System Capacity or the Expansion Capacity for that water distribution system, the General Manager shall:*

a. *Suspend receipt and processing of expansion or extension applications for that Water Distribution System pending a hearing on modification of the System Capacity or Expansion Capacity for that Water Distribution System.*

b. *Notify the Owner or Operator of a Water Distribution System that (i) the System Capacity or Expansion Capacity, or both, for that Water Distribution System that appears to not be in balance with the physical ability of that System to supply water, and (ii) convene a hearing before the Board of Directors to determine whether, and to what extent, modifications shall be made to either the System Capacity or Expansion Capacity, or both, for that Water Distribution System.*

3. Hearing. *Upon notice that physical water supplies do not appear sufficient to support either the System Capacity or the Expansion Capacity, or both, for a Water Distribution System, the Board of Directors shall hold a public hearing to consider whether, and to what extent, modifications shall*

be made to either the System Capacity or Expansion Capacity, or both, for that Water Distribution System. Modification of these limits shall be supported by substantial evidence that establishes physical water supplies available to the Water Distribution System are not sufficient to meet permitted System Capacity or Expansion Capacity limits. Upon such a finding, the Board shall determine a new System Capacity or Expansion Capacity, or both, for that Water Distribution System. The Board's determination shall be based upon substantial evidence, including credible expert evidence.

4. Action Following Hearing.

Where a Water Distribution System has reached or exceeded its System Capacity or Expansion Capacity limit, as modified, the General Manager shall not receive or process any application for a permit to expand or extend that system until the further amendment, based upon credible expert analysis, is made to the System Capacity or Expansion Capacity, or both, for that Water Distribution System.

Once a Water Distribution System presents credible expert analysis to the satisfaction of the General Manager that the system has returned to full compliance and can operate within both the System Capacity or Expansion Capacity for that system, the General Manager shall again be authorized to receive and act upon permits to expand or extend that system within the amended System Capacity and Expansion Capacity limits.

B. C. ANNUAL WATER DELIVERY SYSTEM REPORT

[NOTE: No change is proposed to the substance of Section C. This text is shown to enable an understanding of the context in which Section B has been added.]

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 or 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.

C. D. 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 C 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.

D. E. HEARINGS FOR SYSTEMS THAT EXCEED THE PRO RATA EXPANSION CAPACITY

[NOTE: The sole change proposed to Section E is modification of its title. No change will be made to the substance of Section E. This text is shown to enable an

understanding of the context in which the title has been changed and for which Section B has been added.]

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.

E. F. NOTIFICATION

[NOTE: No change is proposed to the substance of Section F. This text is shown to enable an understanding of the context in which Section B has been added.]

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 ~~r~~Responsible ~~p~~Party, or when personally delivered to the ~~a~~Applicant or his representative.

Section Four: 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 Five: 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 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 Markey, and second by Director Edwards, the foregoing ordinance is adopted upon this 18th day of August, 2008, by the following vote:

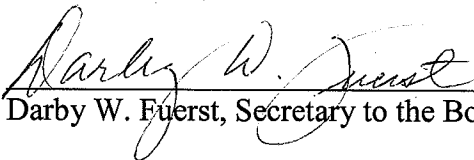
AYES: Directors Markey, Edwards, Brower, Doyle, Lehman, Pendergrass & Potter

NAYS: None

ABSENT: None

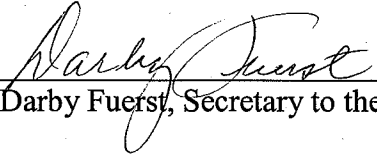
I, Darby Fuerst, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing ordinance was duly adopted on the 18th day of August 2008.

Witness my hand and seal of the Board of Directors this 6th day of October, 2008.


Darby W. Fuerst, Secretary to the Board

COPY CERTIFICATION

I, Darby Fuerst, 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. 136 duly adopted on the 18th day of August 2008.



Darby Fuerst, Secretary to the Board



Date