

Adopted on December 8, 2008 – Effective on January 8, 2009

**FINAL
ORDINANCE NO. 138**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
TO RE-AUTHORIZE A WATER USER FEE TO FUND
AQUIFER STORAGE AND RECOVERY FACILITIES
AND RELATED WATER SUPPLY PROJECTS**

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, and to fix and collect rates and charges for the providing or availability of any service as set forth in District Law, Sections 308, 325 and 326.
3. California American Water (“CAW”) is the Water Distribution System which provides water from the Monterey Peninsula Water Resource System (“MPWRS”) to most residents and businesses within the District. The MPWRS includes the surface water in the Carmel River and its tributaries, groundwater in the Carmel Valley Alluvial Aquifer that underlies the Carmel River, and groundwater in the Seaside Groundwater Basin which includes the Northern and Southern Coastal Subunits and the Northern and Southern Inland Subareas.
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 April 14, 2005, “Seaside Groundwater Basin: Update on Water Resource Conditions” prepared by Gus Yates, Martin Feeney and Lewis Rosenberg (“Seaside Basin Report”), at Figure E-1, Figure 1 and as discussed on page 18 of that Report.
5. The annual quantity of groundwater that can be produced in the Coastal Subareas and the Laguna Seca Subarea of the Seaside Groundwater Basin without causing adverse effects, such as seawater intrusion, declining water levels, or land subsidence (characterized as “Safe Yield”) has been determined by the Superior Court in Monterey County in its final Judgment entered in *California American Water Company v. City of Seaside* (No. M66343). The Court’s Physical Solution, or a series of management actions required to reduce production of natural Basin water to its perennial safe yield, was initially set at 3,000 acre-feet per year. Steps include development of Aquifer Storage and Recovery,

recycled water and other supplemental resources to inject or spread into the Basin; and potential pumping reductions from pre-Judgment levels of production in 10% increments every three years.

6. The supply of water available to CAW in Water Year (WY) 2008 from the Seaside Groundwater Basin is set by the Court at 3,504 AF from the Coastal Subareas and 345 AF from the Laguna Seca Subarea. The WY 2009 limit for all CAW systems that derive their source of supply from the Seaside Groundwater Basin is 3,462 AF, with a maximum of 3,191 AF produced from the Coastal Subareas and a maximum of 271 AF from the Laguna Seca Subarea.
7. CAW is further 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 CAW 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 CAW to 11,285 AF annually (currently) from the Carmel River system, and ordered CAW 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.
8. The 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 District owns and jointly operates with CAW an Aquifer Storage and Recovery ("ASR") project which diverts excess flows from the Carmel River through the CAW Water Distribution System for injection into the Seaside Groundwater Basin through the District's ASR wells. The ASR project enables recovery of the injected water by CAW for delivery to its customers in the summer when the Carmel River is dry.
9. The District's ASR project has artificially replenished groundwater supplies of the Coastal Subarea of the Seaside Groundwater Basin by adding non-native water to the Seaside Basin and has provided water to CAW for delivery to its customers.
10. The District has determined that the ASR is needed to address and mitigate potential adverse effects that may result from overproduction from the Seaside Groundwater Basin. ASR is required to promote and protect the adequacy and integrity of the waters of the Basin. ASR injects non-native water into the Seaside Groundwater Basin to store such water for reasonable and beneficial use.
11. Related components of the water supply project include future expansion of the ASR project, and other facilities to increase water available to the CAW system.
12. The District regularly incurs expenses to create and operate ASR, including but not limited to operations and maintenance costs, and capital improvement costs. ASR costs include planning, specifications and engineering, site planning, and may include 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.

13. Expenses to maintain, repair, and facilitate the ASR cannot be adequately funded without the water use fees authorized by this Ordinance. ASR 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.
14. In addition to ASR activities, proceeds of the water use fee may also be allocated to meet other water supply related expenses that confer benefit and/or service to existing CAW Water Distribution System water users. These services include conservation, rationing, irrigation, erosion control, mitigation, water supply planning, and water augmentation program expenses such as planning for, acquiring and/or reserving augmented water supply capacity, including engineering, hydrologic, legal, geologic, fishery, appraisal, financial, and property acquisition endeavors.
15. Based on reasonable and fair investigation, the District Board of Directors has determined that this water use fee is needed to fund ASR. The District budgeted ASR costs of \$345,000 in fiscal year 2005-06, \$2,630,000 in fiscal year 2006-07, \$1,280,000 in fiscal year 2007-08, and \$1,760,000 in fiscal year 2008-09. Actual capital expenditures through fiscal year 2007-08 totaled \$2,391,700 and an additional \$1,480,000 is budgeted for capital expenditures in fiscal year 2008-09, bringing total estimated ASR capital expenditures through fiscal year 2008-09 to \$3,872,000. Ongoing ASR operation costs are estimated to be \$275,000 per year. Authorization and extension of the CAW Water Distribution System in the amount of one and two tenths percent (1.2%) will generate approximately \$525,000 per year. This is the portion that the District shall use to fund ASR costs, including capital expenditures and operating costs. This authorization shall result in a total use fee on the CAW water bill of 8.325%. The water use fee authorized and extended by this Ordinance is a fee imposed upon actual water use that varies by the amount consumed.
16. The District water user fee shall be equally applied to all water use categories, including residential, multi-residential, commercial, industrial, golf course and public agency water users.
17. The Board of Directors finds that the water use fees authorized and extended 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.
18. This fee may not be used for any other purpose or to fund general governmental activities.

19. Having made fair investigation into the facts and circumstances requiring this Ordinance, each member of the District's Board of Directors finds the authorized and extended rates and charges are reasonable based on his or her exercise of judgment and discretion.
20. The need for ASR has been heightened by the lack of legal CAW water supplies resulting from SWRCB Order WR 95-10, the listing of the California red-legged frog and the steelhead trout as threatened species under the federal Endangered Species Act ("ESA"), and the limitations on water from the Seaside Groundwater Basin as determined by the Superior Court final Judgment in *California American Water Company v. City of Seaside*.
21. This Ordinance is exempt from CEQA pursuant to CEQA Guidelines section 15273(a)(1) – Rates, Tolls, Fares, Charges. The Board of Directors determines and declares that water use fee authorized and extended by this Ordinance is to meet 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.
22. This Ordinance is intended to comply with the provisions of Article XIII D, §6(a) of the California Constitution, as construed by the California Supreme Court in *Bighorn-Desert View Water Agency v. Verjil*, 39 Cal.4th 205 (2006) and as clarified by the Proposition 218 Omnibus Implementation Act (A.B. 1260 of 2007), codified in California Government Code §53750 et seq.
23. In accord with the requirements of Article XIII D, §6(a) of the California Constitution, and the Proposition 218 Omnibus Implementation Act (A.B. 1260 of 2007), codified in California Government Code §53750 et seq, the District mailed notice of, and conducted a public hearing and protest proceeding on the user fee proposed by this Ordinance on November 17, 2008. This hearing allowed property owners who use CAW water within the District an opportunity to tell District officials their thoughts, and to register protests, regarding the proposed re-authorization of a portion of the existing District water user fee. Based thereon, the Board of Directors hereby determines that a majority protest does not exist.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This Ordinance shall be known as the 2008 Aquifer Storage and Recovery ("ASR") and Water Supply Fee Ordinance of the Monterey Peninsula Water Management District ("District").

Section Two: Purposes

This Ordinance shall authorize and extend the one and two tenths percent (1.2%) water use fee collected solely from CAW system water users, factored upon actual water use and variable as to the amount of water consumed in all subareas known as Northern Inland Subarea and the Laguna Seca Subarea, and customers in CAW's Ryan Ranch, Hidden Hills, and Bishop Units.

Proceeds of this fee shall fund District water supply activities, including capital acquisition and operational costs for present and future ASR purposes. In addition to ASR activities, proceeds of this water use fee may also be expended, in accord with Resolution adopted at the discretion of the District Board of Directors, for other purposes that confer benefit and/or service to existing CAW Water Distribution System water users. These services may include conservation, rationing, irrigation, erosion control, mitigation, water supply planning, water rights acquisition and water augmentation program expenses. Unexpended fee revenue in any single year may be placed in a 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 and extend collection of the present water use fee in the aggregate amount of one and two tenths percent (1.2%) of the Monterey District of CAW from each customer's current water bill. This authorization results in a total District use fee applied to CAW water use of 8.325%.

Section Four: Publication and Application

The provisions of this Ordinance shall not cause 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 complement 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; Review Requirement; 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.

So long as this water use fee is collected, the Board of Directors shall hold a public hearing each calendar year in connection with review of the annual District budget to review the amounts collected and expended in relation to the purposes for which the fee is imposed. The District shall require the one and two tenths percent (1.2%) CAW user fee to sunset in full or in part unless the Board determines that the purpose of the fee is still required, and the amount of the fee is still appropriate. If the purpose had expired, the fee shall be required to sunset. If the purpose

for the fee is determined to continue, but the amounts needed to fund that purpose are decreased, the fee shall be reduced to that lesser amount.

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 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 Pendergrass, and second by Director Markey, the foregoing Ordinance is adopted upon this 8th day of December, 2008, by the following vote:

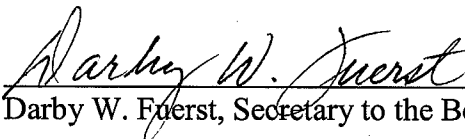
AYES: Directors Brower, Doyle, Edwards, Lehman, Markey, & Pendergrass

NAYS: None

ABSENT: Director Potter

I, Darby W. Fuerst, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing ordinance was duly adopted on the 8th day of December, 2008.

Witness my hand and seal of the Board of Directors this 23rd day of December 2008.



Darby W. Fuerst, Secretary to the Board