

Adopted on May 21, 2009 – Effective on July 1, 2009

**FINAL
ORDINANCE NO. 139**

**AN ORDINANCE OF
THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING THE REBATE PROGRAM TO DISALLOW BOTH A REBATE AND
WATER CREDIT FOR A SINGLE QUALIFYING DEVICE**

FINDINGS

1. The Water Management 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 Water Management District has general and specific power to cause and implement water conservation activities as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.
3. California State Water Resource Control Board (SWRCB) Order No. WR 95-10, issued in July 1995, ruled that California American Water (CAW) did not have a legal right to take approximately 69 percent of the water supplied by CAW to its customers at that time. The SWRCB set specific goals for CAW to reduce water diversions from the Carmel River Basin.
4. Under SWRCB Order No. WR 95-10, CAW was ordered to reduce its historical diversion from the Carmel River Basin by 20 percent beginning with Water Year 1997 and in each subsequent year.
5. By order of the Superior Court in California American Water v. City of Seaside, et al (Monterey Case No. M66343) the initial Operating Safe Yield for the Seaside Basin was determined to be 5,600 Acre-Feet (Coastal Subarea is 4,611 Acre-Feet and 989 Acre-Feet for the Laguna Seca Subarea). The Court defined the "Operating Safe Yield" for the Seaside Basin as the maximum amount of Groundwater resulting from Natural Replenishment which can be produced from each Subarea for a finite period of years as these terms are defined in

the decision. Water conservation is required to achieve the Operating Safe Yield.

6. Retrofitting of properties located in the Monterey Peninsula Water Resource System benefits the Monterey Peninsula by reducing over-pumping of Groundwater that leads to environmental degradation.
7. Retrofitting of properties receiving water from the Seaside Groundwater Basin benefits the Monterey Peninsula by reducing over-pumping of Groundwater that leads to environmental degradation.
8. The joint MPWMD/California American Water Rebate Program supports the MPWMD's Mission to manage, augment and protect water resources for the benefit of the community and the environment.
9. The joint MPWMD/California American Water Rebate Program supports the District's legislative function to conserve water. It is estimated that as of March 31, 2009, the Rebate Program saves 216.268 Acre-Feet Annually.
10. California American Water is a co-sponsor of the Rebate Program and is expected to fully fund the rebate portion of the program upon approval of A.07-12-010 by the California Public Utilities Commission in 2009. Administration will continue to be done by MPWMD.
11. The Rebate Program is designed to provide an incentive to encourage water saving retrofits that contribute solely to long-term water savings. Participation in the Rebate Program is voluntary.
12. The Rebate program is not intended to cause water savings than can later be used to add new water fixtures or to expand existing uses. This ordinance addresses the circumstance where a Water User later chooses to utilize a Water Credit for which a Rebate has been issued as a basis to expand use. In that case, this ordinance shall require the Water User to return the Rebate to the District to ensure that all Rebate funds contribute solely to long-term water savings.
13. This ordinance shall revise, amend and republish Rule 25.5 and Rule 141 of the Rules and Regulations of the Water Management District. This ordinance shall be given a delayed implementation date to allow for orderly implementation of its provisions.

14. This ordinance shall be reviewed and approved under the California Environmental Quality Act (CEQA) Guidelines as set forth in Title 14, Section 15,000, et seq. This action does not constitute a "project" as defined therein because it addresses administrative policies that will not cause direct or indirect physical changes to the environment.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: **Short Title**

This ordinance shall be known as the **Rebate Repayment Ordinance** of the Monterey Peninsula Water Management District.

Section Two: **Statement of Purpose**

The Monterey Peninsula Water Management District enacts this ordinance in response to concerns expressed by the California Public Utilities Commission Division of Ratepayer Advocates regarding the use of ratepayer funding for the Rebate program when the water savings could be used to add new water fixtures or to expand existing uses. This ordinance recognizes that replacement or installation of ultra-low consumption water fixtures may be done without the intent to utilize a Water Credit. Therefore, should a Water User choose to utilize a Water Credit based upon water fixtures that have received a Rebate, the Water User must first return that Rebate to the District. This protocol ensures that all Rebate funds contribute solely to long-term water savings.

Section Three: **Amendment of Rule 141-C, Rebate Eligibility**

District Rule 141-C shall be revised as shown in bold italics (***bold italics***) and strikeout (~~strikeout~~).

C. **REBATE ELIGIBILITY**

1. Rebates shall be issued only for installation of Qualifying Devices on Sites located within the District that are served by Water Distribution Systems regulated by the District.
2. No Rebate shall be issued for installation of Qualifying Devices that are required

to be installed and maintained by Regulation XIV of the District, ***and no Rebate shall be issued for installation of Qualifying Devices that have been used to obtain a Water Permit.*** This includes but is not limited to:

- a. Properties subject to Rule 142 (Plumbing Fixtures for New Construction), Rule 143 (Retrofit of Existing Commercial Uses) and Rule 144 (Retrofit Upon Change of Ownership or Use) at the time the Rebate application is processed.
 - b. Properties required to install Ultra-Low Flush Toilets as a condition of a water rationing variance (Rule 92).
3. No Rebate shall be issued for Ultra-Low Flush Toilets when the District's records indicate that a Water Permit was issued between 1985 and 1987 and a Connection Charge reduction occurred as a result of the Applicant's agreement to install Ultra-Low Flush Toilets.
 4. Rebates shall be available only for the initial installation of Qualifying Devices.
 5. Rebates shall be available for a maximum of twenty (20) toilets on a Non-Residential Site.
 6. Rebates shall not be issued for more than 3,000 gallons of Cistern storage capacity on a Site.

Section Four: Amendment of Rule 25.5-G

District Rule 25.5-G shall be revised as shown in bold italics (***bold italics***) and strikeout (~~strikeout~~).

- G. A valid Water Use Credit may provide the basis for the General Manager to issue a Water Permit for new, modified, or Intensified Water Use on that Site.
 1. There shall be no Connection Charge assessed for any Water Use Credit. Connection Charges, however, shall apply to the Capacity for water use which exceeds the Water Use Credit, or for any Expansion of Use following the expiration of the Water Use Credit.

2. Use of a documented Water Use Credit to offset an Expansion of Use shall cause recordation of a Notice and Deed Restriction Regarding Limitation on Use of Water on a Property.
3. No Connection Charge refund shall accrue by reason of a water use reduction or abandonment of Capacity, whether or not reflected by a Water Use Credit.
4. Issuance of a Water Use Credit shall not result in any change to a Jurisdiction's Allocation or to any Water Entitlement. Use of any Water Use Credit shall similarly not result in a change to a Jurisdiction's Allocation or any Water Entitlement.
5. *When a Water Use Credit or On-Site Credit applied to a Water Permit originates from a Qualifying Device for which a Rebate has been issued, the District shall collect the amount of the Rebate as a Water Permit fee surcharge, in addition to any other fee that may apply to that Water Permit. This fee surcharge shall be deposited in the Rebate Account.*

Section Five: **Publication and Application**

The provisions of this ordinance shall cause the amendment and republication of Rule 25.5 and Rule 141 to the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

Section Six: **Effective Date**

This ordinance shall be given effect at 12:01 a.m. on July 1, 2009.

Section Seven: **Sunset**

This ordinance shall not have a sunset date.

Section Eight: 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 Pendergrass, and second by Director Edwards, the foregoing ordinance is adopted upon this 21st day of May, 2009, by the following vote:

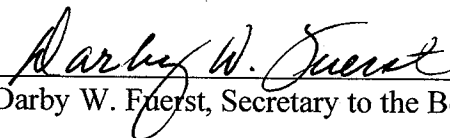
AYES: Brower, Doyle, Edwards, Lehman, Markey, Pendergrass and Potter

NAYS: None

ABSENT: None

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 21st day of May, 2009.

Witness my hand and seal of the Board of Directors this 18th day of June 2009.



Darby W. Fuerst, Secretary to the Board

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