

Adopted on January 28, 2010 – Effective on March 1, 2010

**FINAL
ORDINANCE NO. 142**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AMENDING
REGULATION XV, THE EXPANDED WATER CONSERVATION AND STANDBY
RATIONING PLAN**

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. This ordinance is enacted to respond to present and threatened water emergencies, as provided by Section 332 of the District Law. Water emergencies addressed by this ordinance are created by legal circumstances which constrain the amount of water that is available to serve water users in the Monterey Peninsula area.
4. Since 1999, MPWMD's Regulation XV, Expanded Water Conservation and Standby Rationing Program, in combination with an extensive public awareness campaign and comprehensive water rate structure for conservation, emergency and rationing rates, has enabled compliance with State Water Resources Control Board (SWRCB) Order No. WR 95-10. The plan also provides the foundation for water rationing in the event of drought or other emergency reductions in water supply.
5. This ordinance is intended to maintain California American Water main system and other Water Distribution System production within the limits set by the State Water Resources Control Board (SWRCB) and within the limits that may derive from the Decision of the Monterey County Superior Court in California American Water vs. City of Seaside, et al. (Case No. M66343), as it may be amended from time to time and implemented by the Seaside Watermaster.
6. The October 20, 2009 adoption of a final Cease and Desist Order against California American Water requires implementation of Stage 5 Water Rationing. However, the General Manager has credible evidence to support a position that production can be maintained in compliance with the CDO without water rationing. This potential is supported by the previous year's production, imposition of new rates that will discourage high use, and a plan to focus on high outdoor water users, rather than all Cal-Am customers.

7. This ordinance amends Rules 165, 166, and 167 by adding an appealable mechanism to avoid costly water rationing when convincing evidence exists to support the probability that lower stages of the Expanded Water Conservation and Standby Rationing Plan will achieve water use reductions sufficient to comply with a Cease and Desist Order.
8. This ordinance amends Rule 162 to clarify that failure to complete a Landscape Water Audit and Landscape Water Budget after sufficient notice is Water Waste.
9. This ordinance amends Rule 172 to designate species factors for low and moderate water use landscaping.
10. The portion of this ordinance that amends implementation of Stages 5-7 is not a project under the California Environmental Quality Act (CEQA) definition of "Project" (Section 15378-b-2).
11. The portions of this ordinance pertaining to landscaping are Categorically Exempt from CEQA under Section 15301, Existing Facilities, Class 1.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: **Short Title**

This ordinance shall be known as the Rationing Alternative Revision to the Expanded Water Conservation and Standby Rationing Plan of the Monterey Peninsula Water Management District.

Section Two: **Purpose**

This ordinance amends the Expanded Water Conservation and Standby Rationing Plan to provide an alternate response to a final Cease and Desist Order when there is evidence that compliance can be achieved by implementing a lower stage of the Plan. This ordinance also clarifies action taken by the District to enforce Rule 162 (Stage 2) and adds species factors for low water use plants in Rule 172.

Section Three: **Amendment to Rule 160**

Rule 160-A shall be amended as shown below, with added language as shown in *bold italic* type face, and deleted language shown in ~~strikeout~~ type face.

RULE 160 - GENERAL PROVISIONS

- A. All Water Users within the Monterey Peninsula Water Management District shall comply with the District's Water Waste and Non-Essential Water Use prohibitions and the water conservation requirements of Regulations XIV *and XV*.

Section Four: Amendment to Rule 161

Rule 161 shall be amended as shown below, with added language as shown in *bold italic* type face, and deleted language shown in ~~strikeout~~ type face.

RULE 161 - STAGE 1 WATER CONSERVATION

Stage 1 is the first stage in the District's Expanded Water Conservation and Standby Rationing Plan. During Stage 1:

- A. California American Water shall maintain its Water Year (October 1 through September 30) production from the Carmel River System below 11,285 Acre-Feet (20 percent below historical production as determined in 1995).
- B. California American Water shall comply with production limits imposed by the Seaside Watermaster.
- C. California American Water shall obtain and maintain Water User survey information for its Water Users in compliance with Rule 170.
- D. California American Water, in coordination with the District, shall conduct Landscape Water Audits and establish Landscape Water Budgets for all Water Users subject to Rule 172. By November 1st of each year, California American Water shall review its consumption records for the previous Water Year to identify Water Users required by Rule 172 to have a Landscape Water Budget. Water Users that are required to obtain a Landscape Water Audit and Landscape Water Budget shall be notified by California American Water of this requirement by December 1.
- E. All Water Users shall comply with Rule 160.*

Section Five: Amendment to Rule 162-E

Rule 162-E shall be amended as shown below, with added language as shown in *bold italic* type face, and deleted language shown in ~~strikeout~~ type face.

E. ENFORCEMENT OF LANDSCAPE WATER BUDGET

1. Water use in excess of the established Landscape Water Budget shall be considered Water Waste.
2. ***Failure to file an approved Landscape Water Audit and Landscape Water Budget as required by Rule 172-B shall be considered Water Waste.***

Section Six: Amendment to Rule 165-A-2

Rule 165-A-2 shall be amended as shown below, with added language in ***bold italic*** type face, and deleted language shown in ~~strikeout~~ type face.

2. Regulatory Trigger – Legally Ordered Reduction in Supply

Stage 5 shall be enforced in any Water Distribution System, including any California American Water subsystem, when that system is required to comply with a final Cease and Desist Order by the State Water Resources Control Board, the Seaside Watermaster or any other final court order that reduces available supplies by:

- (a) More than fifteen percent (15%) but less than thirty-five percent (35%) from pre-1995 production (16,806 AFA) in the Main California American Water System. This shall apply to any Water Distribution System that relies, in whole or in part, on production or production offsets from the Main California American Water System, or
- (b) More than fifteen percent (15%) but less than thirty-five percent (35%) from base year production (the term “base year” shall refer to the Water Year immediately preceding any triggering order) for any Water Distribution System that does not rely to any extent upon on production or production offsets from the Main California American Water System.
- (c) ***Stage 5 shall not be triggered if the General Manager determines upon credible evidence that the production targets associated with a final Cease and Desist Order are likely to be met by adhering to the requirements of a lesser stage in the Expanded Water Conservation and Standby Rationing Plan (Regulation XV). The General Manager shall record this determination and any amendment thereto, by memorandum which may be appealed to the Board in accord with Regulation VII, Appeals.***

Section Seven: **Amendment to Rule 166-A-2**

Rule 166-A-2 shall be amended as shown below, with added language in ***bold italic*** type face, and deleted language shown in ~~strikeout~~ type face.

2. **Regulatory Trigger – Legally Ordered Reduction in Supply**

Stage 6 shall be enforced in any Water Distribution System, including any California American Water subsystem, when that system is required to comply with a final Cease and Desist Order by the State Water Resources Control Board, the Seaside Watermaster or any other final court order that reduces available supplies by:

- (a) More than thirty-five (35%) but less than fifty percent (50%) from pre-1995 production (16,806 AFA) in the Main California American Water System. This shall apply to any Water Distribution System that relies, in whole or in part, on production or production offsets from the Main California American Water System, or
- (b) More than thirty-five percent (35%) but less than fifty percent (50%) from base year production (the term “base year” shall refer to the Water Year immediately preceding any triggering order) for any Water Distribution System that does not rely to any extent upon on production or production offsets from the Main California American Water System.
- (c) ***Stage 6 shall not be triggered if the General Manager determines upon credible evidence that the production targets associated with a final Cease and Desist Order are likely to be met by adhering to the requirements of a lesser stage in the Expanded Water Conservation and Standby Rationing Plan (Regulation XV). The General Manager shall record this determination and any amendment thereto, by memorandum which may be appealed to the Board in accord with Regulation VII, Appeals.***

Section Eight: **Amendment to Rule 167-A-2**

Rule 167-A-2 shall be amended as shown below, with added language in ***bold italic*** type face, and deleted language shown in ~~strikeout~~ type face.

2. **Regulatory Trigger – Legally Ordered Reduction in Supply**

Stage 7 shall be enforced in any Water Distribution System, including any California American Water subsystem, when that system is required to comply with a final Cease and Desist Order by the State Water Resources Control Board,

the Seaside Watermaster or any other final court order that reduces available supplies by:

- (a) More than fifty percent (50%) from pre-1995 production (16,806 AFA) in the Main California American Water System. This shall apply to any Water Distribution System that relies, in whole or in part, on production or production offsets from the Main California American Water System, or
- (b) More than fifty percent (50%) from base year production (the term "base year" shall refer to the Water Year immediately preceding any triggering order) for any Water Distribution System that does not rely to any extent upon on production or production offsets from the Main California American Water System.
- (c) ***Stage 7 shall not be triggered if the General Manager determines upon credible evidence that the production targets associated with a final Cease and Desist Order are likely to be met by adhering to the requirements of a lesser stage in the Expanded Water Conservation and Standby Rationing Plan (Regulation XV). The General Manager shall record this determination and any amendment thereto, by memorandum which may be appealed to the Board in accord with Regulation VII, Appeals.***

Section Nine: **Amendment to Rule 172**

Rule 172 shall be amended as shown below, with added language as shown in ***bold italic*** type face, and deleted language shown in ~~strikeout~~ type face. These changes shall also be reflected in the table showing landscape coefficient factors (species factors) in Rule 172-B-7.

- (2) The budget shall include calculations for each of the following hydrozones assuming they are present in the landscape.
 - Cool season turf (.8)
 - Warm season turf (.6)
 - ~~All other~~ ***Medium water using*** vegetation (.5)
 - ***Low water using vegetation*** (.3)

Section Ten: **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 Eleven: Effective Date and Sunset

This ordinance shall take effect at 12:01 a.m. on the 1st day of March 2010.

This Ordinance shall not have a sunset date.

Section Twelve: 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 Brower, the foregoing ordinance is adopted upon this 28th day of January, 2010, by the following vote:

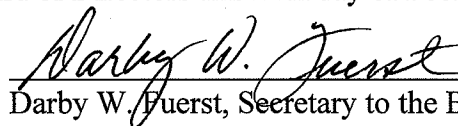
AYES: Directors Markey, Brower, Doyle, Edwards, Lehman, Pendergrass & Potter

NAYS: None

ABSENT: None

I, Darby Fuerst, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the 28th day of January 2010.

Witness my hand and seal of the Board of Directors this 24th day of February 2010.

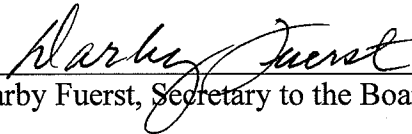


Darby W. Fuerst, Secretary to the Board


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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. 142 duly adopted on the 28th day of January, 2010.



Darby Fuerst, Secretary to the Board



Date