



Adopted by the Board on August 17, 2015 – Effective Date September 16, 2015

ORDINANCE NO. 165

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING RULES 11, 21, 23 AND 23.1, AND ADDING RULE 23.7
TO ESTABLISH A WATER ENTITLEMENT FOR
MALPASO WATER COMPANY**

FINDINGS

1. The Monterey Peninsula Water Management District (MPWMD or District) is charged under the Monterey Peninsula Water Management District Law with the integrated management of all ground and surface water resources in the Monterey Peninsula area.
2. The Monterey Peninsula Water Management District Law grants MPWMD general and specific powers to cause sufficient water to be available for present and future beneficial use or uses of lands or inhabitants within the District. MPWMD Rule 30 requires the District to establish a specific Allocation for each Jurisdiction and provides that the District also may establish Water Entitlements as necessary to manage water supplies throughout the District.
3. The California State Water Resources Control Board (SWRCB) issued Water Right License 13868A (License 13868A) to Malpaso Water Company, LLC (Malpaso Water Company). License 13868A authorizes Malpaso Water Company to divert up to 85.6 Acre-Feet of production water per year from the Carmel River system, and to have this water (less production and conveyance losses) conveyed by the California American Water Company (California American Water) through its Water Distribution System to property owners that have entered into subscription agreements with Malpaso Water Company, for beneficial uses on their properties.
4. Associated with its issuance of License 13868A, the SWRCB certified an Environmental Impact Report (EIR) for the Eastwood/Odello Water Rights Change Petition Project (Project), in accord with the California Environmental Quality Act (CEQA).

5. In its Order WR 95-10, the SWRCB concluded that California American Water was diverting approximately 10,730 Acre-Feet per year of water from the Carmel River system without a valid basis of right. Order WR 95-10 directed California American Water to diligently implement actions to terminate its unlawful diversions from the Carmel River system. In its Order WR 2009-0060, the SWRCB prohibited California American Water, with limited exceptions, from diverting water from the Carmel River system for new service Connections or for any increased uses at existing service addresses resulting from changes in zoning or use.
6. In its Decision 2015-0001, the SWRCB determined that diversions of water from the Carmel River system under License 13868A for the benefit of Malpas Water Company Water Use Permit subscribers will not be classified as water diverted by California American Water for new service Connections or any increased use of water at existing service Connections under term 2 on page 57 of SWRCB Order WR 2009-0060 or water for new projects under term 3 or term 5 of that Order.
7. Besides authorizing diversions from the Carmel River system for the benefit of Malpas Water Company Water Use Permit subscribers, License 13868A also authorizes and directs Malpas Water Company to temporarily use the portions of License 13868A that are not needed by Malpas Water Use Permit subscribers to provide water to California American Water. California American Water may use these portions of License 13868A to assist California American Water in complying with term 2 on page 40 of SWRCB Order WR 95-10.
8. Malpas Water Company has contracted with California American Water for the conveyance of water diverted under License 13868A to Malpas Water Company Water Use Permit subscribers through California American Water's Water Distribution System, and for the temporary use of the portions of License 13868A that are not used each year by Malpas Water Company Water Use Permit subscribers to supply water to California American Water.
9. This ordinance establishes a Water Entitlement for Malpas Water Company under which Malpas Water Company may divert water from the Carmel River system under License 13868A and have California American Water convey that water through California American Water's Water Distribution System to Malpas Water Company Water Use Permit subscribers. This ordinance also establishes procedures under which Malpas Water Company subscribers may apply to the District for Water Use Permits and receive and use water that is diverted under License 13868A.

10. This ordinance shall allow for new Connections and modifications of existing Connections to the California American Water System to provide Potable water service in specific annual quantities (expressed in Acre-Feet) for the use on and benefit of property located within the California Public Utilities Commission (CPUC)-recognized Service Area of the California American Water Water Distribution System.
11. This ordinance authorizes Malpas Water Company, on terms and conditions set forth in this ordinance, to separately sell and convey portions of the Water Entitlement established by this ordinance within the CPUC-recognized Service Area of the California American Water Water Distribution System and within the Carmel River watershed and the City of Carmel-by-the-Sea.
12. This ordinance authorizes the Malpas Water Company to furnish water for present and future beneficial use of lands and inhabitants within the District, including but not limited to new and expanded water uses.
13. This ordinance benefits the community by allowing temporary diversions and use of water under Water Right License 13868A to serve California American Water's existing customers and to assist California American Water in its compliance with SWRCB Order WR 95-10.
14. This ordinance provides that water use authorized by Water Use Permits issued under this ordinance shall be subject to the water efficiency and conservation rules of MPWMD under its Regulation XIV and the rationing rules of MPWMD under its Regulation XV.
15. The Project will allow for the expansion of Non-Residential and Residential water uses, thereby contributing to the economy within MPWMD as well as providing new housing opportunities within the MPWMD.
16. It is in the best interest of MPWMD and the inhabitants thereof to provide for the Water Entitlement and to enable the Malpas Water Company Water Use Permits.
17. The Project is consistent with the goals and strategic objectives of MPWMD.
18. This ordinance amends Rules 11 (Definitions), 21 (Applications), 23, Section C (Adjustment of Allocation for Unused Water Capacity) and 23.1 (Action on Application for a Water Use Permit on a Benefited Property), and adds Rule 23.7 (Malpas Water Company Water Entitlement) to the Rules and Regulations of the Monterey Peninsula Water Management District.

19. The MPWMD is a responsible agency under CEQA. As a CEQA Responsible Agency, the MPWMD may rely on the SWRCB's Eastwood/Odello Water Rights Change Petition EIR for MPWMD's CEQA compliance for this ordinance.
20. The SWRCB has concluded that the Project, including the delivery of water represented by the Water Entitlement to the Benefited Properties, does not violate any provision of Order WR 95-10 or Order WR 2009-0060.
21. In the adoption of this ordinance, MPWMD has followed those guidelines adopted by the State of California and published in the California Administrative Code, Title 14, Section 15000 et seq. Specifically, the MPWMD, as a Responsible Agency under CEQA for this action, has complied with Guidelines Section 15096. The MPWMD, as a Responsible Agency for this Project, has considered the Notice of Determination filed by the State Water Resources Control Board on July 7, 2015, and all environmental documents associated with the Project. Copies of the Draft and Final EIR have been provided to MPWMD Board members for review prior to the public hearing on this matter. The MPWMD Board has reviewed the environmental information and relied on the information as part of its decision-making on this matter.
22. Pursuant to CEQA Sections 15091 and 15092, the MPWMD Board finds that the Project will not have a significant effect on the environment, based on the documentation cited in Finding #21. Mitigation measures are not made as conditions of approval by MPWMD for this action.

NOW THEREFORE, be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the Malpas Water Company Water Entitlement Ordinance of the Monterey Peninsula Water Management District.

Section Two: Purpose

The purpose of this ordinance is to allow Malpas Water Company and the California American Water Company to divert and use water from the Carmel River system in the manner and for the

purposes authorized by Water Right License 13868A. This ordinance establishes a Water Entitlement to facilitate the use of Malpas Water Company water in the CPUC-recognized Service Area of the California American Water Water Distribution System and within the Carmel River watershed and the City of Carmel-by-the-Sea. This ordinance also streamlines the ordinance process for future Water Entitlements by reducing the number of amendments needed throughout the District's Rules.

Section Three: Amendment of Rule 11, Definitions

The following definitions in Rule 11 shall be amended as shown in bold italics (*bold italics*) and strikeout (~~strikethrough~~).

ASSIGNMENT DOCUMENT - "Assignment Document" shall refer to *a document recorded by a Water Entitlement Holder indicating the grant, assignment, and conveyance of a specific quantity of water from a Water Entitlement to a specific Site.* ~~the document titled, "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 "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.~~

BENEFITED PROPERTY - "Benefited Property" shall mean those properties *eligible to receive a portion of a Water Entitlement.* ~~located in the unincorporated portion of the Del Monte Forest described on Exhibit "A" to Monterey Peninsula Water Management District Ordinance No. 109, or (2) Sand City Sites located within the jurisdictional limits of the City of Sand City pursuant to Monterey Peninsula Water Management District Ordinance No. 132.~~

WATER ENTITLEMENT - "Water Entitlement" shall mean a discrete ~~amount~~ *quantity* of water ~~that has been set aside by the~~ *designated by a District ordinance to a specified Water Entitlement holder* for new or Intensified Water Use ~~that shall occur~~ on one or more ~~specific~~ Parcels.

WATER ENTITLEMENT HOLDER - "Water Entitlement Holder" shall refer to one of the following entities: The Pebble Beach Company (Ordinance Nos. 39 and 109), Hester Hyde Griffin Trust (Ordinance No. 39), J. Lohr Properties Inc. (Ordinance No. 39), the City of Sand City (Ordinance Nos. 132), Cypress Pacific Investors LLC (Water Distribution System Permit approved September 15, 2014), and Malpas Water Company LLC (Ordinance No. 165).

WATER USE PERMIT -- ‘Water Use Permit’ means a writing from MPWMD which evidences the dedication of ~~the~~ ***all or a portion of a*** Water Entitlement as a present vested property right enuring to the use and benefit of one or more ~~of the~~ Benefited Properties. ***Water available through a Water Use Permit can be used to obtain a Water Permit.*** ~~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 use and upon payment of applicable Connection Charges and fees, and issuance of a Water Permit as provided in Rule 23.5 or 23.6.~~

Section Four: Amendment of Rule 21, Applications

Section E. of MPWMD Rule 21 shall be amended as shown in bold italics (***bold italics***) and strikeout (~~strikethrough~~):

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

1. ***Any person that has an Assignment Document may file an application for a Water Use Permit.*** ~~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:~~
 - a. A completed Water Use Permit application;
 - b. 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;***
 - c. Processing fees.

2. *Upon completion of the process described in Rule 23.1, each holder of an Assignment Document shall be issued a Site-specific Water Use Permit for the quantity of water shown on the Assignment Document.*
3. *Each Water Use Permit issued pursuant to Rule 23.1 shall be appurtenant to the title of the Benefited Property and shall vest in the owner a property interest for the use and benefit of the quantity of Potable water in Acre-Feet per year.*
4. *Upon issuance of a Water Use Permit to the owner of a Benefited Property, the General Manager shall simultaneously make a record of the quantity of Water Entitlement that was conveyed to the owner of the Benefited Property and a commensurate reduction in the remaining amount of the Water Entitlement, if any, that thereafter is still held by the Water Entitlement Holder.*

Section Five: Amendment of Rule 23, Section C, Adjustment of Allocation for Unused Water Capacity

Rule 23, Section C shall be revised as shown in bold italics (*bold italics*) and ~~strikeout~~ text.

C. ADJUSTMENT OF ALLOCATION *OR WATER USE PERMIT* FOR UNUSED WATER CAPACITY

1. Any permitted ~~w~~Water Use ~~e~~Capacity which is not used because of an abandoned, expired, Revoked, returned, or amended Water Permit shall be returned to the applicable Allocation or ~~Water Entitlement~~Water Use Permit.
2. *The Owner of any Benefited Property shall be entitled to receive additional Water Permit(s) until the Water Use Permit has been used in full.*

Section Six: 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~~ text.

~~The Application and Process for Water Use Permits issued after May 24, 2007 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 ***Assignment Document 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~~ ***by the Water Entitlement Holder.***
 - (1) When the APN(s) shown on the Assignment Document does not match the spreadsheet of water purchasers, the General Manager shall contact the appropriate Water Entitlement ~~h~~***H***older to verify the validity of the Assignment Document.
 - (2) When the APN(s) shown on the Assignment Document is found to be incorrect, the Applicant shall submit a corrected and recorded Assignment Document from the Water Entitlement ~~h~~***H***older prior to issuance of a Water Use Permit. The Water Entitlement ~~h~~***H***older shall notify the District in writing of any correction.
- 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~~ ***provided*** 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 *or when new APNs are assigned to existing lots of record on a Site*. 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 and ownership information sufficient to prepare a new Water Use Permit.

C. **WATER USE PERMIT LIMITATIONS**

Water Use Permits issued under this Rule 23.1 shall be subject to the following limitations:

1. *The Water Use Permit and subsequent Water Permit shall not limit the power of the District to curtail water use in the event of any emergency caused by drought, or other threatened or existing water shortage, as defined in Section 332 of the Monterey Peninsula Water Management Act or other provision of law, including without limitation the power of the District to terminate water service as a consequence of a violation of water use restrictions.*
2. *The Water Use Permit and subsequent Water Permit shall not relieve or reduce any obligation of the holder of the Permit to pay customary fees, Capacity Fees, User fees, surcharges, taxes, utility taxes and/or other customary monetary obligation which may be imposed by the California Public Utilities Commission, California American Water, or the District upon Water Users of the same class within the California American Water Service Area, including but not limited to fees and charges due*

and payable to the District by reason of Rule 24, nor shall such Permit limit the authority of California American Water or the District to terminate water use for non-payment of such fees and changes.

Section Seven: Addition of Rule 23.7, Malpaso Water Company Water Entitlement

The following text shall be added as Rule 23.7 –Malpaso Water Company Water Entitlement:

RULE 23.7 – MALPASO WATER COMPANY WATER ENTITLEMENT

A. MALPASO WATER COMPANY WATER ENTITLEMENT

1. The Malpaso Water Company Water Entitlement confers on Malpaso Water Company, LLC (Malpaso Water Company) a Water Entitlement of 80 AFA through the California American Water Company Water Distribution System.
 - a. Malpaso Water Company shall hold Water Right License 13868A (issued by the California State Water Resources Control Board on July 3, 2015); and
 - b. Malpaso Water Company shall exercise Water Right License 13868A in a manner that will allow up to 80.0 AFA (reflecting conveyance losses) from the Carmel River system to be assigned by Malpaso Water Company to Benefited Properties via an Assignment Document; or
 - c. Malpaso Water Company shall exercise Water Right License 13868A in a manner that will allow the diversion of up to 85.6 AFA of production water from the Carmel River system for interim use by California American Water.
2. The Malpaso Water Company Water Entitlement shall continue for so long as Malpaso Water Company and California American Water comply with the preceding conditions (a. and b., or c.) or as modified by Section B-1.

3. Benefited Properties of the Malpaso Water Company Water Entitlement shall mean all properties that are legal lots of record as of March 4, 2014, and that are located within the California American Water Service Area and within the Carmel River watershed and the City of Carmel-by-the-Sea as described as a “place of use” in Water Right License 13868A.
4. Malpaso Water Company is authorized to separately sell, transfer and convey to owners of Benefited Properties for such consideration and upon such terms and conditions as Malpaso Water Company in its discretion may determine, such portions of the Malpaso Water Company Water Entitlement as it may choose. Any portion of the Malpaso Water Company Water Entitlement conveyed to the owner of a Benefited Property by an Assignment Document shall vest in the owner of the Benefited Property, and become appurtenant to title to the particular Benefited Property, at the time the Water Use Permit is issued as evidence of such conveyance.
5. The Malpaso Water Company Water Entitlement shall be separate and distinct from any other Allocations provided in Rule 30. The existence of the Malpaso Water Company Water Entitlement shall not affect any existing use of water in the County of Monterey or any City, or any existing Allocation to the County of Monterey or any City.
6. For purposes of collecting Capacity Fees and tracking the use of a Water Entitlement, the projected increase in Water Use Capacity of a Benefited Property shall be calculated in the manner set forth in Rule 24, as it may be amended from time to time.
7. Each Water Use Permit issued pursuant to this Rule shall represent a vested property interest upon issuance and shall not be subject to Revocation or cancellation except as expressly set forth in subparagraph B below.
8. The portion of the Malpaso Water Company Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to MPWMD Rule 30, nor shall the setting of meters for the California American Water system be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters.

B. REVOCATION, TERMINATION, OR MODIFICATION OF WATER USE PERMITS

1. Each Water Use Permit which, on or after January 1, 2075, embodies an annual Water Entitlement in excess of requirements for planned land uses on the Benefited Property, or which purports to authorize usage in excess of the constitutional limitation (California Constitution, article 10, Section 2) to reasonable and beneficial use, shall be subject to modification, Revocation, or termination in the sole discretion of MPWMD, such that the water usage authorized thereby shall not exceed such requirements and limitations.
2. Prior to any modification, termination or Revocation pursuant to this subparagraph B, the holder of the Water Use Permit shall be entitled to notice and a hearing, and any termination, Revocation, or modification shall be subject to appeal to the Board pursuant to Rule 70 of the MPWMD Rules and Regulations.

Section Eight: Effective Date and 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.

Section Nine: 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 Byrne, and second by Director Lewis, the foregoing ordinance is adopted upon this 17th day of August, 2015 by the following vote:

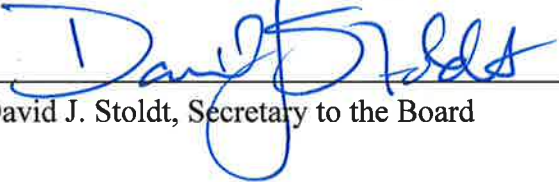
AYES: Directors Byrne, Lewis, Brower, Clarke, Markey, Pendergrass and Potter

NAYS: None

ABSENT: None

I, David J. Stoldt, 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 17th day of August 2015.

Witness my hand and seal of the Board of Directors this 1st day of September 2015.



David J. Stoldt, Secretary to the Board

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COPY CERTIFICATION

I, David J. Stoldt, 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. 165 duly adopted on the 17th day of August 2015.



David J. Stoldt,
Secretary to the Board of Directors

9-1-15
Date