



Adopted by the Board on December 14, 2015 – Effective Date January 13, 2016

**ORDINANCE NO. 166
AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING RULE 11 AND ADDING RULE 23.8
TO ESTABLISH A WATER ENTITLEMENT FOR
D.B.O. DEVELOPMENT NO. 30**

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. D.B.O. Development No. 30, a California Limited Liability Company (DBO), is the current owner of Assessor's Parcel Number (APN) 011-011-051, referred to herein as the "Donor Parcel." A portion of the water rights associated with the Donor Parcel is being transferred to California-American Water Company (California American Water or CAW), for future service to unspecified recipient properties in the Seaside Groundwater Basin designated by DBO.
4. DBO holds adjudicated rights, including rights to a Standard Production Allocation of water totaling at least 15.0 Acre-Foot per Year (AFY) from the Seaside Groundwater Basin, after accounting for triennial 10% reductions through year 2021 as ordered by the Monterey County Superior Court in the Seaside Basin Adjudication Decision (as amended). The Donor Parcel was previously owned by D.B.O. Development No. 27, which is named in that Decision.

5. DBO's water rights are based on the historical production from a Well that is located within the Edgewater Shopping Center complex on a Parcel currently identified as APN 011-011-043. The Well is currently a Monitor Well. The Well Parcel is owned by Dayton Hudson Corporation (Target), but the deed specifies that all water rights shall be retained by DBO. The Adjudication Decision allows parties to exercise their water rights anywhere in the Seaside Basin, and extractions are not limited to the location of historical use. Thus, DBO's water rights are not confined to the Well Parcel, and may be produced from another Seaside Basin Well, owned by another entity, and delivered to recipient parcels within the Seaside Basin.
6. Based on District staff analysis of the application, the CAW production limit from the Coastal Subareas of the Seaside Basin is increased by 15.0 AFY to meet the water needs of the unspecified recipient properties that would benefit from the Donor Parcel specified in Finding #3. This is equivalent to metered sales (customer water consumption) of 13.95 AFY that would be approved via MPWMD Water Permits for use on the recipient properties, based on an assumed system loss factor (unaccounted for water) of seven percent (7%). This factor is considered as reasonable in light of the 7% goal set in the MPWMD Rules & Regulations, the CPUC goal of 9% maximum system losses set in July 2009, and other CPUC approvals to replace and repair water mains.
7. The Monterey County Superior Court, Seaside Groundwater Basin Watermaster, and Sixth District Court of Appeal have confirmed (Order After Hearing on SNG's Motion to Enforce and Clarify the Amended Decision, Case #M66343, filed by the Monterey County Superior Court (Judge Roger Randall) on May 11, 2009 (referred to herein as "Court Order"); Sixth District Court of Appeal Decision, Case #H034335, dated April 1, 2010 (referred to herein as the "Appeal Decision")) that all or a portion of DBO's 15.0 AFY Standard Production Allocation water rights may be delivered to recipient properties in the Seaside Basin from offsite CAW Well(s) located in the Seaside Basin.
8. This ordinance establishes a Water Entitlement for DBO that California American Water will convey through California American Water's Water Distribution System to DBO Water Use Permit subscribers.
9. 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.

10. This ordinance authorizes DBO, 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 supplied with water from the Seaside Groundwater Basin.
11. 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.
12. This ordinance amends Rule 11 (Definitions) and adds Rule 23.8 (D.B.O. Development No. 30 Water Entitlement) to the Rules and Regulations of the Monterey Peninsula Water Management District.
13. 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 has determined that a Statutory Exemption applies as defined in CEQA Guidelines Section 15268 (Ministerial Projects), based on previous environmental determinations by the Courts. The Monterey County Superior Court concluded that its Adjudication Decision included environmental determinations related to the Seaside Basin and adjudication of the rights therein. The MPWMD action is also consistent with the May 11, 2009 Court Order as confirmed by the Sixth District Court of Appeal, which limits CEQA review of water-related issues to areas other than the Seaside Basin.

NOW THEREFORE, be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the D.B.O. Development No. 30 (D.B.O. Development No. 30) Water Entitlement Ordinance of the Monterey Peninsula Water Management District.

Section Two: Purpose

This ordinance establishes a D.B.O. Development No. 30 Water Entitlement for use in the Service Area of the California American Water Water Distribution System.

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 (~~strike through~~).

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), Lohr Properties Inc. (Ordinance No. 39), the City of Sand City (Ordinance No. 132), Cypress Pacific Investors LLC (Water Distribution System Permit approved September 15, 2014), ~~and~~ Malpas Water Company LLC (Ordinance No. 165), *and D.B.O. Development No. 30, a California Limited Liability Company (Ordinance No. 166).*

Section Four: Addition of Rule 23.8, D.B.O. Development No. 30, Water Entitlement

The following text shall be added as Rule 23.8 –D.B.O. Development Water Entitlement:

RULE 23.8 – D.B.O. DEVELOPMENT NO. 30 WATER ENTITLEMENT

A. D.B.O. DEVELOPMENT NO. 30, WATER ENTITLEMENT

1. The D.B.O. Development No. 30, a California Limited Liability Company (D.B.O. Development No. 30) Water Entitlement confers on D.B.O. Development No. 30 a Water Entitlement of 13.95 AFA through the California American Water Company Water Distribution System.
2. Benefited Properties of the D.B.O. Development No. 30 Water Entitlement shall mean all properties that are supplied with water from the Seaside Groundwater Basin and that are located within the California American Water Company Water Distribution System.
3. D.B.O. Development No. 30 is authorized to separately sell, transfer and convey to owners of Benefited Properties for such consideration and upon such terms and conditions as D.B.O. Development No. 30 in its discretion may determine, such portions of the D.B.O. Development No. 30 Water Entitlement as it may choose. Any portion of the D.B.O. Development No. 30 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.

4. The D.B.O. Development No. 30 Water Entitlement shall be separate and distinct from any other Allocations provided in Rule 30. The existence of the D.B.O. Development No. 30 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.
5. 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.
6. 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.
7. The portion of the D.B.O. Development No. 30 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 a water emergency, water moratorium or other curtailment on the setting of meters with the exception of a water emergency, water moratorium or other curtailment that affects the use of water by all Users of the Coastal Subarea of the Seaside Groundwater Basin.

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 Five: 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 Six: Severability

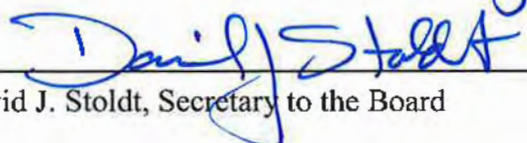
If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions 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 Potter, and second by Director Brower, the foregoing ordinance is adopted upon this 14th day of December, 2015 by the following vote:

AYES: Directors Potter, Brower, Byrne, Clarke, Lewis and Pendergrass
NAYS: None
ABSENT: Director Evans

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 14th day of December 2015.

Witness my hand and seal of the Board of Directors this 28th day of January 2015.



David J. Stoldt, Secretary to the Board

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. 166 duly adopted on the 14th day of December 2015.



David J. Stoldt,
Secretary to the Board of Directors

1-26-16
Date