



*Adopted by the Board on January 27, 2016 – For Effective Date Refer to Section Six*

**ORDINANCE NO. 168**  
**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE**  
**MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**  
**AMENDING RULE 11 AND ADDING RULE 23.9**  
**TO ESTABLISH A WATER ENTITLEMENT FOR**  
**THE CITY OF PACIFIC GROVE**

**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 City of Pacific Grove (City) committed to construct the Pacific Grove Local Water Project (Project) within the City. The Project is intended to create non-potable recycled water supply of 125 acre-feet annually (AFA) to meet irrigation needs on the City-owned Pacific Grove Golf Links and El Carmelo Cemetery and will thereby reduce potable water metered demand on the California American Water Company (Cal-Am) water system. The Project includes a new Satellite Reclaimed Water Treatment Plant facility with a design flow capacity of 0.25 million gallons per day, and will recycle a portion of the City's municipal wastewater at the Point Piños Wastewater Treatment Plant. Potable water freed by reason of Project operations shall be available for re-use; a remainder will be conserved and permanently suspended from use for the benefit of the Carmel River system.
4. The City certified an Environmental Impact Report (EIR) for the Project on November 19, 2014, in accord with the California Environmental Quality Act (CEQA). In certifying

this EIR, the City made specific findings which, by this reference, are made an integral part of this ordinance, as if set forth in full. The City thereafter prepared and certified a Supplemental EIR (SEIR) on modification to the PG Local Water Project (SCH# 2014021058) which examined impacts that might result from implementation of this ordinance.

5. A key purpose for the Project is to assist the City, the District, and Cal-Am to meet requirements of State Water Resources Control Board (SWRCB) Order WR 95-10, whereby the SWRCB concluded Cal-Am 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 Cal-Am to terminate unlawful diversions from the Carmel River system. The Project reduces metered demand and Cal-Am production requirements from the Carmel River system. The Project is scheduled to be fully on line and delivering up to 125 afy on or before December 31, 2016.
6. This ordinance suspends use of a portion of the potable water previously diverted by Cal-Am and used by the City to irrigate its Golf Links and El Carmelo Cemetery, during that period before Cal-Am is able to cease diverting water from the Carmel River system without a valid basis of right.
7. This ordinance establishes a Water Entitlement for the City by which Cal-Am may convey water through its distribution system to City subscribers based upon a Water Use Permit, and adds water to Jurisdictional Allocations under Rule 33. This ordinance also establishes procedures under which City subscribers may apply to the District for Water Use Permits receive and use water diverted by Cal-Am.
8. This ordinance amends Rule 11 (Definitions) and adds Rule 23.9 (City of Pacific Grove Water Entitlement) to the Rules and Regulations of the Monterey Peninsula Water Management District.
9. Significant portions of the water made available by the Project shall assist Cal-Am's efforts to comply with SWRCB Order WR 95-10, and Cease & Desist Order 2009-060.
10. The MPWMD is a responsible agency under CEQA. As a CEQA responsible agency, the MPWMD may rely on the City's CEQA compliance for this ordinance. 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 information contained in the SEIR. 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 Pacific Grove Recycled Water Supply Entitlement Ordinance of the Monterey Peninsula Water Management District.

### **Section Two: Purpose**

The purpose of this ordinance create a process to confirm and quantify replacement of existing Potable water use with Recycled Water by reason of the Pacific Grove Local Water Project, to quantify the portion of replaced water supply retired from use during the period before California American Water is able to cease diverting water from the Carmel River system without a valid basis of right, and to confirm how the remainder portion of water may be re-used by the City of Pacific Grove and the District via deliveries from California American Water from its various sources, including water from the Carmel River system.

### **Section Three: Amendment of Rule 11, Definitions**

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

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~~ Malpaso Water Company LLC (Ordinance No. 165), ~~and~~ D.B.O. Development No. 30, a California Limited Liability Company (Ordinance No. 166), *and the City of Pacific Grove (Ordinance No. 168).*

### **Section Four: Addition of Rule 23.9, City of Pacific Grove Water Entitlement**

The following text shall be added as Rule 23.9 – City of Pacific Grove Water Entitlement:

**RULE 23.9 – CITY OF PACIFIC GROVE WATER ENTITLEMENT**

**A. CITY OF PACIFIC GROVE WATER ENTITLEMENT**

1. The City of Pacific Grove Water Entitlement confers on the City of Pacific Grove, a vested property right to release up to 66 AFA of water for consumption from the California American Water Company Water Distribution System.
2. 13 AFA of metered water demand previously used by the City of Pacific Grove to irrigate its Golf Links and El Carmelo Cemetery shall be permanently suspended from use in order to provide lasting benefits to the Carmel River system.
3. Benefited Properties of the City of Pacific Grove Water Entitlement shall mean all properties that are located within the City of Pacific Grove.
4. City of Pacific Grove is authorized to separately sell, transfer and convey to owners of Benefited Properties for such consideration and upon such terms and conditions as City of Pacific Grove in its discretion may determine, such portions of the City of Pacific Grove Water Entitlement as it may choose. Any portion of the City of Pacific Grove 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 City of Pacific Grove Water Entitlement shall be separate and distinct from any other Allocations provided in Rule 30.
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 City of Pacific Grove Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to MPWMD Rule 30.

**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 E, 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: Designation of 9 Acre-Feet of Water Savings to MPWMD**

Simultaneous with the creation of the Pacific Grove Water Entitlement pursuant to Rule 23.9, the District shall reserve 9 AFA of conserved water for its exclusive use for future Jurisdictional Allocation pursuant to Rule 30 or to be held in reserve.

**Section Six: Effective Date and Sunset**

This ordinance shall take effect upon completion of the Pacific Grove Local Water Project and verification of disconnection from the California American Water Water Distribution System of all irrigation and irrigation Connections to the Pacific Grove Municipal Golf Links and the El Carmelo Cemetery.

This Ordinance shall not have a sunset date.

**Section Seven:      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 Pendergrass, and second by Director Lewis, the foregoing ordinance is adopted upon this 27th day of January, 2016 by the following vote:


AYES:            Directors Pendergrass, Lewis, Clarke, Byrne, Evans and Potter

NAYS:           None

ABSENT:        Director Brower

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 27th day of January 2016.

Witness my hand and seal of the Board of Directors this 23<sup>rd</sup> day of February 2016.

  
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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. 168 duly adopted on the 27th day of January 2016.

  
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David J. Stoldt,  
Secretary to the Board of Directors

2-23-16  
Date