

December, 1988

ORDINANCE NO. 38

AN ORDINANCE OF THE  
BOARD OF DIRECTORS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
ESTABLISHING A BOARD TO CONDUCT VARIANCES AND  
APPEALS RELATING TO DISTRICT WATER RATIONING RULES

ORDINANCE

Section One: Statement of Purpose

The Monterey Peninsula Water Management District enacts this Ordinance to establish rules and standards for a hearing panel for all formal variances and appeals relating to any water supply emergency which may be declared in accord with Section 332 of the District Law, including that emergency which has been declared by District Ordinance No. 35. This Ordinance provides for the administration and management of all formal water rationing hearings. This Ordinance shall amend and supersede those provisions of the District Rules and Regulations pertaining to Variances or Appeals as they relate to water rationing, and shall amend and supersede those provisions of Ordinance No. 35 and Ordinance No. 37 as those Ordinances pertain to formal rationing variances or appeals. In all other respects this ordinance shall be construed to compliment and not supersede the provisions of that Ordinance. This Ordinance shall be further read in conjunction with and compliment the District's Rules and Regulations.

The purpose of this Ordinance is to ensure that water rationing hearings are conducted fairly, before an informed panel of decision makers, yet proceed in an expeditious and responsive manner.

Section Two: Informal Water Rationing Variances

Water use rations, baseline ration options, and lifeline ration options mandated by any water rationing ordinance may be modified in writing by the General Manager or his designee upon written request, without formal application or hearing, when the modification is consistent with the District rationing and water

conservation goals, and where a strict application of water rationing requirements would cause health or safety problems, cause extreme hardship, or be inapt by reason of extreme or unusual circumstances. In making this determination, the General Manager shall be guided by those principles set forth in Rule 24 of the District Rules and Regulations. Further relief may be sought by any applicant pursuant to the Formal Rationing Hearing process set forth by this Rule. The General Manager shall maintain a separate file of each informal rationing variance request, and the response to that request. This file shall be available for public inspection during regular business hours.

Section Three: Appointment of a Hearing Officers to Conduct Formal Water Rationing Variance, Compliance or Enforcement Hearings

At the time any Water Supply Emergency is declared by the Board of Directors, and from time to time thereafter, the Board shall designate by Resolution three (3) or more persons to serve as administrative hearing officers for all formal water rationing hearings, including formal variances, appeals, and enforcement actions. Each hearing officer shall serve a term of twelve (12) months, unless earlier removed by Board Resolution. Each hearing officer shall be a resident of the District.

Section Four: Variance, Compliance or Enforcement Hearing Panels

- (A) Each Water Rationing Variance, and each Water Rationing Compliance or Enforcement Hearing shall be conducted before a panel of three (3) hearing officers who have been designated as such by Board Resolution in accord with this Rule. In the event more than three (3) hearing officers have been designated as such by the Board of Directors, selection of the three (3) who shall conduct hearings during any two (2) week period shall be determined by random lot. All administrative hearings shall proceed in a quasi-judicial manner, but may be held in an informal fashion without the burden of procedural technicalities.
- (B) During each two (2) week administrative hearing period (or as alternately deemed appropriate by the hearing panel), a presiding officer shall be selected among the three (3) hearing officers to conduct the administrative proceedings and to rule on any technical matters before the hearing panel.

## Section Five: Hearing Notice

Formal administrative hearings relating to water rationing may be initiated by any individual, by a member of the Board of Directors, or by the General Manager or his designee through the process set forth in this Section. There shall be no fee required of any applicant for a formal rationing hearing.

A. Compliance Hearings. The following written notice shall be provided by the District at least ten (10) calendar days before any enforcement or compliance hearing may be held at which a penalty may assessed, including installation of water service flow restrictors, disconnection of water service, or imposition of penalty assessments which may be greater than the standard excess water use surcharge fee. This notice shall be mailed to the address of all properties and persons or entities listed in sub-paragraphs a through d below, shall be posted conspicuously at or near the site of the alleged non-compliance, and shall be published once in a newspaper of general circulation within the District. The notice shall contain the following:

- a. the address of the real property which may be affected by the decision; and
- b. the name of any occupant(s) of the real property affected by the decision; and
- c. the name of each owner of record of the real property affected by the decision; and
- d. the name of the water distribution system which may be affected by the decision; and
- e. a concise statement of the nature of the hearing, together with a clear statement of the penalty which may be imposed by reason of the hearing; and
- f. a concise statement and description of any alleged violation or non-compliance of water rationing or water waste rules, together with any applicable time, date and place of the alleged violation or non-compliance; and
- g. a reference to the provisions of any water waste standard or rationing rule which shall be referenced at the hearing; and
- h. the name of the District staff member who can answer questions concerning the enforcement hearing process; and
- i. the date, time and place at which the hearing shall be held; and
- j. the name of each hearing officer who is anticipated to participate in the administrative hearing.

B. Variance Hearings. For any formal water rationing variance hearing request, whether initiated by the District or by an individual, it is preferred that the information set forth

in this sub-paragraph shall be provided in writing by the applicant for the variance on the form provided by the District. The District shall nonetheless accept and act upon any written request for a water rationing variance hearing. Nonetheless, the lack of any material information respecting the application, or the failure to provide data respecting other interested parties, shall be construed against the party requesting the hearing. The written application should contain the following:

- a. the address of the real property which may be affected by the variance application and decision; and
- b. the name and telephone number of each and every occupant of the real property affected by the variance application and decision; and
- c. the name, address and telephone number of each owner of record of the real property affected by the variance application and decision, together with the name, address and telephone number of all other persons or entities who possess a tangible interest in the variance application and decision; and
- d. the name of the water distribution system which may be affected by the decision, the number of water meters serving the affected property, and the name of each individual to whom water service is currently billed; and
- e. the character of water use (residential, commercial, industrial, or mixed use) which applies to each water meter upon the property, the water ration for each water meter, and the actual water use during the most recent two (2) billing periods for each water meter; and
- f. a concise statement of the issues the hearing panel shall be requested to consider in its ruling upon the matter; and
- g. a reference to the provisions of any water waste standard or rationing rule which shall be referenced or questioned by reason of the variance request; and
- i. a statement of the character of evidence which shall be presented at the administrative hearing in support of the request; and
- j. a list of persons, if any, who shall be requested to testify at the hearing; and
- k. the name, address and telephone of each technical or expert witness who shall provide expert or opinion testimony at the administrative hearing; and
- l. an estimate of the time required for presentation at the administrative hearing; and
- m. a concise statement and description of any specific action, remedy, or relief which is requested by the applicant; and
- n. a proposed set of findings of fact which will support

- o. the relief requested; and
- o. information (if any) which would disqualify for cause any member of the hearing panel; and
- p. the name, address and telephone of each authorized agent who will represent the applicant in pre-hearing matters, or who will appear at the administrative hearing.

The responding party (typically the District) shall supplement the information noted above no less than thirty (30) calendar days following actual receipt of the request for the administrative hearing. The responding party shall provide at least ten (10) calendar days prior to the hearing a separate proposed set of findings of fact, and in addition, shall note each finding of fact for which a dispute is known or suspected to exist.

No less than thirty (30) calendar days following the receipt of a formal hearing request by the District, a hearing shall be set. Notice of the date, time, and place of the hearing shall be mailed to the address of all properties and persons or entities listed in sub-paragraphs a through d above, shall be posted conspicuously at or near the site of all affected properties, and shall be published once in a newspaper of general circulation within the District.

#### Section Six: Pre-Hearing Issues

The District shall have a policy of discouraging continuance of calendared hearings. Continuances shall be allowed only in the discretion of the presiding hearing officer, and shall be allowed only upon a showing of good cause which is in the best interests of the District. A continuance shall not cause a change in the hearing panel, except as required for the convenience of the hearing officers. Disputes respecting whether an issue is ready for hearing, or whether sufficient information has been provided to set a hearing shall be determined by the presiding hearing officer. The presiding hearing officer shall also rule on any other preliminary question, including but not limited to discovery and pre-hearing motions. A motion to disqualify any designated hearing officer must be written, must allege actual bias rather than the mere appearance of bias, and must be received by the District no later than five (5) calendar days after the date required for submission of the Responding Party's written materials specified in this Rule. A ruling on the disqualification of any designated hearing officer may be made by any other member of the hearing panel. An untimely or oral motion to disqualify any designated hearing officer shall have no force or effect.

## Section Seven: Administrative Hearing Process

Each hearing shall proceed in substantially the manner set forth by this section. Each hearing shall be conducted in a quasi-judicial manner, but may proceed in an informal fashion without the burden of procedural technicalities. An oral recording shall be made of each administrative hearing. Each hearing shall be open, fair, and impartial. The presiding hearing officer, however, may require witnesses other than parties to be excluded except when providing testimony. The order of presentation may proceed as follows:

- (1) The presiding hearing officer calls the matter for hearing and asks parties (and counsel) to identify themselves.
- (2) Pleadings, e.g., application, appeal, complaint, accusation, notice of defense, and notice of hearing are made part of the record.
- (3) The presiding hearing officer takes official notice of the capacity of the respondent and the status of the requesting party and shall designate the party which shall carry the primary burden of proof. The primary burden of proof shall be on the applicant (or requesting party) for any party initiating a variance hearing. The District shall have the burden of proof in any compliance or enforcement proceeding.
- (4) Either party may make an opening statement, although this is seldom done. If opening statements are made, the party having the burden of proof proceeds with the first opening statement. The opposing party may reply at that time or reserve an opening statement until the time for presentation of the case.
- (5) The party having the burden of proof puts its case on first by the presentation of documents, affidavits or declarations, and if necessary, live testimony. The responding party follows.
- (6) After an initial presentation of evidence by both sides, the parties may introduce evidence only in rebuttal.
- (7) The presiding hearing officer may request witnesses on relevant matters, but should not try the case for either party.
- (8) Each party shall make a brief closing argument, but shall have no opportunity for rebuttal argument.
- (9) The presiding hearing officer shall close the hearing, however, all deliberations of the hearing panel shall be open and public, but may be continued from time to time.

Section Eight: Post Hearing Process

At the close of the administrative hearing, the hearing panel shall review the file and all evidence presented at the hearing as follows:

- (1) All deliberations of the hearing panel shall be open to the public.
- (2) The hearing panel shall consider the substantial evidence in the file and presented during the hearing. All decisions of the hearing panel shall be made upon a preponderance of the evidence, except where the hearing order shall cause termination of water service in which case a higher degree of proof shall be required, i.e., clear and convincing proof to a reasonable certainty.
- (3) The hearing panel shall adopt findings of fact and issue a written final decision based upon the majority decision of the hearing officers.
- (4) A copy of the hearing panel's decision and findings shall be signed by the presiding officer and mailed to each party within ten (10) calendar days of the last day of the hearing, not counting the day of the hearing. A copy of the decision and findings shall also be posted at the District for a period of ten (10) days. The decision shall state the applicability of Section 1094.6 of the Code of Civil Procedure pursuant to Rule 16 of the District Rules.
- (5) Decisions of the hearing panel shall be fixed when issued and, except for clerical modifications to the administrative record, may only be reviewed by a competent court of law. Administrative remedies shall be exhausted upon the decision of the hearing panel.

Section Nine: Enforcement Penalty Options

In any enforcement proceeding, the administrative hearing panel may select from the following penalty options as warranted:

- (1) Civil Penalty for Water Waste - for each gallon of water wasted (or used in excess of the limitations set forth by the current phase of the water supply emergency) a penalty fee shall be assessed as follows:

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# EXCESS USE FEE

(1 UNIT = 748 GALLONS)

## MONTHLY BILLS

1st Unit - \$25	(3.3¢/gal)
2nd Unit - \$50	(6.7¢/gal)
3rd Unit - \$75	(10¢/gal)
4th Unit - \$100	(13.3¢/gal)
5th Unit - \$125	(16.7¢/gal)
6th Unit - \$150	(20¢/gal)
7th Unit - \$175	(23.3¢/gal)
8th Unit - \$200	(26.7¢/gal)
9th Unit - \$225	(30¢/gal)
10th Unit - \$250	(33.4¢/gal)
Over 10 Units - \$250/Unit	(33.4¢/gal)

## BI-MONTHLY BILLS

1st & 2nd Units - \$25/Unit
3rd & 4th Units - \$50/Unit
5th & 6th Units - \$75/Unit
7th & 8th Units - \$100/Unit
9th & 10th Units - \$125/Unit
11th & 12th Units - \$150/Unit
13th & 14th Units - \$175/Unit
15th & 16th Units - \$200/Unit
17th & 18th Units - \$225/Unit
19th & 20th Units - \$250/Unit
Over 20 Units - \$250/Unit

- (2) Misdemeanor Citation - Referral for prosecution as a misdemeanor and abatement as a civil nuisance for continued water waste following the correction deadline set forth in the original Notice of Violation.
- (3) Installation of flow restrictor for duration of water supply emergency together with payment to the public utility or water distribution system of actual costs for installation and removal of the flow restrictor, and payment to the District of a use fee of \$500.00 (mandatory for second offense of Phase II, Phase III, or Phase IV rationing limitations).
- (4) Disconnection of water service for duration of water supply emergency together with payment to the public utility or water removal system of actual costs for removal of the connection and payment to the District of a use fee of \$750.00 (discretionary, and only as a penalty imposed upon a third offense of Phase III or Phase IV rationing limitations).



Section Ten: Publication

The provisions of this ordinance shall be published in the Rules and Regulations of the Monterey Peninsula Water Management District as Rule 92, and shall supersede and replace the former provisions of that Rule 92.

On motion of Director Heuer, and second by Director DeBerry, the foregoing ordinance is duly adopted this 9th day of January, 1989, by the following vote:

- AYES: Directors Pendergrass, DeBerry, Lombardo, Davis, Heuer and Hughes  
NAYS: None  
ABSENT: Director Strasser Kauffman

I, Bruce Buel, 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 this 9th day of January, 1989.

Witness my hand and seal of the Board of Directors this 20th day of January, 1989.

  
Bruce Buel, Secretary to the Board