

December 21, 1988

ORDINANCE NO. 39

AN ORDINANCE AUTHORIZING THE MONTEREY  
PENINSULA WATER MANAGEMENT DISTRICT  
TO IMPLEMENT A WATER DEDICATION PLAN  
AND TO INVITE PROPOSALS TO  
FINANCE A WASTEWATER RECLAMATION PROJECT

FINDINGS

1. The Monterey Peninsula Water Management District (the District) has found and determined that it is in the best interest of the District and the inhabitants of the District to provide for the construction of a wastewater treatment plant (the "Reclamation Project") to produce subpotable water which can be used for the irrigation of greenbelt areas within the District.

2. The Reclamation Project will be owned and operated by the Carmel Sanitary District ("CSD") and the Pebble Beach Community Services District ("PBCSD") pursuant to a joint ownership and operating agreement or by a joint powers agency established by such agencies.

3. It is estimated that the production of subpotable water by the Reclamation Project will lessen consumption of the limited potable water resources available on the Monterey Peninsula by at least 800 acre feet per dry year, thus liberating such potable water for other uses (such water being herein called "Franchise Water") within the California-American Water Company ("Cal-Am") service territory.

4. The District has determined that the most desirable and cost effective method of financing the costs of construction and operating the Reclamation Project is to provide a permanent dedication of a portion of the Franchise Water to users who shall guarantee payment of all costs of constructing, equipping, and operating the Reclamation Project. The value of any guarantee, however, is limited to the creditworthiness of the guarantor.

5. The District has determined that the Reclamation Project will benefit the public good by increasing the supply of potable water available for new use, by reducing the existing demand for potable water, or for reserve water. The reduction in demand will reduce production impacts upon the environment. The District has determined that the maximum portion of the Franchise Water which may be appropriately dedicated to users in order to provide for the construction, equipping and operation of the Project shall not exceed 400 acre feet per year, or fifty (50%) percent of the Franchise Water as set forth in Finding 3 above, whichever amount may be less. Dedication of less Franchise Water will confer an even greater benefit upon the community at large.

6. The District has determined that it is necessary (i) to establish a formal manner and process for selection of a Fiscal Sponsor or Sponsors (as hereinafter defined) who will assume responsibility for guaranteeing or assuring payment of costs of constructing, equipping and operating the Reclamation Project, (ii) to establish the manner in which a portion of the Franchise

Water shall be dedicated to the use and benefit of property owned by the Fiscal Sponsor or Sponsors, and (iii) to provide for other agreements and procedures as are necessary to provide for the construction and operation of the Reclamation Project and for the sale of reclaimed, subpotable water produced by the Reclamation Project.

7. The District has determined that it is necessary to identify potential Fiscal Sponsors who may be able and willing to guarantee payment of costs of constructing, equipping and operating the Reclamation Project prior to the District's decision to approve or reject participation in the Reclamation Project. Identification of potential Fiscal Sponsors will enable a more accurate analysis of both the quality of any guarantee and consequences of the Reclamation Project and its potential impacts. This Ordinance shall not constitute approval of the Reclamation Project, or approval of the Reclamation Project financing plan by the District. This Ordinance shall not commit the District to select a Fiscal Sponsor or to approve the Reclamation Project or to approve the Reclamation Project financing plan.

NOW THEREFORE BE IT ORDAINED BY THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT that the following shall hereby be adopted and approved to implement a Water Dedication Plan and invite proposals to finance a Wastewater Reclamation Project.

PART I.

PURPOSE

It is the purpose of this ordinance to establish a plan which will enable the financing of a Wastewater Reclamation Project to produce subpotable water for greenbelt irrigation, to lessen near term consumption of limitable potable water supplies, and to enable the reuse of potable water supplies which are freed by reason of the Reclamation Project. The financing plan requires dedication of a portion of the potable water freed by the Reclamation Project in return for guarantees of fiscal responsibility. This ordinance establishes a process, in the event the Reclamation Project is later approved by the District, for the dedication of a portion of the potable water freed by the Reclamation Project, authorizes the General Manager to invite proposals to enable later selection of Fiscal Sponsors for the Reclamation Project, and establishes criteria for that selection process. This Ordinance, in the event the Reclamation Project is approved, enables the grant of water use permits which represent vested property rights of the fiscal sponsor, and amends the District's Rules and Regulations respecting aspects of this Ordinance which shall have continuing effect.

PART II.

SELECTION OF FISCAL SPONSORS

A. Authority to Invite Proposals. The General Manager shall invite proposals from persons, entitles and/or public

entities within the District in order to finance all Capital Costs and Net Operating Deficiencies including Ancillary Project Costs (but in any event no longer than twenty years). The invitation of proposals shall provide such information as is necessary for an applicant to assess the Financial Commitment required to finance the Reclamation Project, including but not limited to the estimated Capital Costs of the Reclamation Project, a construction engineer's report concerning the feasibility of the Reclamation Project, and the estimated Operating Revenues, Operation and Maintenance Expenses, and Net Operating Deficiency including Ancillary Project Costs for the Reclamation Project during its useful life (but in any event no longer than twenty years).

The invitation shall also describe the nature and extent of the Water Entitlement which will be dedicated in consideration for the Financial Commitment of the Fiscal Sponsor/Sponsors. The invitation shall further state that, in the event the Reclamation Project is approved by the District, only parcels which are situated within the existing service areas of the California American Water Company (Cal-Am) shall be eligible for a dedication of a portion of the Water Entitlement, and that any proposed use of any portion of the Water Entitlement must be consistent with planned uses. The invitation shall provide notice that this Ordinance does not alter, affect, or preempt the land use planning authority of the county or any city, and that the Fiscal Sponsor/Sponsors shall be solely responsible for full

and complete compliance with all applicable land use planning procedures.

The invitation shall further state the nature and extent of the Financial Commitment required of the Fiscal Sponsor/Sponsors, as well as any terms or conditions pursuant to which such Financial Commitment may be limited or extinguished. Such terms may include a provision permitting the Fiscal Sponsor to terminate its Financial Commitment so long as (i) all Capital Costs of the Project have been paid as provided for (or if the bonds or other obligations issued to finance the Capital Costs of the Project will have been paid or otherwise provided for) and (ii) the Operating Revenues (adjusted upward, if necessary to ensure that rates for reclaimed water are imposed at the maximum rate imposed by Cal-Am) for potable water for the most recent three (3) fiscal years for which financial data is available are at least equal to 125% of Operation and Maintenance Expenses for such fiscal years.

Any such financial commitment shall be required to be guaranteed by an irrevocable and unconditional letter of credit or other comparable financial guarantee in form and substance satisfactory to the District issued by a banking or other financial institution whose long-term debt is rated in one of the two highest rating categories by at least one nationally recognized rating agency. An alternate guarantee may be required of any public agency Fiscal Sponsor, provided however, that such guarantee shall not impair the security of the District.

The invitation shall further state that the District or another Public Participant is willing to issue bonds or other obligations sufficient to finance the Capital Costs of the Reclamation Project. If bonds or other obligations are issued by the District or any Public Participant to finance the Capital Costs of the Reclamation Project, the financial commitment of the Fiscal Sponsor or Sponsors shall be required to guarantee the timely payment of such bonds or other obligations in accord with the provisions of Part VII of this Ordinance, and shall enable the bonds to qualify for a rating in one of the two highest rating categories from at least one nationally recognized rating agency. Should the bonds be purchased directly by the Fiscal Sponsor/Sponsors at the time of issuance and not receive the required rating, all bonds shall have a limitation prohibiting re-sale without the prior written consent of the District, and shall provide for relief and complete discharge of District's or other Public Participants' obligations to satisfy payment of bond interest and/or principal if, (a) the Fiscal Sponsor/Sponsors holding the bond should default upon their fiscal guarantee, and (b) there shall be in complete indemnification to District by reason of the letters of credit or other security interest provided by the Fiscal Sponsor/Sponsors.

The invitation shall further state a date and time by which timely responses must be delivered to the District office. This date shall not be less than thirty (30) days following issuance of the invitation for proposals to finance the Reclamation

Project. Each response shall be reviewed by the General Manager as an application to participate as a Fiscal Sponsor.

B. Criteria for Selecting Fiscal Sponsors

Following the time and date in which an applicant may submit a timely response to the District's invitation, the General Manager shall review each application, and if the application appears to be incomplete, shall request the responding party submit additional information. The General Manager shall not receive or process any untimely response. The General Manager within a further period not to exceed thirty (30) days shall review each application which is complete and timely and shall rate each applicant on the basis of the following criteria:

1. Ability to Finance.

Applicants shall be evaluated as to their capability to provide the Financial Commitment to guarantee financing for the Capital Cost, Net Operating Deficiencies and Ancillary Project Costs of the Reclamation Project and to eliminate risk to the District and Public Participants in accord with the provisions of Part VII of this Ordinance. If the applicant is requesting to finance less than the total Capital Cost and the Net Operating Deficiencies of the Reclamation Project, the applicant will provide adequate assurances that it shall cooperate with other Fiscal Sponsors to ensure and guarantee that the entire Financial Commitment shall be satisfied. Sponsor applicants will be ranked by both the quality of their Financial Commitment (the means and the extent to which Capital Cost and net Operating Deficiencies



shall be guaranteed by the Fiscal Sponsor), and by the extent to which the Sponsor applicant requests to finance the entire Reclamation Project costs. Preference shall be given to any applicant or applicants who singly or collectively will assure or guarantee 100% of the Financial Commitment (Reclamation Project Capital Costs and Net Operating Deficiencies) without contribution by District.

2. Amount of Franchise Water Required

Applicants shall identify the annual quantity of Water Entitlement required as consideration for providing the Financial Commitment by the applicant. Preference will be given to the applicant or applicants who will assure or guarantee the full Financial Commitment for the Reclamation Project for the smallest annual Water Entitlement.

3. Location of Use

Applicants shall identify by full legal description and by common address the location of each parcel of land upon which a portion of the potable Water Entitlement is proposed to be dedicated (all proposed Benefited Properties). An application shall be accepted only if it proposes utilization of the entire Water Entitlement within the existing service area of the California-American Water Company.

4. Type of Use

Applicants shall identify the planned uses pursuant to general plans and zoning (e.g. commercial, residential or industrial) to which the applicant will apply the Water

Entitlement, the status of construction or development of the applicant's projects, the estimated amount of annual water usage, and the estimated number and types of potential connections for such projects. It shall be mandatory for all such applications to apply the Water Entitlement in a manner consistent with planned uses. Preference shall be given to those applications which singly or conjunctively can cause implementation of the complete Reclamation Project with the smallest annual dedication of Franchise Water.

5. Date for Full Use

Applicants shall identify the projected date by which the full annual Water Entitlement shall be completely utilized, and any information which may relate to interim potable water use on Benefited Properties. Preference shall be given to those applications which propose use of Franchise Water at the most distant future date. Preference shall also be given to those applications which propose to phase the use of Franchise Water over time.

6. Alternative Potable Water Supplies

Applicants shall identify whether another or alternate supply of water, including but not limited to groundwater or subpotable water, is reasonably available to such applicant to supply all or a portion of its water needs. Preference shall be given to those applicants which have no alternative water supply.

7. Use of Subpotable Water

Applicants shall identify whether the applicant is at the

present time using potable water for irrigation, and whether the applicant is willing to voluntarily relinquish that potable water use in exchange for a commitment to receive reclaimed, subpotable water from the Reclamation Project. Preference shall be given to these applicants.

C. Recommendation to the Board The General Manager shall submit a recommendation to the Board as to the applicant or applicants who based upon the above criteria are best suited to act as Fiscal Sponsor/Sponsors for the Reclamation Project, together with the basis for such selection. The General Manager shall further make a recommendation as to the quantity of Franchise Water required for dedication as the annual Water Entitlement for use by the Fiscal Sponsor/Sponsors. If more than one applicant is recommended to act as a Fiscal Sponsor, the General Manager shall disclose the manner in which the financial commitment and the corresponding Water Entitlement is to be divided among such Fiscal Sponsors, and the adequacy of assurances that the Fiscal Sponsors can function cooperatively.

D. Board Approval The Board shall review the recommendations of the General Manager in its action on whether or not to proceed with the Reclamation Project. The Board shall determine the extent to which these recommendations respecting Fiscal Sponsor selection shall be approved. Should more than one application be received by prospective Fiscal Sponsors for the Reclamation Project, the Board will hold a public hearing to receive comments from all applicants and other interested parties

prior to action on the recommendations of the General Manager. In the event the Reclamation Project is approved, the Board thereafter shall authorize the General Manager to issue the permits described in Rule 23.5 of the District's Rules and Regulations (Part III of this Ordinance) and to negotiate such contracts and agreements as are required to ensure that Cal-Am shall provide the Water Entitlement to the Fiscal Sponsor/Sponsors as described in Part IV of this ordinance. Any Fiscal Sponsor/Sponsors selected by the Board shall assure or guarantee the Financial Commitment in such manner as determined acceptable to the Board, and shall hold harmless, indemnify, and defend the District from any expenses, costs, and/or risks associated with the Reclamation Project as the Board deems appropriate. This Financial Commitment shall also be guaranteed by a renewable letter of credit or other financial guarantee issued by a banking or other financial institution whose long-term debt is rated in the two highest rating categories by at least one nationally recognized rating agency; this guarantee shall be provided in the manner and to the extent as determined by the District Board.

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PART III.      PERMITS FOR WATER FROM THE CAL-AM WATER  
DISTRIBUTION SYSTEM DEDICATED FOR USE IN  
CONNECTION WITH THE PLAN TO FINANCE THE  
WASTEWATER RECLAMATION PROJECT

A.    Issuance of Water Use Permits.      Upon Board Selection of all Fiscal Sponsor/Sponsors pursuant to Part II of Ordinance No. 39 and upon irrevocable commitment by those sponsors to underwrite, be responsible for, assure and guarantee payment of the Financial Commitment (Capital Costs and Net Operating Deficiencies and Ancillary Project Costs of the Reclamation Project recorded by the agreements required by Part VII of this Ordinance), the General Manager shall issue Water Use Permits to the Fiscal Sponsor/Sponsors authorizing the expansion and extension of the Cal-Am water distribution system to provide water service and connections for the benefit of the properties identified in the application(s) of the Fiscal Sponsor/Sponsors (such properties hereinafter referred to as the "Benefited Properties"). Each Water Use Permit shall grant an irrevocable property interest upon one or more Benefited Parcels for the use and benefit of a specified quantity of potable water per year (in acre feet) produced by the Cal-Am water distribution system. Water Use Permits shall be subject only to the following limitations, (1) the permit shall not limit the power of the District to curtail water use in the event of a water emergency, as defined in Section 332 of the Monterey Peninsula Water

Management Act; (2) the permit shall not relieve or reduce any obligation of the recipient of water to pay customary fees, connection charges, use fees, surcharges, taxes, utility taxes, and/or any other customary monetary obligation which may be imposed by the California Public Utilities Commission, Cal-Am, District, or other Public Participants upon water users of the same class within the California-American Water Company service area, including but not limited to fees and charges due and payable to the District by reason of Rule 24 of the District's Rules and Regulation; (3) the permit shall enable present use of the Water Entitlement only upon the commencement of operation of the Reclamation Project and upon the continuing financial assurance or guarantee by the Fiscal Sponsor(s) relating to the payment of Net Operating Deficiencies for the Reclamation Project; (4) notwithstanding any other provision of this Ordinance, once a new water connection is established through use of all or a portion of a Water Entitlement, the water user shall be treated in a manner equal to any other Cal Am water user and shall not be entitled to preferential access to water over any other water user of the Cal Am water distribution system. The revocation and termination of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of a prior expansion or extension of the Cal-Am water distribution system through any connection previously made pursuant to such Water Use Permit. Permits 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 D below. The Water Entitlement granted by each Water Use Permit shall not be subject to reallocation pursuant to District Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the California-American Water System, nor shall it otherwise be subject to reallocation pursuant to District Rule 30, nor shall it be terminated or diminished by reason of any water emergency, water moratorium or other curtailment on the setting of meters for the California-American Water System, nor shall it otherwise be subject to diminishment or revocation, except in the event that a Water Use Permit is revoked or cancelled as provided by subparagraph D below.

B. Water Use Permit Provisions. Each Water Use Permit shall be issued by the General Manager with respect to a single Benefited Property and shall identify:

- (1) the nature (industrial/commercial/residential) and location of the water use to be applied to each Benefited Property, and the consistency of such water use with existing land use and zoning plans;
- (2) the number and nature of connections projected for each Benefited Property; and
- (3) the projected water use required by each connection proposed upon the Benefited Property.

C. Amendment of Water Use Permits. Each Fiscal Sponsor, as owner of any Benefited Property, shall, upon request, be entitled to an amendment to any Water Use Permit to reduce, or increase, or change the number and type of connections and water use with respect to any Benefited Property owned by such Fiscal Sponsor, provided that in no event shall the aggregate amount of estimated annual water usage for the Benefited Properties of that Fiscal Sponsor/Sponsors exceed the aggregate Water Entitlement allocated to the Benefited Properties of that Fiscal Sponsor, and provided further that the reallocation of connections shall be allowed only among those locations identified in the Fiscal Sponsor's application. Water Use Permits may be transferred and assigned only to successors-in-interest to the Benefited Properties.

D. Revocation and Termination of Water Use Permits. Each Water Use Permit shall provide that it shall be revoked and terminated in the event that the Fiscal Sponsor shall default in any material manner upon its obligation, assurance and guarantee of the Financial Commitment for the Reclamation Project, provided that nothing herein shall preclude the Fiscal Sponsor from disputing in good faith any claim of default made by the District nor shall the District terminate or revoke any Water Use Permit unless the Fiscal Sponsor shall have been given notice and a reasonable opportunity to cure any such default so long as such opportunity to cure shall not result in any payment default to



any bondholders. In addition, notwithstanding any other provision of this Ordinance, 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 Properties shall be subject to revocation and termination in the sole discretion of the District. Prior to any termination and revocation pursuant to this paragraph, the Fiscal Sponsor shall be entitled to notice and a hearing, and any termination shall be subject to appeal to the Board pursuant to Rule 70 of the District Rules and Regulations. The revocation and termination of any Water Use Permit shall not diminish or otherwise adversely affect present actual use of water by reason of a prior expansion or extension of the Cal-Am water distribution system through any connection previously made pursuant to such Water Use Permit.

E. Cal-Am System Expansion/Extension Pursuant to Water Use Permits.

So long as the Reclamation Project has commenced operation so long as all assurances or guarantees required for both payment of Capital Costs and payment of Net Operating Deficiencies for the Reclamation Project continue to be met, each Water Use Permit shall entitle the owner of a Benefited Property to service to be provided by the Cal-Am water distribution system for such Benefited Properties, including the installation of water meters and mains as necessary, upon presentation to the District by the Fiscal Sponsor of the following:

- (1)
  - (a) A statement by the Fiscal Sponsor setting forth the annual capacity of water use that the Fiscal Sponsor will exercise through such expansion/extension of the Cal-Am water distribution system, and the nature of the uses to which such water is intended to be applied in the future; and
  - (b) a valid municipal or county building permit which will allow construction upon the Benefited Property; or
  - (c) a complete set of architectural contract drawings; or
  - (d) other documentation sufficient for the District to determine quantity and the capacity for annual water use of the Benefited Property and the number and type of each requested connection.
- (2) The payment of any customary fees and connection charges required by both Cal-Am and the District of water users within the Cal-Am service area, calculated upon the basis of the annual water usage capacity for the Benefited Property set forth in the Fiscal Sponsor's statement, including but not limited to fees and charges due by reason of Rule 24 of the District's Rules and Regulations.

Upon the filing of the information and payment of the fees required above, the General Manager shall make a notation on the Water Use Permit indicating the location, capacity and nature of each connection requiring a present expansion/extension of the Cal-Am water distribution system. Estimated usage shall be based

upon the water use capacity for proposed or planned development upon Benefited Properties. The aggregate water use represented by such expansions/extensions of the Cal-Am water distribution system, shall not exceed the Water Entitlement evidenced by such Water Use Permit. In the event that a Fiscal Sponsor requests an expansion/extension of the Cal-Am water distribution system with respect to less than all of the Water Entitlement evidenced by such Water Use Permit, the General Manager shall make a notation on such Water Use Permit indicating the remaining Water Entitlement.

The Fiscal Sponsor shall be entitled to increase the annual water use for any Benefited Property to which the Fiscal Sponsor has previously applied a portion of the Water Entitlement through prior expansions/extensions of the Cal-Am water distribution system upon presentation of the information and payment of the fees set forth in this subparagraph E, provided that any such increases in water use for the Benefited Properties shall not exceed in the aggregate the total Water Entitlement of the Fiscal Sponsor for all Benefited Properties.

Cal-Am shall be authorized to execute a contract with the Fiscal Sponsor to enable the provision of water service consistent with the Water Entitlement evidenced by the Water Use Permit issued under this provision.

Such agreement with Cal-Am shall at the Fiscal Sponsor's option be a condition precedent to the providing of the Fiscal Commitment by the Fiscal Sponsor. The actions required to be

taken by the General Manager pursuant to this paragraph shall be ministerial, non-discretionary acts which shall not be affected by any water moratorium, water emergency, allocation decision or other curtailment on the setting of new water meters for the Cal-Am water distribution system and shall be enforceable by mandamus.

**PART IV                    MODIFICATION OF ALLOCATION COMPLIANCE RULE**

The provisions of Rule 41 B of the District's Rules and Regulations shall be amended to add the following sentence:

"Neither the Board of Directors nor the General Manager shall take any action pursuant to this paragraph which would prohibit, limit, or affect the expansion/extension of a water distribution system by reason of a Water Use Permit as defined by Rule 23.5(F)."

**PART V                    MUNICIPAL  
MODIFICATION OF MULTIPLE UNIT ALLOTMENT PROVISIONS**

The provisions of Rule 30 of the District's Rules and Regulations shall be amended to add the following sentence:

"Each allotment shall include water which has been irrevocably committed and dedicated for use pursuant to a Water Use Permit, and those dedicated water supplies shall be separately

identified as available exclusively to Benefited Properties as a vested property interest."

**PART VI                    AGREEMENTS TO PROVIDE FOR WATER ENTITLEMENT**

The General Manager is authorized to negotiate and, subject to the prior approval or ratification by the Board, to execute agreements with Cal-Am and the Fiscal Sponsor as are necessary or desirable to assure to the Fiscal Sponsor/Sponsors that the Water Entitlement will be provided to the Benefited Properties. The District will cooperate with the Fiscal Sponsor/Sponsors and Cal-Am in securing any approval required from the California Public Utilities Commission in connection with such agreements.

The District shall acknowledge in any such agreement that the Fiscal Sponsor(s) have made the Financial Commitment in reliance upon the provisions of this ordinance, and shall agree not to amend the provisions of this ordinance in any manner which would impair the interest of such Fiscal Sponsor(s) or any successor or assign.

**PART VII                    AGREEMENTS TO GUARANTEE THE PAYMENT OF PROJECT CAPITAL COSTS AND NET OPERATING DEFICIENCIES**

The General Manager is authorized to negotiate and, subject to the prior approval or ratification by the Board, to execute

agreements with Cal-Am as are necessary or desirable to assure to the Fiscal Sponsors, their agents, or other parties as are necessary or desirable to assure and guarantee, within the scope and plans for the Reclamation Project as specified in the Engineer's Report, the full payment of Reclamation Project Capital Costs and Reclamation Project Net Operating Deficiencies and Ancillary Project Costs with minimal fiscal risk to the District or any other Public Participant. The agreements shall not require the Fiscal Sponsor to incur any cost or liability for changes which expand the scope of the Reclamation Project. Furthermore, the agreement shall provide reasonable controls over expenditures and accounting of expenditures.

The Financial Commitment provided by the Fiscal Sponsor/Sponsors shall be secured by an irrevocable renewable letter of credit or other comparable financial guarantee issued by a banking or other financial institution whose long term debt is rated in the two highest rating categories by at least 20 years following the completion date one nationally recognized rating agency. The letter of credit or other comparable financial guarantee securing the financial obligation of the Fiscal Sponsor relating to the payment of Net Operating Deficiencies and Ancillary Project Costs may be provided separately from and subsequently to the financial guarantee relating to the payment of Capital Costs. The Fiscal Sponsor/Sponsors shall further provide a present irrevocable guarantee of direct and timely payment to the District of all

unpaid but then anticipated Reclamation Project Capital Costs and Reclamation Project Net Operating Deficiencies for at least 20 years following the completion date of the Reclamation Project in the event that,

(a) the letter of credit is revoked or expires, and is not immediately renewed or replaced through a banking institution with the qualifications set forth above, or

(b) if the issuing banking institution should lose the requisite rating qualification, and no replacement letter of credit from a banking institution which meets the rating criteria is provided to the District within a reasonable period of time as determined by the District.

The Fiscal Sponsor/Sponsors shall provide present security to the District in the manner and extent determined by the District Board to ensure satisfaction of those contingent liabilities, and if any banking institution has required a security interest as a condition upon the issuance of the letter of credit, the District shall also receive a secondary security interest in the same property.

Public agency Fiscal Sponsors may provide an alternative financial guarantee than stated by this Part, provided however, that such guarantee shall not impair the security of the District.

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PART VIII

AGREEMENTS WITH PUBLIC PARTICIPANTS

The General Manager is authorized to negotiate and, subject to the prior approval or ratification by the Board, to execute agreements as are necessary or desirable to provide for the construction, equipping and operation of the Reclamation Project. All financial commitments of the District for the construction, ownership and operation of the Reclamation Project shall be payable first from Operating Revenues of the facility including any reserves therefor, then from proceeds of any bonds or other obligations issued by the Public Participant to finance the cost of the Reclamation Project, then from the funds provided by the Fiscal Sponsor/Sponsors, and lastly from any other lawfully available funds. In the event that the Fiscal Sponsor/Sponsors request, or the Public Participants otherwise determine that it is appropriate, to issue bonds or other obligations in order to finance the Capital Cost of the Reclamation Project, the District shall cooperate with such Public Participants in providing for the issuance of such obligations.

PART IX

PURCHASE OF SUBPOTABLE WATER FROM THE  
RECLAMATION PROJECT

The General Manager is authorized to negotiate and, subject to the prior approval or ratification by the Board, to execute agreements with the owners of golf courses within the Del Monte



Forest and with other potential users of subpotable water within the Cal-Am service areas (the "subpotable water users") for the purchase of subpotable water from the Reclamation Project. All agreements shall: (1) require the subpotable water users to purchase such subpotable water for a term not less than a period of twenty (20) years; (2) guarantee delivery to such subpotable water users of subpotable water from the Reclamation Project; (3) guarantee delivery to such subpotable water users of additional potable water from Cal-Am as may be necessary to fulfill the requirements of such subpotable water users in the event the Reclamation Project is incapable of providing subpotable water in sufficient quantities provided, however, that the use of potable water shall not be guaranteed during any water emergency declared by the Board pursuant to either Section 31026 of the California Water Code, or Section 332 of the Monterey Peninsula Water Management District Law; and (4) require the District to impose rates and charges for subpotable water sufficient to maximize payment for Operating and Maintenance Expenses and Capital Costs of the Reclamation Project, provided that such agreement shall guarantee that the price for subpotable water for all subpotable water users does not exceed the then prevailing price for potable water.

The General Manager shall establish a billing and collection procedure to ensure the timely collection of revenues under these agreements.

PART X

DEFINITIONS

For the purpose of this Ordinance and Rule 23.5, the following words shall have the meanings set forth below. Other words which are defined in Rule 11 to the Rules and Regulations, when used in this Ordinance shall have the meanings set forth therein, unless the context otherwise indicates.

"Ancillary Project Costs" means net revenues (gross revenues less allocable operation and maintenance costs and administrative and general costs as such terms are defined in accord with generally accepted utility practices) which Cal-Am shall not receive by reason of operation of the Reclamation Project. Ancillary Costs shall not include any return on assets of Cal-Am which have been removed from the water distribution system rate base by reason of the Reclamation Project. Ancillary Costs shall be reduced over time by net revenues received by Cal-Am by reason of sales of Cal-Am water (with respect to the benefitted properties) following the first date of Reclamation Project operation.

"Benefited Properties" means those properties within the Cal-Am service area which have been identified within the application of the selected Fiscal Sponsor(s) and upon which Water Entitlements granted pursuant to a Water Use Permit may be utilized. For any public agency Fiscal Sponsor, the term "Benefited Properties" shall be defined as those properties owned entirely by the public agency and dedicated for public use.

"Cal-Am" means the California American Water Company, its successors and assigns.

"Capital Costs" as applied to the Reclamation Project or portion thereof means all or any part of:

(a) the cost of acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for the Reclamation Project, inclusive of fees and commissions for acquisition;

(b) the cost of construction related to the Reclamation Project, including but not limited to demolition, repair, modification, replacement or renovation of existing structures, facilities, fixtures or equipment; cost of improvements and materials; direct and indirect Public Participation construction and administration expenses properly allocable to the Reclamation Project in accordance with generally accepted accounting principles; costs of painting, decorating, furnishing and landscaping; contractor and subcontractor profit; and costs related by reason of the Reclamation Project to plumbing, mains, tanks, or pipes which are modified, repaired, replaced, or renovated, whether owned by Public Participants or others.

(c) the cost of demolishing or removing any buildings, fixtures, equipment, or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved;

(d) the cost of all machinery, piping, equipment and furnishings, including but not limited to the cost of machinery, piping, equipment and furnishings made obsolete or unusable to Cal-Am, Public Participants, or others by reason of the Reclamation Project;

(e) financing charges;

(f) interest prior to, during, and for a period after completion of the acquisition and construction of the Reclamation Project as determined by the District;

(g) provisions for working capital;

(h) reserves for routine or extraordinary repairs and replacements necessary to the Reclamation Project;

(i) the cost of architectural, engineering, planning, environmental analysis, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, permits, fees, adverse claims, personnel and overhead costs (both direct and indirect to the extent properly allocable to the Reclamation Project), and other expenses necessary or incident to determining the feasibility of construction the Reclamation Project or incident to the planning, construction, acquisition, or financing of that Project, including, without limitation:

(1) payment during the construction period of the premiums for all title and other insurance, bonds, or undertakings required to be taken out and maintained with respect to any part of the Reclamation Project to

the extent such amounts are not paid by any contractor who constructs or installs any portion of the Reclamation Project;

(2) payment of the taxes, assessments and other fees or charges, if any, that may become payable during the construction period with respect to the Reclamation Project, or reimbursements thereof; and

(3) payment of expenses incurred in seeking to enforce any remedy against any contractor or subcontractor in respect of any default under a contract relating to the acquisition, construction or installation of the Reclamation Project.

"Financial Commitment" means the commitment of a Fiscal Sponsor or Sponsors to assume and guarantee payment of (1) the Capital Costs of the Reclamation Project (including the payment of the principal of and interest on any bonds or other obligations issued by any Public Participant to finance such costs), and (2) the Net Operating Deficiencies of the Reclamation Project for the entire period ending twenty years following the estimated completion date of the project (or for any shorter periods as permitted by the District), and (3) payment of all Ancillary Project Costs.

"Fiscal Sponsor or Fiscal Sponsors" means the person or persons (including partnerships, corporations, municipal corporations, or other public entities) selected to act as the Fiscal Sponsor/Sponsors pursuant to Part II of Ordinance 39,

which person or persons will be obligated, and liable for, and capable of paying the Capital Costs and Net Operating Deficiencies of the Reclamation Project.

"Franchise Water" means potable water which has been freed for new use by reason of subpotable water deliveries from the Reclamation Project.

"Net Operating Deficiency" as applied to the Reclamation Project means, for any fiscal year or portion thereof, the difference between the Operating Revenues and the Operation and Maintenance Expenses for such period.

"Operation and Maintenance Expenses" as applied to the Reclamation Project means all expenses and costs of management, operation, maintenance and repair of the Reclamation Project, including payments to be made by the Public Participants under agreements with Cal-Am for the purchase of subpotable water, debt service payments on all bonds or other obligations issued to finance the cost of the Reclamation Project, and all incidental costs, fees and expenses properly chargeable to the Reclamation Project, including reasonable depreciation and obsolescence charges or reserves therefore assuming straight line depreciation upon a useful life assumed to be thirty (30) years, amortization of intangibles and other bookkeeping entries of a similar nature.

"Operating Revenues" as applied to the Reclamation Project means all income, rents, rates, fees, charges and other moneys derived by the Public Participants from the ownership or operation of the Reclamation Project, including, without limiting

the generality of the foregoing: (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing and supplying of the reclaimed, subpotable water or from potable water supplied in lieu thereof; (ii) interest earnings on all revenues mentioned in (i) above, and on the reserve fund or on any other fund or account relating to the Reclamation Project, and (iii) insurance and condemnation proceeds resulting from damage to or destruction of the Reclamation Project facilities, or from the condemnation of the Reclamation Project; provided, that the term "Operating Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the Public Participants.

"Project" or "Reclamation Project" means the CSD/PBCSD wastewater treatment plant (including lands, facilities, equipment, furniture and fixtures).

"Public Participant" means any one or more of the following: the Monterey Peninsula Water Management District, the Carmel Sanitary District, the Pebble Beach Community Services District, or any successor public agency including but not limited to any joint powers agency formed by one or more of the above agencies.

"Water Entitlement" means 400 acre feet per year (or less) of potable water, and in no event more than fifty (50%) percent of the total amount of Franchise Water, which shall be the maximum portion of the Franchise Water which may be dedicated to land within the jurisdiction of the District for the purpose of providing for the payment of the Capital Cost, Ancillary Project

Cost, and Net Operating Deficiencies of the Reclamation Project.

"Water Use Permit" means a writing from the District which evidences the irrevocable dedication of the Water Entitlement as a property right enuring to the use and benefit of the Benefited Parcels. A Water Use Permit shall by non-discretionary ministerial action cause the present Expansion/Extension of the Cal-Am water distribution for Benefited Properties upon designation of the location of use, upon payment of applicable connection fees and charges. A Water Use Permit shall take the place of and be used instead of any Expansion/Extension Permit upon any Benefited Parcel.

#### PART XI

#### 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 or unenforceability 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.



PART XII

PUBLICATION

The provisions of Part III of this Ordinance shall be published as Rule 23.5 of the Rules and Regulations of the Monterey Peninsula Water Management District. The provisions of Part X shall be published as subdivision F of Rule 23.5. The provisions of Parts IV and V shall amend Rule 41 B and Rule 30, respectively.

The remaining provisions of this ordinance shall not be published in those Rules and Regulations.

On motion of Director Davis, and second by Director Hughes, the foregoing ordinance is duly adopted this 13th day of February, 1989, by the following vote:


AYES: Directors Fisher, DeBerry, Lombardo, Davis, Heuer and Hughes

NAYES: Director Strasser Kauffman

ABSENT: None

I, Bruce Buel, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a full, true and correct copy of an ordinance duly adopted on the 13th day of February, 1989.

Witness my hand and seal of the Board of Directors of the Monterey Peninsula Water Management District this 14th day of February, 1989.

  
Bruce Buel, Secretary to the Board