

ORDINANCE NO. 40

AN ORDINANCE OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING THE WATER CONNECTION
PERMIT PROCESS

FINDINGS

1. The Monterey Peninsula Water Management District has adopted and regularly implements a process whereby permits are issued to allow new or expanded water use from water distribution systems within the District. The District has exercised this power in accord with the provisions of Section 363 of Chapter 527 of the Statutes of 1977.
2. The water connection permit process followed by the District is based on the capacity of a water user to consume water on a particular site, dependent upon the activity undertaken at that site. The District has not administered its water connection permit process in a manner which would allow transfers of water use credits between water users, or between different water use sites.
3. The District has received a request to amend the administrative process which prohibits water use credit transfers to enable government entities to transfer water uses from one site to another in order to enable water use on open space such as parks, trails, and recreation areas.
4. The District finds and determines that this request is consistent with the Legislative declarations respecting support of the "scenic, cultural, and recreational resources" of the Monterey Peninsula as set forth in Section 2 of Chapter 527 of the Statutes of 1977. The District further finds that this request would serve the public good and can be accommodated for a cooperating government agency without detriment to water users who have previously relied on the District's water connection permit process provided all transfers shall occur on lands owned and operated by a government agency, no transfers are allowed between different government agencies, and all uses of water following transfer shall be entirely dedicated to open space use.
5. The District has further received a request to amend the administrative process under which water connection permits are issued by the District. This request seeks to ensure that water use in each area of the District shall be consistent with the water use plans and policies of the public agency which exercises land use planning authority over the site upon which the water use is proposed to occur. The District finds that this request

would serve the public good and can be accommodated upon the request of a cooperating land use planning agency.

6. The District further finds that a policy which allows transfer of water use credits for open space use, and a policy which enables a water use planning and policy consistency determination will primarily benefit land use planning agencies within the District, and reduces costs to those agencies. These policies are discretionary, and shall apply only to those agencies which have implemented administrative procedures which enable cooperative processing of the District's water connection permit and water waste prevention activities.

NOW THEREFORE BE IT ORDAINED AS FOLLOWS:

SECTION ONE: WATER CREDIT TRANSFERS FOR OPEN SPACE LANDS OWNED BY GOVERNMENTAL AGENCIES.

The following additions (shown in bold face and underscored) shall be made to the District's Rules and Regulations, Rule 24 B:

RULE 24. CONNECTION CHARGES

The following connection charges shall apply to the expansion, extension, and increased utilization of any connection or water-measuring device in a potable water distribution system within the District.

A. PROCESS

Each individual, prior to increasing the use of water from a potable water distribution system within the District, and before adding a connection or changing the character of use of an existing connection to a potable water distribution system within the District, shall obtain a permit from the Monterey Peninsula Water Management District.

Each applicant for a permit to expand or extend water distribution system, shall, prior to issuance of such a permit, deposit with the District all connection and water supply improvement charges calculated pursuant to this rule in addition to the fees prescribed by Rule 60. Such charges shall apply to each applicant seeking to relocate or change the size of a connection or a water-measuring device, applicants seeking to intensify the use of water from an existing connection, and/or applicants for an amended permit.

The addition of any fixture unit by a user shall be deemed an intensification of use requiring an

expansion/extension permit, or an amended permit pursuant to these Rules and Regulations. Any change in use from one category to another as shown on Table No. 2 of this rule shall be deemed an intensification of use requiring an expansion/extension permit pursuant to these Rules and Regulations.

B. APPLICATIONS WHICH AFFECT EXISTING CONDITIONS OR WHICH RELATE TO AN INTENSIFICATION OF USE

(1) All Applications

Projects which will relocate, enlarge, resize, or alter the type or quantity of use from an existing permanent connection, including projects which will add to or remodel existing structures, shall pay the connection fee required by this rule. For such projects, the General Manager shall first determine the connection charge calculation in this rule. Thereafter, the General Manager may reduce the connection charge with respect to applications for an amended permit which seek only to relocate, increase, or alter the type or quantity of use from an existing permanent connection. The connection charge for intensification of use from an existing connection shall exact a charge only as it relates to the extra increment of water which will be available to and subject to use by the applicant as the function of the relocated, increased, or altered use from the connection.

With respect to both new and amended expansion/extension permits, a project's capacity to use water shall be finally determined at the time the project is first available for use or occupancy. At this final determination, the General Manager shall adjust the connection charge to ensure that final connection charge bears a positive correlation to the water use capacity of the project as built, rather than the project as planned. Adjustment of the connection charge, including refunds or the imposition and collection of additional charges based upon water use capacity reflected by Table 1 or 2, shall be made at that time, subject to the administrative fee required by Rule 60.

A change of use following the project's first user or occupancy which results in a less intensive utilization of water shall not entitle the user to any refund of connection charges which have previously been paid, except where an adjustment is permitted under paragraph G, and where such adjustment was approved at the time the original permit was granted.

(2) Governmental Open Space.

As a sole exception to the transfer or relocation of water use credits, the General Manager, upon written request, shall enable a government agency (i.e. Municipal, County, State, or Federal public agency) to transfer water use from one location owned and operated by that agency to another location owned and operated by that agency provided use of water transferred to the new location shall be entirely dedicated to open space use.

This exception shall apply as follows:

(a) transfers between different government agencies shall not be allowed; and

(b) transfers from or to lands owned or operated by private (non-public) agencies shall not be allowed; and

(c) transfers for other than open space use shall not be allowed; and

(d) transfers which enable greater water use shall be assessed connection charges for all capacity for water use in excess of the transferred water credit; and

(e) any right or entitlement to water use at the original (pre-transfer) location shall be terminated and shall extinguish to the extent of the water use credit transferred.

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SECTION TWO: AMENDMENT OF THE DISTRICT'S WATER CONNECTION PERMIT PROCESSING TO ENABLE A CONSISTENCY DETERMINATION FOR LAND USE AGENCY WATER PLANNING

The following additions (shown in bold face and underscored) shall be made to the District Rules and Regulations, Rule 23:

RULE 23. ACTION ON APPLICATION FOR PERMIT TO EXPAND OR EXTEND A WATER DISTRIBUTION SYSTEM

A. AUTHORITY TO PROCESS APPLICATIONS

Applications to expand or extend a water distribution system and applications for amended expansion/extension permits shall be submitted to the General Manager. The General Manager shall process all applications and may issue the permit in accord with the procedure set forth in Rule 23 (B) except when the following applies.

- (1) The General Manager shall not issue an expansion/extension permit unless the applicant has either,
 - (a) Previously obtained a valid municipal or county building permit which will allow the construction of an enclosed structure suitable for human occupancy on the parcel for which the application is proposed, unless the General Manager determines that the expansion is reasonably required to satisfy the near-term potable water needs of the applicant; or
 - (b) Submitted a complete set of architectural contract drawings sufficient for the District to determine the project's capacity for water use pursuant to Tables 1 or 2 of Rule 24, together with any amendment, addition, or modification of those drawings which may be made prior to use or occupancy of the project, and any drawings which may be submitted to the municipal unit for land use or building permit approvals.
- (2) The General Manager shall not issue any single expansion/extension permit where such expansion or extension will utilize a single water measuring device to provide water to more than one user. Multiple users must seek individual permits pursuant to this rule.
- (3) The General Manager shall not issue an expansion/extension permit when the District Board has determined that the water distribution system

affected by that permit has reached its expansion capacity limit as provided by Rule 40.

- (4) The General Manager shall not issue an expansion/extension permit when the municipal unit in which the expansion or extension is to be located has exceeded its municipal unit allocation for that water distribution system pursuant to Rule 30.
- (5) The General Manager shall not issue an expansion/extension permit when the General Manager determines such expansion or extension is not reasonably required to satisfy the near-term needs of the applicant.
- (6) The General Manager shall not issue an expansion/extension permit when any portion of the expansion or extension lies outside of the affected water distribution system service area.
- (7) The General Manager shall not issue an expansion/extension permit until all fees and connection charges are paid by, or on behalf of, the applicant. At the time of first use or occupancy of the project, the General Manager may adjust the charge, and cause a refund of the imposition and collection of an additional charge in accord with the provisions of Rule 24 B.
- (8) The General Manager shall not issue an expansion/extension permit which would allow the use of potable water in excess of 5 acre feet for green-belt irrigation when alternate sub-potable water is reasonably available to the applicant (see Rule 23 C, 131 and 132).
- (9) The General Manager shall not issue an expansion/extension permit for use in the county or any municipal jurisdiction when the applicant has not presented written notification from the applicable land use planning agency that the proposed permit is consistent with planned water use under that agency's water allocation plan. This condition 9 of Rule 23 A shall apply only for those jurisdictions which request by resolution or Board or Council Order that the District apply the consistency criteria set forth herein. This Condition 9, however, shall be discretionary, and shall apply only to those governmental agencies which have implemented administrative procedures which enable cooperation with the District's water connection permit and water waste processes. The General Manager shall refer to the Board of Directors any request pursuant to this paragraph received from an agency which does not appear to

apply a cooperative administrative process to assist the District in its water permit and water waste prevention activities.

Determinations of the General Manager under this rule, either issuing or refusing to issue a permit, may be appealed to the Board pursuant to Rule 70.

SECTION THREE: Publication

The provisions of this ordinance shall be published in the Rules and Regulations of the Monterey Peninsula Water Management District as Amendments to Rules 23 and 24. Except as shown, no other changes shall be made to those rules.

SECTION FOUR: 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.

On motion of Director Davis and second by Director Fisher, the foregoing ordinance is duly adopted this 10th day of April, 1989, by the following votes:

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

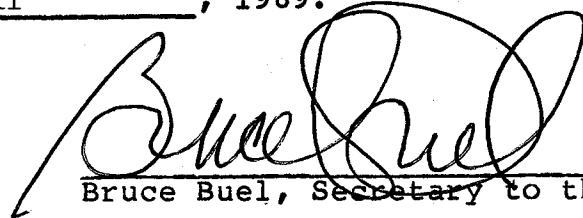
NAYES: None

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 a ordinance duly adopted on the 10th day of April, 1989.

Witness my hand and seal of the Board of Directors this 19th day of April, 1989.

A handwritten signature in cursive script, appearing to read "Bruce Buel", written over a horizontal line.

Bruce Buel, Secretary to the Board

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