

Original

ORDINANCE NO. 47

AN URGENCY ORDINANCE OF THE
BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
CAUSING A TEMPORARY LIMIT ON THE
ISSUANCE OF WATER CONNECTION PERMITS

FINDINGS

1. The present drought is one of the most severe in the historical record of the Monterey Peninsula. The District has experienced three consecutive years of substandard (less than average) rainfall. Historic evidence indicates that this area periodically experiences droughts of 5 to 7 year duration, and longer.
2. As a consequence of rainfall patterns, the three year record of water runoff is only 14% of the historical average. Consequently, the District water systems have mined area groundwater basins, particularly during summer months. The drought has had an impact upon both human and environmental habitats.
3. In response to this drought, the District imposed mandatory water conservation measures during the summer of 1988, and instituted mandatory water rationing on January 1, 1989. At the same time, during calendar year 1989, the District granted over 1300 requests to permanently increase water use. Over the past five years, annual water demand has increased in excess of 1100 acre feet by reason of permits for new or intensified water use. Each new permit adds to the cumulative demand placed upon the water supply.
4. Water rationing during 1989 caused a 30% reduction in annual water use, but the quantity of water in storage (17,900 Acre Feet) remained static due to decreased inflow. Further, of the potential water in storage, only 54% is available for use due to physical limitations on groundwater pumping capacity.
5. In the event a recurrence of the 1977 rainfall pattern were to occur, the community would require more than the present rationing standard (20%) reduction to meet water demand.
6. During the first quarter of this water year (Oct. - Dec., 1989) cumulative rainfall totaled only 3 inches. This amount is 50% of the historical average, substantiating a

continuation of the present drought pattern. Due to this fourth drought year, inflow to the Carmel River is presently less than 10% of the historic average.

7. Near term (3 month) meteorological forecasts for the Monterey Peninsula predict rainfall to be lower than the historic median.
8. Rainfall during December 1989 was recorded at 0.55 inches, as compared with December 1988 which experienced rainfall of 4 inches. This amount not only resulted in the second driest December on record, but an extraordinarily few number of days of precipitation occurred.
9. Although the present rationing mandate calls for a reduction in water demand of at least 20%, December 1989 water use was only 11.4% less than the base month of December, 1987. The declining ability to achieve water demand reductions puts the adequacy of existing water supplies at doubt. Community-wide support is essential to an effective water rationing program.
10. The present water shortage has touched each resident, and is a general concern to the community. Approximately 10,500 citizens stated this concern by requesting a limit on new water use by signing a petition circulated in 1989 by the Residents Water Committee. Concern was also voiced by elected officials of Carmel-by-the-Sea, Monterey City, Monterey County, and Pacific Grove; each body passed resolutions which requested that the Water Management District enact limitations on the continued setting of new water connections.
11. The record demonstrates a present and continuing water supply emergency which constitutes a present and extraordinary threat to the health and safety of the citizens of the Monterey Peninsula. No data is available to show whether this is a short term phenomenon, or a part of a long term pattern.
12. Efforts to expand the water storage capacity available to the community are actively underway, but are not likely to cause a long term solution within the near (10 year) term.
13. Each additional water connection and each expansion of use from existing connections intensifies demand on existing water supplies, and further endangers citizens of the Monterey Peninsula. Further, increased water use during a drought exacerbates detrimental environmental impacts caused by the extraction of water by water distribution systems. This ordinance implements limitations on new water uses which are necessary to protect existing water supplies, to

ensure sufficient supplies are available to meet the human and environmental water use needs, and to motivate existing water consumers to achieve the reduction of water use necessitated by the water rationing program. Consequently each new use of water must clearly balance the benefit a project will confer upon the community at large against the burden that project shall place upon the water supply.

14. Due to the present danger posed by increasing demand upon limited water supplies during the continuing drought, time is of the essence. Limits on new and expanded uses of water are urgently required. Accordingly, this temporary ordinance constitutes an urgency measure which shall have immediate effect on first reading following its approval by five or more Directors of the Monterey Peninsula Water Management District.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Statement of Purpose and Finding of Urgency

The Monterey Peninsula Water Management District enacts this urgency ordinance to modify standards for the issuance of water connection permits and to enact a temporary limitation on select new uses of water. This urgency and interim measure is enacted due to the present water supply emergency which has been declared in accord with Section 332 of the District Law. This measure is also required to maintain a balance between water demand and the limited water available for consumption during this drought period.

This ordinance is consistent with prior District ordinances which have imposed water rationing upon water users of the California American Water Company, Water West, and the Seaside Municipal Water System, and which prohibited water waste and non-essential uses of water. This ordinance constitutes a temporary and interim measure which is consistent with evidence presented by the District's draft water allocation program EIR.

Ordinance enacts temporary measures to ensure that consumption of potable water does not exceed anticipated water supplies available to the District. This ordinance assures existing water users that water supplies shall be managed in a fair and equitable manner, and that efforts of the citizens to conserve and ration water shall contribute to increased drought reserves, and shall not enable unlimited expansion of water demand.

This ordinance is required to meet the health and safety

requirements of the communities served by the District. During this period, time is of the essence. Accordingly, the Board of Directors finds that this ordinance is necessary, and by approval of 5 or more Directors shall be adopted with urgency effect.

Section Two: Water Distribution Systems Affected

A. Systems affected. The provisions of this urgency ordinance shall apply to each of the following water distribution systems, and water users within those systems:

- Californian American (Cal-Am) Water Company, and all Cal-Am sub-units except as exempted below in part B of this Section.
- Water West,
- Seaside Municipal,
- any water system which is subject to mandatory Phase III water rationing by reason of the present water shortage emergency, and
- any water system which derives its source of supply from one or more subunits of the Monterey Peninsula Water Resource System.

B. Systems exempted. This ordinance, however, shall not apply to any of the following classes of water users:

- properties within the Rancho Fiesta (Cal-Am) sub-unit,
- properties within the Ryan Ranch (Cal-Am) sub-unit
- properties which rely upon reclamation or conservation based water entitlements which have vested pursuant to Rule 23.5,
- any water systems within the District which are exempt from mandatory Phase III water rationing under the present water shortage emergency, or
- any water system which derives 100% of its source of supply from water resources other than the Monterey Peninsula Water Resource System.

Those water systems and water users shall be exempt from the limitations effected by this ordinance.

Section Three: Limitation on Select New Water Uses

A. Permits affected. Upon the effective date of this urgency ordinance, a temporary limitation shall take effect for those systems listed in Part A of Section Two above with respect to the issuance of the water permits listed in this Part A. Except as may be provided for in Part B (exceptions) and Part C (variances)

of this Section Three, the District shall suspend all action to process or issue permits for the following applications under Rules 21, 22, 23, and 24 for those systems and water users affected by this ordinance.

Limitations shall be imposed upon requests for the following types of permits.

commercial/industrial uses:

- all permits for the placement of new water meters for commercial or industrial uses, and for which District staff projects a capacity for water use in excess of 0.25 AF per year.
- all permits for the expansion of water use through existing commercial or industrial water meters where the aggregate capacity for water use at that site (following the expansion) is in excess of 0.25 AF per year.

open space uses:

- all permits for the placement of new water meters for privately owned open space uses.
- all permits for the expansion of water use through existing privately owned open space water meters.

multi-family residential uses:

- all permits for the placement of new water meters for multi-family residential uses.
- all permits for the expansion of water use through existing water meters for multi-family residential uses.

expansion or creation of water distribution systems:

- all permits to form or create a new water distribution system which derives any of its water supply from a subunit of the Monterey Peninsula Water Resource System.
- all permits to add new water production facilities to a water distribution system where those production facilities derive from a subunit of the Monterey Peninsula Water Resource System.
- all permits to add new water distribution facilities to a water distribution system whose production facilities derive from a subunit of the Monterey Peninsula Water Resource System.

B. Permits exempted. All applications listed in this Part B shall be exempt from the limitations effected by this ordinance provided that the aggregate increment of new annual water demand permitted under this ordinance following January 22, 1990 (and excepting projects defined as either "In Progress" or "Based Upon Existing Agricultural Water Use Offsets") shall not in any calendar year exceed 110 Acre Feet. District staff shall monitor and report the aggregate increase in new annual demand capacity permitted under this Part B.

Applications for the following types of water permits shall not be affected by the limitations imposed by ordinance.

single family residential uses:

- all permits for the placement of new water meters for single family residential uses on existing vacant lots of record provided both the project and site incorporate all practical state of the art water conservation methods, including 1.6 gallon toilets, recirculating or instant access hot water systems, and drip irrigation systems for all non-turf landscape.
- all permits for the expansion of water use through existing water meters for single family residential uses provided both the project and site incorporate all practical state of the art water conservation retrofit methods, including 1.6 gallon toilets, recirculating or all instant access hot water systems, and drip irrigation systems for all non-turf landscape.

low and moderate income residential uses:

- all permits for the placement of new water meters exclusively for low and moderate income residential uses on existing lots of record, provided both the project and site incorporate all practical state of the art water conservation methods, including 1.6 gallon toilets, recirculating or all instant access hot water systems, and drip irrigation systems for all non-turf landscape.
- all permits for the expansion of water use through existing water meters exclusively for low and moderate income residential uses, provided both the project and site incorporate all practical state of the art water conservation retrofit methods, including 1.6 gallon toilets, recirculating or all instant access hot water systems, and drip irrigation systems for all non-turf landscape.

commercial/industrial uses:

- all permits for the placement of new water meters for commercial or industrial uses on existing vacant lots of record provided both the project and the site incorporates all practical state of the art water conservation methods, including 1.6 gallon toilets, recirculating or instant access hot water systems, and drip irrigation systems for all non-turf landscape, and provided the aggregate annual water use capacity for the site is projected by District staff to be 0.25 AF or less.
- all permits for the expansion of water use through existing water meters for commercial or industrial uses provided both the project and the site incorporates all practical state of the art water conservation and retrofit methods, including 1.6 gallon toilets, recirculating or instant access hot water systems, and drip irrigation systems for all non-turf landscape and provided the annual water use capacity for that site following the expansion does not exceed 0.25 AF.

projects "in progress":

- all permits for the placement of new water meters relating to any development project which meets all elements of the definition of "projects in progress" (as defined by Section 6) on or before January 22, 1990.
- all permits for the intensification of water use through existing meters relating to any development project which meets all elements of the definition of "projects in progress" (as defined by Section 6) on or before January 22, 1990.

projects which do not intensify water use:

- all permits relating to water use through existing meters where the applicant can prove that the development shall not expand or intensify water use capacity of that site.

projects based upon existing agricultural water use:

- all permits for the placement of new water meters relating to any subdivision of property wholly located in the California American Water Company service area

and (1) which property currently utilizes water from existing on-site wells for agricultural purposes in addition to that supplied by Cal-Am, and (2) which causes no resulting net increase in the overall use of water by reason of this offsetting supply, and (3) which does not adversely impact developed water uses of the Monterey Peninsula Water Resource System.

C. Permits allowed by variance. Each application for a project listed in this paragraph C shall be reviewed by the Board of Directors under the notice and hearing process set forth in District Rule 70 for Permit Appeals. In its exercise of discretion on the variance application, the Board of Directors shall weigh the benefit a project would confer upon the Monterey Peninsula against the water use burden that the project shall place upon the Monterey Peninsula Water Resource System and shall find that the proposed project meets an ~~overriding community need~~. Thereafter, the Board may choose to grant approval, deny approval, or place conditions upon the quantity or nature of water use on that site.

The following water permits may be issued during the limitations set by this ordinance only upon the grant of a discretionary variance by the Board of Directors:

governmental projects:

- all permits for the placement of new water meters for governmental uses, including redevelopment projects.
- all permits for the expansion of water use through existing meters for governmental uses, including redevelopment projects.

non-governmental community projects:

- permits for the placement of new water meters which are dedicated to non-governmental community or non-profit uses.
- permits for the expansion of water use through existing water meters which are dedicated to non-governmental community uses.

projects "in progress" (which fail to demonstrate continuous hot pursuit):

- projects which partially meet the definition of "in progress" as defined by Section 6, but which fail to demonstrate continuous hot pursuit of their completion

following receipt of required discretionary or ministerial approvals, and therefore are ineligible for an exemption under Part B of Section 3. Projects in this category are those where substantial avoidable delay has occurred following the receipt of any ministerial or discretionary approval.

projects based upon offsetting water supplies:

- permits for new water meters for any uses (excepting those which qualify for an agricultural water use offset exemption under part B of this section) which: (1) are based upon the development of offsetting water supplies not previously available to a water distribution system for beneficial use; (2) which do not adversely impact developed water uses from the Monterey Peninsula Water Resource System; and (3) by reason of the offsetting supply cause no net intensification to water demand.

expansion or creation of water distribution systems:

- all permits to form or create a new water distribution system which derives any of its water supply from a subunit of the Monterey Peninsula Water Resource System.
- all permits to add new water production facilities to a water distribution system where those production facilities derive from a subunit of the Monterey Peninsula Water Resource System.
- all permits to add new water distribution facilities to a water distribution system whose production facilities derive from a subunit of the Monterey Peninsula Water Resource System.

Section Four: Sunset of the Provisions of this Urgency Ordinance

The standards enacted by this urgency ordinance for the issuance of water connection permits shall have continuous effect throughout the present water supply emergency, the end of which shall be evidenced by a sustained flow (at least 14 consecutive days) in the Carmel River into the Carmel Bay of the Pacific Ocean, and the filling of all subbasins of the Carmel Valley Alluvial Aquifer (at least 26,546 Acre Feet of usable storage). Thereafter these provisions shall have no further force or effect, except however, that this sunset provision may be terminated at an earlier date or extended from time to time by subsequent ordinances enacted by the Board of Directors.

The Board shall review the provisions of this ordinance once each calendar quarter during this water supply emergency.

Section Five: Publication and Application

The provisions of this temporary ordinance shall not be published in the permanent Rules and Regulations of the Monterey Peninsula Water Management District. This Ordinance shall be read in conjunction with and compliment those provisions of the District's Rules and Regulations, provided, however that the provisions of this urgency measure shall take precedence and supersede any contradictory provision of those rules.

Section Six: Definitions

The following words and phrases, as used in this ordinance, shall be given the definitions set forth below.

"Existing Lots of Record" - shall mean and refer to any parcel of land which is capable (consistent with applicable land use controls) of development for human habitation; existing lots of record shall be limited to those parcels for which a final map (Gov. Code Sec. 66456), or parcel map (Gov. Code Sec. 66426), or vesting tentative map (Gov. Code Sec. 66424.5) had been approved by the city or county, and filed with the county recorder for recording on or before January 22, 1990.

"Low and Moderate Income Housing" - shall mean and refer only those exclusive housing units that are affordable to moderate-income (or below) households and which are eligible for a permit in accord with Rule 24.5 of the District Rules and Regulations. This phrase shall be applied in conformity with the definitions of "affordable housing" and "moderate income household" as set forth in Rule 11 of the District Rules and Regulations, enacted by District Ordinance 25 on July 14, 1986.

"Monterey Peninsula Water Resource System" - shall mean the ground water and surface water supplies which serve major water distribution systems within the District, including the surface water and groundwater resources of the Carmel Valley (both the Carmel River and the Carmel Valley aquifer) and the resources of the Seaside Coastal groundwater subbasin. The Monterey Peninsula Water Resource System shall exclude resources of the Seaside Inland groundwater subbasin, and the Carmel Valley upland formation.

"Projects in Progress" - shall mean and refer to those projects which have not experienced avoidable delay, and which can demonstrate a near term need during the next 12 months for

water, and that on or before January 22, 1990: (a) had been granted prior discretionary approval, or (b) were pending the last and final required ministerial approval of a submitted and complete application.

(a) Prior discretionary approval shall mean those projects which had received one or more of the following city or county approvals:

- a use permit
- a zoning variance
- final architectural or design review approval

EIR certification, however, shall not constitute a prior discretionary approval for the purposes of this definition.

(b) Pending approval of a ministerial application shall mean those projects which had submitted a completed application, together with all required fees and attachments, for the following city or county approval:

- a building permit

For a project to be "in progress", the applicant shall further demonstrate that no substantial avoidable delay has occurred following the receipt of any discretionary or ministerial approval referenced above. A project which fails to demonstrate continuous "hot pursuit" of its completion (i.e. evidence of a substantial avoidable delay following an approval referenced above) shall not be sufficiently "in progress" under this definition to warrant an exemption under Part B of Section 3 and instead shall require a discretionary variance under Part C of Section 3.

Section Seven: Urgency Effect

This temporary ordinance constitutes an urgency measure which provisions shall be given urgency effect at 12:01 a.m., January 23, 1990, following its approval by five or more Directors of the Monterey Peninsula Water Management District.

Should the measure be approved by a simple majority of the Board, a second reading shall be required in February, 1990, before this ordinance shall take effect.

Section Eight: Severability

If any subdivision, paragraph, sentence, clause or phrase of

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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 Hekhuis, and second by Director Fisher, the foregoing ordinance is adopted as an urgency ordinance upon first reading this 22nd day of January, 1990, by the following vote:

AYES: Directors Fisher, Russell, Hekhuis, Heuer, Strasser Kauffman, and Hughes

NAYS: None

ABSENT: Director Davis abstained

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 22nd day of January, 1990.

Witness my hand and seal of the Board of Directors this 23rd day of January, 1990.



Bruce Buel, Secretary to the Board

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