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**ORDINANCE NO. 49**

**AN ORDINANCE OF THE  
BOARD OF DIRECTORS OF THE  
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT  
REDEFINING PHASE III WATER RATIONING RULES**

**ORDINANCE**

**Section One: Statement of Purpose**

The Monterey Peninsula Water Management District enacts this Ordinance to redefine rules and standards for Phase III of the present water supply emergency which has been declared in accord with Section 332 of the District Law. This ordinance restates prohibitions upon water waste and non-essential uses of water, and defines the Phase III response level for the continuing water supply emergency declared by the District in Ordinance No. 35. This ordinance supercedes all prior Ordinances which address water rationing, and provides a comprehensive plan for the administration and management of water rationing. Specifically this ordinance shall repeal and supersede Ordinance Nos. 35, 37, 38, 42 and 43. In all other respects this ordinance shall be read in conjunction with and complement provisions of the District's Rules and Regulations.

The purpose of this Ordinance is to ensure that consumptive use of potable water during Phase III of the present water supply emergency does not exceed anticipated water supplies available to the District. This Ordinance is required to meet the health and safety requirements of the communities served by the District.

The restated water rationing rules for Phase III pursuant to this ordinance establish additional prohibitions upon water waste and non-essential uses of water, change the rationing procedure applicable to commercial users, and require monthly reporting from large private wells.

Section Two: Phase III Rationing Standard

The mandatory water use restrictions imposed by reason of Phase III are established to achieve reductions in potable water consumption by a factor of twenty (20%) percent. Phase III rationing standards shall apply to potable water users within the Monterey Peninsula Water Management District who derive water from any Water Distribution System or private well as listed in paragraphs A or C below. Systems in paragraph B are exempt from the 20% mandatory rationing standard of Phase III, but shall nonetheless comply with the water use limitations required by Section 5 of this ordinance.

A. Water Distribution Systems deriving their source of supply from the Monterey Peninsula Water Resource System.

- California-American
- Water West
- Seaside Municipal
- Carmel Valley Road
- Riverside Park
- Saddle Mountain
- Rancho Fiesta Road 1 & 2
- Rancho San Carlos Road

B. Water Distribution Systems not deriving their source of supply from the Monterey Peninsula Water Resource System.

- Ryan Ranch
- Country Club Rd.
- Los Robles Road
- P & M Ranch
- Rancho Fiesta Mutual
- Carmel Valley Mutual
- Schulte Road
- Sleepy Hollow
- Tao Woods Mutual
- Cachagua Rd. 1
- Brannan
- Prince's Camp
- Cachagua Rd. II
- Jones
- Jensen Mobile Home
- Moro Mini
- Nason Road
- Los Ranchitos de Aguajito
- Bishop Water Company

C. Private wells classified as deriving their source of

supply from the Monterey Peninsula Water Resource System include:

- All wells perforated in the Carmel Valley alluvium, and
- All wells perforated in the Seaside Coastal Subbasin.

Section Three: Commercial, Industrial and Public Use Water Rations for Phase III

A. Percentage Reduction Requirement. During Phase III of this water supply emergency, all commercial, industrial, and public authority water users shall during any billing period limit current potable water use to eighty (80%) percent of the water use recorded for that site for the equivalent billing period in the base year. Any water user in this classification which also includes a mixed residential use shall similarly comply with the reduction to eighty (80%) percent of use during the equivalent billing period in the base year. Unless otherwise provided by an exception set forth in this Ordinance, or by a written variance, the base year shall be the water year which commenced October 1, 1987, and which ended September 30, 1988. Water users in this classification which do not have established water use billing records for the base year, including individual (non water distribution system) well users, may access prior water use records from that site to determine a base year for calculating the applicable water ration. Where a prior history of water use is unavailable or inapplicable, the user shall limit current water use to eighty (80) percent of the water use projected for a comparable business. The General Manager shall administer this provision in accord with guidelines promulgated by Resolution of the Board of Directors. Those guidelines shall address water users which do not have a full history of water use in the base year, water systems which do not utilize water meters, and individual well uses which are not metered.

B. Deletion of Optional Commercial Baseline Standards for Commercial, Industrial and Public Users.

1. Deletion of Commercial Baseline. Former Phase III rationing standards afforded each commercial, industrial, or public authority water user an option to use an alternative baseline water ration. Effective upon the first complete billing cycle for each commercial, industrial, or public authority water user which begins on or after August 1, 1990, the optional baseline ration shall no longer be available. Those water users shall instead be required to:

- a) reduce water consumption by a factor of 20% or more as compared to that user's base year use, or

- b) apply for and receive a variance for greater water use based upon the water user's proven inability to satisfy the ration requirement where the user also demonstrates that all reasonable conservation and retrofit measures have been undertaken in accord with the standards set forth below.

## 2. Variance for Greater Commercial Water Use

i. Written Application. Any commercial, industrial, or public authority water user may make a written application for and receive a variance for greater commercial water use based upon a clear and reasonable unavoidable need for additional water, the user's proven inability to meet the ration standard, and proof all reasonable conservation and retrofit measures have been undertaken. A variance for greater commercial water use shall be granted only upon proof of the following:

- a) Proof that the applicant cannot meet the standard Phase III commercial ration of 20% reduction in water use from the applicable base year or alternate base year do to reasons beyond that user's control (such as increased business, or plumbing retrofit prior to the base year); and
- b) Proof of a clear and reasonable unavoidable need for additional water, and
- c) Proof that the applicant has taken all reasonable and available state-of-the-art conservation actions which are technically and financially feasible, including but not limited to compliance with retrofit measures to reduce water use; and
- d) Proof that the applicant has taken all reasonable and available action to educate employees and customers to reduce on-site water consumption; and
- e) The applicant's written consent (and property owner's, if needed) to the inspection of the subject property to ensure water conservation and rationing rule compliance.
- f) The applicant's written certification, under penalty of perjury, that the subject property has complied with all required water conservation and water rationing measures.

The application for a variance for greater commercial water use shall be in the form and manner required by the General Manager and include the following: (1) data to verify the specific type, location, and character of the applicant's water use, (2) the actual historical pattern of water use at that site during all periods of water rationing and during the applicable base year, (3) data substantiating the applicant's request for water use in excess of the standard ration, (4) data substantiating any change in business volume or business practice which may affect water use, (5) proof of all actions taken to retrofit prior plumbing

fixtures, (6) proof of all actions taken to maximize water conservation practices at the site.

ii. Action on the Application. Staff may grant an increased water ration to users based upon the application for a variance for greater commercial water use, provided however that staff shall not grant a variance ration in excess of 100% of the applicant's base year use without proof that the applicant had retrofitted all existing plumbing fixtures prior to that base year. Staff's determination under this part shall be reviewed on appeal by the rationing hearing panel when a written request is received within 10 days from either the applicant, any member of the rationing hearing panel, or any member of the board of directors. Action to grant a variance for greater commercial water use which exceeds 100% of the base year in all other circumstances shall only by authorized following a variance hearing conducted by the rationing hearing panel.

The grant of any variance shall ensure that the water user shall further use all reasonable state-of-the-art means to minimize unnecessary water use, to promote water conservation, and to avoid water waste. Reasonable conditions may be attached to the grant of each variance to minimize water use.

C. Notification to Prior Recipients of Option Baseline Rations.

The General Manager shall cause each commercial, industrial, or public authority water user that had previously been granted an optional commercial baseline ration to be notified of the new rationing rules affecting their water use, and the necessity that each seek and receive a variance for greater commercial water use in order to justify water consumption in excess of 80% of that user's base year. This notice shall be by written notification addressed to the same address shown on the user's water bill.

D. Special Category Exceptions. Notwithstanding any other provision of this ordinance, hospitals, nursing homes, and commercial laundries shall not be required to meet the percentage reduction requirements set forth for Phase III water rationing but shall not increase water use above base year use except as may be allowed by a rationing variance. These special category uses shall further use all reasonable means to minimize unnecessary water use, and to avoid water waste. The term "commercial laundry" shall include any retail laundromat.

Section Four: Residential Water Use Rations for Phase III

A. Percentage Reduction Requirements During Phase III of this water supply emergency all residential water users shall during any billing period limit current potable water to eighty (80) percent of the water use recorded for the same user for the equivalent billing period in the base year. Unless otherwise provided by an exception set forth in this ordinance, or by a

written variance, the base year shall be the water year for bills issued between October 1, 1987, and September 30, 1988. Water users in this classification which do not have established water use billing records for the base year, including private or individual (non water distribution system) well users, may access prior water use records from that site to determine a base year for calculating the applicable water ration. Where a prior history of water use at that site is unavailable or inapplicable, the user shall limit current water use to eighty (80) percent of the water use for a residence with a comparable number of occupants. The General Manager shall administer this provision in accord with guidelines promulgated by Resolution of the Board of Directors. Those guidelines shall address water users which do not have a full history of water use in the base year, water systems which do not utilize water meters, and individual well uses which are not metered.

B. Residential Lifeline Exception. Notwithstanding any reduction of water use which would otherwise be required of residential water users pursuant to the Percentage Reduction Requirement set forth above no residential household shall be required to reduce water consumption below the following per capita standards:

1. single person residences:

single-family detached dwelling units (houses):	122 gallons/day/person
multi-family & clustered dwelling units (apartments and condominiums):	68 gallons/day/person

2. multi-person residences:

single-family detached dwelling units (houses):	82 gallons/person/day
multi-family & clustered dwelling units (apartments and condominiums)	46 gallons/person/day

These Residential Lifeline exceptions shall also apply to any mixed commercial/residential use. Mixed use lifelines shall be additive, combining both the Residential Lifeline and the Commercial Ration (if applicable) which may apply to that site.

C. Residential Water Use Cap.

1. Limit on Extreme Residential Water Use. Notwithstanding any other provision of this ordinance, no residential water user shall receive a water ration in excess of 70 units (from all water meters if the residence is served from more than one meter) per residence (single family dwelling unit) per 60-day billing period without justifying additional use by variance application.

## 2. Variance for Greater Residential Water Use

i. Written Application. Any residential water user may make a written application for and receive a variance for water use in excess of 70 units per single family dwelling unit based upon a clear, present and reasonable unavoidable need for additional water, the user's inability to meet the ration standard, and proof all reasonable conservation and retrofit measures have been undertaken. A variance for greater residential water use shall be granted only upon the proof of the following:

- a) Proof that the applicant cannot meet the ration cap of 70 units per residence; and
- b) Proof that the applicant has a clear, present and reasonable unavoidable need for water in excess of 70 units per 60-day billing period; and
- c) Proof that the applicant has taken all reasonable and available state-of-the-art conservation actions which are technically and financially feasible; and
- d) Proof that the applicant has taken all reasonable and available action to educate residents and household employees to reduce on-site water consumption; and
- e) The applicant's written consent (and property owner's, if needed) to the inspection of the subject property to ensure water conservation and rationing rule compliance; and
- f) The applicant's written certification, under penalty of perjury, that the subject property has complied with all required water conservation and water rationing measures.

The application for a variance for greater residential water use shall be in the form and manner required by the General Manager and include the following: (1) data to verify the specific type, location, and character of the applicant's water use, (2) the actual historical pattern of water use at that site during all periods of water rationing and during the applicable base year, (3) data respecting the nature of outdoor irrigation, including the area of turf and the quantity of other irrigated plants, (4) data substantiating the applicant's request for water use in excess of the maximum ration, (5) proof of all actions taken to retrofit plumbing fixtures, (6) proof of all actions taken to maximize water conservation practices at the site.

ii. Action on the Application. Action to grant a variance approving residential water use in excess of 70 units per residence per billing period shall only be authorized following a variance hearing conducted by the rationing hearing panel. An increased ration may be granted upon clear proof that the applicant has a clear and present reasonable unavoidable need



for water in excess of 70 units per residence, and has taken all reasonable and available state-of-the-art conservation actions including retrofit measures to reduce water use. Water use for outdoor landscape which is easily replaceable (i.e. turf or annuals) shall not qualify as an unavoidable need for such additional water.

Conditions on the variance shall ensure that the water user shall further use all reasonable state-of-the-art means to minimize water use, to promote water conservation, and to avoid water waste.

C. Notification to Residential Users. The General Manager shall cause each residential water user to be notified of the more stringent rationing rules affecting water use, and the necessity that each seek and receive a variance for greater residential water use in order to justify water consumption in excess of 70 units per 60-day billing period per residence. This notice shall be by written notification addressed to the same address shown on the user's water bill.

#### Section Five: Additional Limitations On Water Use.

A. Water Waste Prohibition. By this ordinance the District shall impose and enforce mandatory prohibitions against water waste. All Water Distribution Systems and private wells listed in Section Three, subparts A, B and C, and the consumers they serve, shall cease and desist wasteful uses of water within the District.

"Water waste" is deemed to be the indiscriminate, unreasonable, or excessive running or dissipation of potable water. This shall include, but not be limited to the following:

1. Water waste caused by easily correctable leaks, breaks, or malfunctions after a reasonable time within which to correct; exceptions may be made by the General Manager for corrections which are not feasible or practical, or for large users or utilities and water distribution systems which adhere to regular repair or renovation schedules.
2. Use of potable water to wash sidewalks or roadways where airblowers or sweeping provides a reasonable alternative, or where subpotable water is reasonably available.
3. Indiscriminate or excessive water use which allows excess to run to waste.

4. Use of potable water to irrigate turf, lawns, gardens or ornamental landscaping between 9:00 a.m. and 5:00 p.m. by means other than drip irrigation, or hand watering without quick acting positive shut-off nozzles.
5. Individual washing of cars, buildings, or exterior surfaces without use of quick acting positive shut-off nozzles.

B. Restriction Upon Non-Essential Water Uses. By this ordinance, the District shall further impose and enforce mandatory restrictions upon non-essential water use. All Water Distribution Systems and private wells listed in Section Two, subparts A, B and C, and the consumers they serve, shall cease and desist non-essential use of water within the District.

"Non-Essential Water Use" shall mean the indiscriminate or excessive dissipation of potable water which is unproductive, or does not reasonably sustain economic benefits or lifeforms, given the present shortage of potable water. Non-essential water use shall include any and all activities defined as water waste, and shall further include but shall not be limited by the following.

1. Operation of fountains, ponds, lakes, or other ornamental use of potable water without recycling;
2. Unreasonable or excessive use of potable water for dust control or earth compaction without prior written approval of General Manager where non-potable water or other alternatives are readily available or satisfactory.
3. Use of unmetered fire hydrant water by individuals other than for fire department or public utility officials for fire suppression or utility system maintenance purposes, except upon prior approval of General Manager.

C. Mandatory Conservation Measures. By this ordinance the District shall further impose and enforce the following conservation measures.

Golf Course - (Mandatory)

1. The General Manager shall review and report to the Board of Directors as to water consumption levels and standards which are necessary for golf course needs, yet are commensurate with the water conservation goals necessary to Phase III water rationing. Thereafter the Board shall adopt water rationing criteria specifically tailored for golf course use.

2. The General Manager shall review and report to the Board of Directors to the means to monitor and the frequency for review of water consumption from all golf courses subject to the Phase III rationing standard.

Commercial and Visitor-Serving - (Mandatory)

1. Each commercial establishment shall conspicuously display messages to explain the local policy regarding water conservation; this message may be conveyed by placard, decal, menu message, or any appropriate medium to promote water conservation.

2. Each commercial establishment shall conspicuously display messages in each public restroom, hotel or motel room (placard or decal) providing information concerning the need to conserve water. At the time of check-in, each hotel and motel shall provide the guest a printed message respecting water conservation and water rationing standards prepared and supplied by the Water Management District.

3. All restaurants and convention facilities shall serve water only upon request. Information respecting this limitation shall be appropriately disseminated.

Construction Trade - (Mandatory)

1. The construction trades shall avoid unreasonable or excessive use of potable water for dust control or earth compaction without prior written approval of General Manager where non-potable water or other alternatives are readily available or satisfactory.

Government and Schools - (Mandatory)

1. Each governmental office and school shall place messages in each restroom (placard or decal) providing information concerning the need to conserve water.

2. Government entities shall minimize consumptive water use in training exercises and rely instead upon Cal-Am sites where water shall not be wasted.

3. Sewer line flushing shall be from subpotable water to the extent such supplies are available.

4. Food service shall serve water only upon request.

5. Water conservation information shall be provided to each occupant of governmental residential quarters.

#### Hardware and Plumbing Trade - (Mandatory)

1. The hardware and plumbing trade shall promote ultra-low flow and other conservation hardware within retail outlets or by advertisement.

2. The hardware and plumbing trade shall promote messages concerning the need to conserve water within retail outlets or by advertisement.

#### Public Utilities and Water Distribution Systems- (Mandatory)

1. Each public utility or water distribution system listed in Section Three shall implement an annual information campaign (billing insert or other means) disseminating conservation advice and advising of water waste prohibitions to customers, clients and owners of those systems.

2. Cal-Am shall provide 60 acre feet/year for riparian irrigation use pursuant to its lower Carmel Valley well permits.

#### Private Wells - (Mandatory)

1. Each owner and/or operator of a well which derives its source of supply from the Monterey Peninsula Water Resource System shall adhere to the mandatory water rationing provisions of this ordinance.

2. Each owner and/or operator of a well which is located on a parcel larger than 2 1/2 acres, which has a discharge opening larger than two inches and which has a historic annual production greater than 20 acre-feet, shall report that well's water use by the Water Meter method as described in District Rule 56 as required by District Ordinance No. 48 provided, however, that reports of water production shall be forwarded to the District each month during Phase III water rationing, with a reading on the first business day of each month.

#### Nursery/Gardening Trade - (Mandatory)

1. Nurseries and gardeners shall promote messages concerning the need to conserve water to clients and customers.

2. Nurseries and gardeners shall promote the use of drought tolerant plants as appropriate for new planting purposes and discouraging installation of new lawns or other high water use plant types.

3. Nurseries and gardeners shall promote expanded irrigation practices and hardware which conserve potable water and avoid water waste.

4. Nurseries and gardeners shall promote expanded use of non-potable water for irrigation uses.

5. All gardeners shall practice efficient outdoor irrigation. The General Manager shall promulgate an exception to outdoor gardening trades provided all irrigation practices effect the 20% reduction in potable water consumption required by Phase III.

6. Monitoring of Mobile Water Distribution Systems shall be required in accord with Rule 106 of the existing District Regulations.

Swimming Pool and Spa Trade - (Mandatory)

1. The swimming pool and spa trade shall promote messages concerning the need to conserve water to clients and customers.

2. The swimming pool and spa trade shall promote expanded use of maintenance practices which conserve potable water and avoid water waste.

Section Six: Administrative Implementation

A. Implementation The General Manager shall be charged with implementation of this ordinance, and with implementation of water use restrictions or requirements by this ordinance. The General Manager shall provide notice as necessary to water users of the applicable rationing standards imposed by Phase III.

B. System Compliance Each Water Distribution System listed in Section Two of this ordinance shall be required to comply with all reasonable administrative measures promulgated by the General Manager to ensure compliance with the provisions of this ordinance. Compliance shall include but shall not be limited to installation of flow restrictors by water distribution systems for users determined by the process set forth by this ordinance to have failed to comply with rationing rules, and/or termination of water service for water waste in accord with the process set forth by this ordinance. The General Manager shall be authorized to pay upon invoice all actual, reasonable and necessary expenses which may be incurred by any public utility or water distribution system by reason of information collection, system programing, water service restrictions, or other requirements imposed by reason of this water emergency. This provision shall not be construed to allow reimbursement to a

water distribution system for any revenues lost by reason of reduction in water sales.

C. Excess Water Use Fee

1. Imposition of Excess Use Fee. Water use in excess of the maximum ration allowed in any billing period during Phase III water rationing shall cause the automatic imposition of an excess water use fee. The excess use fee shall be calculated as follows:

\$25.00 (flat fee) for each month during which use exceeds a user's water ration (\$100 for repeat offenders),

plus

\$25.00 (variable fee) for each unit of water use which exceeds a user's water ration (1 unit = 748 gallons).

The fee shall apply to all water use in excess of the maximum ration applicable to that user. The General Manager, following the notification requirement set forth below, shall cause this fee to be collected directly from any water user if that user exceeds the monthly Phase III water ration.

2. Courtesy Notice and One-time Forgiveness. For the first instance of excess water use, that water user shall be given written notice of any water use in excess of that user's ration, and notice that an excess water use fee shall be collected in the event the water user again exceeds that user's water ration during any billing cycle under Phase III rationing. If the water user complies with all water rationing and water waste requirements during the next billing cycle following the first instance of excess use, the excess use fee shall be forgiven.

If the water user again exceeds that user's water ration during any following billing period, the excess use fee shall be imposed immediately as a charge upon all water use in excess of that user's water ration, dating back to the original billing period for which notice of excess use had been given. The fee for excess water use shall be forgiven automatically only once for any water user during Phase III rationing.

Violation notices shall only be given as a first courtesy "Notice" and a "Final Notice". If the Final Notice does not result in payment within fifteen (15) days from the date of mailing, immediate action shall be taken to enforce compliance.

3. Waiver of Excess Fees by Variance Application. A n y

water user may seek to have the variable fee for excess water use waived or forgiven through the Rationing Variance process set forth in this ordinance upon substantial evidence that the excess water use was beyond the user's control, and was not reasonably correctable in a timely fashion due to special and unique circumstances. Due diligence must be shown to forgive any water waste caused by a leak; under no circumstance shall a leak justify the forgiveness of an excess use fee for more than two billing periods. The applicant shall further demonstrate that all reasonable means have been taken to conserve water and minimize future water use. Flat fees, however, shall not be waived except where a notice was issued by error of the Water Management District.

Staff may grant any application to waive variable fees in the sum of \$500 or less, provided however that the waiver of all variable fees shall require both the signature and approval of a staff member and his or her immediate supervisor, and the waiver of fees between \$250 and \$500 shall further require the signature and approval of the General Manager. Any staff action to waive an excess use fee shall be recorded in writing and include a written explanation to substantiate and justify the waiver; only the rationing hearing panel shall have authority to waive variable fees in excess of \$500.

Although inspections shall not be required in all cases, District staff shall use spot or random inspections as necessary to verify an applicant's eligibility for a waiver of fees through this variance process.

Each person making written application for a variance shall be notified in writing of the disposition of their application.

D. Administration of Multiple Meters To enable the reasonable management of this water rationing program, the General Manager may take action to consolidate the administration of water rationing for persons or entities (public or private) who utilize more than one water meter for water use for a single purpose or site. Any action taken in accord with this provision, however, shall be documented in writing, together with the reasons therefore, and shall be reviewed by a member of the water rationing hearing panel. Those not ratified on such review shall be referred to the full hearing panel under the variance rules set forth below.

E. Sunset for Water Emergency User Fee The General Manager shall continue collection of the water emergency user fee by the California American water distribution system from each water customer within that public utility system without change. Those proceeds shall continue to be used exclusively to underwrite costs of administration, enforcement, education, and other necessary activities relating to the water supply emergency. The

General Manager shall also continue collection of equivalent (per unit of water) user fees for this purpose by every other public utility or water distribution system within the District. Collection of the water emergency user fee shall extend only for the exact period of time necessary to cause full funding of the District's actual incurred costs of administration, enforcement, education, and other activities relating to the water supply emergency. Thereafter this user fee shall no longer be collected.

F. Modification of P.U.C. Rationing Standards The General Manager shall take action as necessary to ensure that Rules of the California Public Utilities Commission enable any water distribution system to enforce or collect fees, charges, surcharges, or penalties pursuant to the rationing standards set forth by this ordinance, including but not limited to water restrictor installation and, if warranted, service disconnection.

#### Section Seven: Rationing Hearings

A. Informal Variances. Water use rations, residential baseline options, lifeline options, and waiver of excess use fees less than \$500 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 Phase III 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 or his designee shall be guided by those principles set forth both in this ordinance and in Rule 24 of the District Rules and Regulations. The General Manager shall maintain records of each informal variance request, and the response to that request.

Although inspections shall not be required in all cases, District staff shall use spot or random inspections as necessary to verify an applicant's eligibility for a variance. Each person making written application for a variance shall be notified in writing of the disposition of their application. Each variance shall be time limited, granted for a specific term of need, and require an inspection or other discretionary review at the end of its term prior to renewal.

B. Administration of Hearings for Formal Variances, Appeals and Compliance Proceedings. This section provides for the administration and management of formal variances, appeals and compliance proceedings as they relate to water rationing hearings. The purpose of this section 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.

1) Appointment of Hearing Officers to Conduct Formal Water Rationing Variance, Compliance or Enforcement Hearings.

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.

2) Variance, Compliance or Enforcement Hearing Panel

(i) 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 Section. 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 any particular hearing 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.

(ii) During each administrative hearing, 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.

3. Initiating Hearings. 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. Any water user who uses excess water for any three (3) billing periods shall be referred to a compliance hearing under this section.

C. Information and Notice for Compliance Hearings. The following information and 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 be 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 fee. This notice shall be mailed or posted at or near the site of the alleged non-compliance, mailed to the address of as listed on the water bill, 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 (if known); 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.

D. Information and Notice for 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 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 number of each authorized agent who will represent the applicant in pre-hearing matters, or who will appear at the administrative hearing.

The responding party shall provide at least two (2) 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.

Within 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.

#### E. 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 two (2) calendar days after the date required for submission of the Responding Party's written materials. 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.

F. Administrative Hearing Process 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 involved 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.

So long as adequate notice has been given, the hearing panel shall render its decision even if an affected property owner, responsible party or occupant fails to appear at the hearing.

G. 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.

H. Enforcement Penalty Options for 1st Offenders

In any enforcement or compliance proceeding, the hearing panel may select from one or more of the following penalty options as warranted:

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

\$25.00 (flat fee) for each month during which use exceeds a user's water ration,

plus

\$25.00 (variable fee) for each unit of water use which exceeds a user's water ration (1 unit = 748 gallons).

- (2) Conditional Installation of Flow Restrictor - A condition that further water use in excess of the user's ration shall cause automatic installation of a flow restrictor for a specified period during the 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. A water restrictor shall not be installed as a penalty for first time offenders, only as a conditional penalty triggered by repeated use of water in excess of the user's ration.
- (3) Penalty Assessments - In addition to the excess use fee noted in (1) above, the hearing panel may impose a penalty assessment greater than the standard excess water use fee for flagrant water waste. Factors used to calculate this fee shall be based upon the quantity of water wasted and the reasonableness (or lack) of the water user's action to halt the waste of water.
- (4) 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.

I. Enforcement Penalty Options for Repeat Offenders

In any enforcement or compliance proceeding affecting a repeat offender, the administrative hearing panel, in addition to the options listed in part H above, may also select from the following penalty options as warranted:

- (1) Use Fee for Repeat Offenders - for each unit of water wasted (or used in excess of the limitations set forth by the current phase of the water supply emergency)

where the user has already received a use fee for excess water use, a further flat use fee (in addition to the variable fee listed in part H (1) above shall be assessed as follows:

\$100.00 (flat fee) for each month following imposition of the original excess use fee during which use exceeds a user's water ration,

plus

the (variable fee) in part H (1) above for each unit of water use which exceeds a user's water ration.

- (2) Present installation of a flow restrictor for all or part of the 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.
- (3) Disconnection of water service for all or part of the duration of the water supply emergency together with payment to the public utility or water removal system of actual costs for removal of the connection. This latter penalty may only be imposed upon a third offense.

#### Section Eight: Republication and Continuation of Connection Limits on Select New Water Uses

This ordinance shall incorporate and republish without change the limits on new water use effected by Ordinance Number 47 which had been previously enacted with urgency effect.

The limitation on select new water uses republished by this ordinance shall have continuous effect throughout the present water supply emergency, the end of which shall be evidenced by a 14-day sustained flow in the Carmel River into the Carmel Bay of the Pacific Ocean, and the filling of all subbasins of the Carmel Valley Alluvial Aquifer; thereafter the limitation provisions shall have no further force or effect, except however, that the date of 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.

#### Section Nine: Sunset of Phase III Water Rationing

The provisions of this ordinance declaring Phase III water use restrictions shall continue to have force and effect until suspended by Resolution of the Board of Directors upon a finding

that the present water use restrictions are no longer necessary.

Section Ten: Mechanisms to Trigger Board Review of Water Use Restrictions

Enactment of this ordinance shall cause the continued implementation of Phase III Water Waste Restrictions. This ordinance shall not be deemed to set criteria for subsequent reductions in potable water consumption beyond the 20% standard set by Phase III, or to alter any trigger mechanisms and criteria as are set forth in the Interim Relief Plan.

Pursuant to that plan, the Board of Directors shall convene a special public hearing within seven calendar days after the District is informed that Cal-Am is unable to meet the minimum cubic feet per second (CFS) discharge into the Carmel River at the San Clemente Dam as may be required by any then existing Memorandum of Understanding (MOU) between Cal-Am, the California Department of Fish and Game, and the District, or, that Cal-Am is pumping water for supply purposes from production wells east of the Narrows.

Following public testimony and upon a determination that one or more of the above factors has occurred and shall continue, the Board shall cause a change from the existing phase to one which causes a greater reduction in water consumption. The Board, however, may postpone the acceleration of any phase change upon a finding that the triggering event was short term.

Section Eleven: Publication

The provisions of this ordinance shall not be published in the Rules and Regulations of the Monterey Peninsula Water Management District.

Section Twelve: Effective Date

The provisions of this ordinance shall take effect at 12:01 a.m., June 1, 1990.

Section Thirteen: Conjunctive Application

The provisions of this ordinance are intended to compliment and to be read conjunctively with the Rules and Regulations and other ordinances of the Water Management District. All definitions used in the District Rules and Regulations shall apply to this ordinance.

Section Fourteen: Severability

If any section, sub-section, sentence, clause, or phrase of



this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The Board of Directors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, or phrases may be declared invalid.

On motion of Director Fisher, and second by Director Strasser Kauffman, the foregoing ordinance is adopted this 21st day of May, 1990, by the following vote:

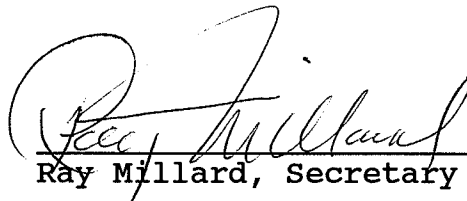
AYES: Directors Fisher, Strasser Kauffman, Hughes, Hekhuis, Heuer and Davis

NAYS: None

ABSENT:

I, Ray Millard, 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 21st day of May, 1990.

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

  
Ray Millard, Secretary to the Board

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