

Ordinance No. 56

**AN ORDINANCE OF THE  
MONTEREY PENINSULA  
WATER MANAGEMENT DISTRICT  
AMENDING DISTRICT REGULATIONS  
TO REQUIRE WATER METERS  
ON ALL MEDIUM AND LARGE PRODUCTION WELLS**

FINDINGS

1. The Monterey Peninsula Water Management District was formed, among other reasons, to provide integrated management of the ground and surface water resources within the Monterey Peninsula area, including the waters of the Carmel River.
2. On July 7, 1980, the District enacted Ordinance 3 to create a ground water zone under the authority of Section 344 of the District Law (Chapter 527 of the Statutes of 1977). This zone encompasses area solely within the District boundaries. Within this groundwater zone the District is authorized (pursuant to Section 347) to register and require meters on all water production facilities, including privately owned wells.
3. Ordinance 3 enacted District Regulation V, Rules 50 through 59, stating well registration and well production reporting requirements. Each well owner is required to report the quantity of water produced to the District. Regulation V originally allowed a well owner three alternative methods to report water production: a land use method for wells serving parcels of land smaller than 2.5 acres, a power consumption method, or a water meter method. The reporting method was at the option of the well owner, and all expenses of the chosen method were borne by that owner.
4. Ordinance 48 modified Regulation V to delete the power consumption method for large wells. Each large well must now report production by water meter, but wells serving parcels of land smaller than 2.5 acres may continue to operate wells without meters and use an alternate (but less accurate) reporting method, based on either the land use method or the power consumption method.
5. Failure to register any private well in the manner required by the District constitutes a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

6. The District may also require (pursuant to Section 347 of the District Law) that each private well be measured with a satisfactory water meter. Section 360 of the District law makes it unlawful for any well owner to produce water from any water-producing facility unless such water-producing facility has been registered with the District and has a meter installed thereto capable of registering the accumulated amount of water produced. Water production without a required water meter is punishable by a fine not to exceed five hundred dollars (\$500) pursuant to Section 360; each day of well operation in violation (i.e. without a meter) shall constitute a separate offense.

7. This ordinance shall delete reporting options now held by certain private wells, and shall require that all medium, large and new wells be measured with greater accuracy by a water meter.

8. Meter installation required by this ordinance shall balance the District's need for water production records with each citizen's concern regarding privacy and cost effectiveness of the metering program. This ordinance shall cause the present installation of meters on approximately twenty five percent (25%) of the unmetered wells known to exist within the District. The annual production from those wells is estimated to exceed 500 acre feet for Reporting Year 1990.

9. Data collected pursuant to this Ordinance shall not provide the basis for imposing a charge or levy against any overlying land where the water production occurs from a resource naturally occurring in the groundwater basin, and the water use was on the overlying land.

**NOW THEREFORE BE IT ORDAINED AS FOLLOWS:**

**SECTION ONE: AMENDMENT OF RULE 54 "REPORTING"**

Rule 54 of the District Rules and Regulations shall be deleted in its entirety, and in its place the following provisions shall be added:

- A. REPORTING REQUIRED.** Each owner and/or operator of a well located within the boundaries of the Monterey Peninsula Water Management District shall file with the District an annual production statement on the form provided by the District on or before the 15th day of August. The statement shall set forth the water production from each well for the preceding water reporting year (the 12 month period commencing on July 1 of the preceding calendar year, and concluding on June 30 of the current calendar year).

B. **REPORTING STATUS.** Reporting status refers to the computation method selected for each well by the District to calculate water production on the Annual Water Production Summary Statement. The reporting status for each well shall be either by water meter, or by land use method, as required by the provisions of this Rule.

C. **WELLS NOT REQUIRED TO HAVE WATER METERS.** Water Meters shall not be required for the following classes of wells:

(1) All wells outside the boundaries of the Monterey Peninsula Water Resource System (MPWRS) (defined by Rule 11) which meet each of the following criteria:

- (a) that were completed before February 23, 1992, and
- (b) that were registered and reporting water use by June 30, 1992; and
- (c) that produce less than 5 af in each water reporting year (the 12 month period commencing on July 1 of the preceding calendar year, and concluding on June 30 of the current calendar year), and
- (d) where the total land area (all parcels) served by that well does not exceed 2 1/2 acres.

(2) Wells within the boundaries of the MPWRS which meet each of the following criteria:

- (a) that were completed before February 23, 1992, and
- (b) that were registered and reporting water use by June 30, 1992; and
- (c) that produce less than 5 af in each water reporting year (the 12 month period commencing on July 1 of the preceding calendar year, and concluding on June 30 of the current calendar year), and
- (d) where the total land area (all parcels) served by that well does not exceed 2 1/2 acres.
- (e) that are on property which has not had a change of title due to sale of property after June 30, 1992.

(3) Any well (inside or outside the boundaries of the MPWRS) which has been granted a variance from this standard pursuant to Rule 57.

D. **WELLS REQUIRED TO HAVE WATER METERS.** Water meters shall be required for the following classes of wells within the boundaries of the Monterey Peninsula Water Management District:

(1) All new wells (inside or outside the boundaries of the Monterey Peninsula Water Resource System (MPWRS) which are completed after February 23, 1992.

- (2) All wells within the boundaries of the MPWRS that
  - (a) were completed before February 23, 1992, and
  - (b) did not register with the MPWMD by June 30, 1992
- (3) All wells (inside or outside the boundaries of the MPWRS) which produce 5 af (or more) in any single water reporting year (the 12 month period commencing on July 1 of the preceding calendar year, and concluding on June 30 of the current calendar year).
- (4) All wells (inside or outside the boundaries of the MPWRS) where total land area (all parcels) served is larger than 2 1/2 acres. A property owner can apply for a variance from this standard pursuant to Rule 57.
- (5) All wells upon property within the boundaries of the MPWRS for which a title transfer is made upon resale after June 30, 1992.

**SECTION TWO: AMENDMENT OF RULE 55 "LAND USE METHOD"**

Rule 55 of the District Rules and Regulations shall be deleted in its entirety, and in its place the following provisions shall be added:

- A. **REPORTING REQUIRED.** Each owner and/or operator of a well located within the boundaries of the Monterey Peninsula Water Management District, whose well is identified in Rule 54 (paragraph C) as being in a class of wells not requiring a water meter, shall file with the District an annual water production statement on the form provided by the District on or before the 15th day of August. The statement shall set forth the water production from each well for the preceding water reporting year (the 12 month period commencing on July 1 of the preceding calendar year, and concluding on June 30 of the current calendar year) based upon the land use method.
- B. **REPORTING METHOD.** Approximate water production for wells listed in Rule 54 (paragraph C) shall be computed based upon land use information in the Annual Water Production Statement, unless that owner voluntarily elects the Water Meter Method. Among other things, the owner and/or operator of that well shall report the use of the land, and the area and type of irrigation used during the reporting period.

**SECTION THREE: AMENDMENT OF RULE 56 "WATER METER METHOD"**

Rule 56 of the District Rules and Regulations shall be deleted in its entirety, and in its place the following provisions shall be added:

- A. REPORTING REQUIRED.** Each owner and/or operator of a well located within the boundaries of the Monterey Peninsula Water Management District, whose well is identified in Rule 54 (paragraph D) as being in a class of wells which require a water meter, shall file with the District an Annual Water Production Statement on the form provided by the District on or before the 15th day of August. The statement shall set forth the water production from each well for the preceding water reporting year (the 12 month period commencing on July 1 of the preceding calendar year, and concluding on June 30 of the current calendar year) based upon the water meter method.
- B. REPORTING METHOD.** Water production for wells identified in Rule 54 (paragraph D) shall be computed based upon actual water meter readings derived from an approved water meter and reported to the District on the Annual Water Production Statement. Water production from each well on which an approved water meter is installed shall be computed by the District from the beginning and ending totalizer reading on the water meter during the period as reported on the Annual Water Production Statement filed by the owner or operator of the well.
- C. WATER METER INSTALLATION.** Each owner and operator of a well listed in Rule 54 (paragraph D) which is located within the boundaries of the Monterey Peninsula Water Management District shall install and maintain a District-approved water meter on the well according to the time table set forth in this rule. It shall be the owner and operator's joint and several responsibility to install, maintain, and repair the water meter required by this Rule.

Water meters satisfactory to the District shall be capable of recording water production within an accuracy of plus or minus five percent (5%). The General Manager shall maintain a list of meters satisfactory to the District. The water meter shall also be equipped with a totalizer, susceptible to correction only by changing mechanical gear equipment.

- D. CONFIGURATION OF WATER METER INSTALLATION.** Each water meter shall be installed so as to permit access for inspection and testing as the District may, from time to time, deem necessary. The installation configuration shall be in accordance with good design practices and shall include the

following elements to insure meter accuracy:

(1) Each meter shall be situated to provide a minimum of eight (8) diameters of straight pipe (no bends or valves) both upstream and downstream of the water meter, in order to limit turbulence at the meter point; and

(2) Each meter shall be situated to provide a minimum of one (1) foot increase in elevation of the pipe from meter point to the discharge opening, in order to have a full pipe at the meter point.

- E. TIMING OF WATER METER INSTALLATION.** All water meters required by Rule 54 (paragraph D) shall be installed on or before July 1, 1992. In the case of a new well, the water meter shall be installed upon completion of the well. In the case of any well which requires a meter because it is situated upon property for which a title transfer is made upon resale after June 30, 1992, the water meter shall be installed on or before the close of escrow. In either case, the installation of the water meter shall be scheduled in such a timely fashion as to permit inspection and approval of the meter and the meter installation by the District or the District's delegated registrar within the prescribed time period.

The installation of all water meters required by this ordinance shall be completed on the following schedule:

- (1) each well requiring a water meter by Rule 54 (paragraph D) shall be metered on or before July 1, 1992.
- (2) each new well completed after February 23, 1992, shall be metered within 90 days of its completion, or within 90 days of its first use, or within 90 days of the date the well first becomes operable, whichever date occurs first.
- (3) each well within the Monterey Peninsula Water Resource System shall be metered before the close of escrow upon resale of that property after June 30, 1992.

After a well has been fitted with a meter, all production reports shall be based upon water meter readings unless otherwise authorized by written approval of the District.

- F. MAINTENANCE OF ACCURACY.** The owner and operator of a well which requires a water meter shall maintain meter accuracy within a minimum of plus or minus five percent (5%) percent.

It shall be the owner and operator's joint and several responsibility to repair or replace the meter. Such actions shall be taken as necessary or where it is shown to the owner or operator by the District that the meter fails to comply with this specification.

**G. VERIFICATION OF WELL METER INSTALLATION AND ACCURACY.**

To implement this Regulation, the General Manager or his delegated agent, acting in accord with the provisions of Section 362 (c) of the District law and pursuant to Rule 58, may enter on to any land for purposes consistent with this Regulation V and for the purpose of making investigations relating to water production. For such purposes, the authorized representative of the District, upon presentation of credentials, or, if necessary under the circumstances, after obtaining an inspection warrant pursuant to Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure, shall have the right of entry to any premises on which a water-producing facility is located for the purpose of inspecting such facility, including verifying accuracy of water-measuring devices or any records required to be maintained in connection therewith by federal, state, or local law, order, ordinance, regulation, or rule.

**H. PROHIBITION AGAINST PRODUCTION FROM A WELL WITHOUT THE INSTALLATION OF ANY REQUIRED WATER METER.**

It shall be unlawful for any owner or operator of a well located within the District to produce water from that facility unless that water-producing facility has been registered with the District and has been equipped with a water meter as required by Rules 54 and 56 of this Regulation. A violation of this Regulation shall also be a violation of Section 360 of the District law (production without a required water meter) and shall be punishable by a fine not to exceed five hundred dollars (\$500); each day of well operation in violation shall constitute a separate offense.

**I. LIMITATION ON USE OF DATA FROM METERED WELLS.**

District staff shall not use any data collected pursuant to this Regulation for the purpose of imposing a charge or levy against any overlying land where the water production was from a resource naturally occurring in the groundwater basin, and the water use was on the overlying land.

**SECTION FOUR: ADDITION OF RULE 56A "WELL METER INSTALLATION UPON CHANGE OF OWNERSHIP"**

Rule 56A of the District Rules and Regulations shall be added as follows:

**RULE 56A. WELL METER INSTALLATION UPON CHANGE OF OWNERSHIP**

In accord with Rule 54 (paragraph D), wells which are located within the boundaries of the Monterey Peninsula Water Management District shall be required to have a water meter installed on or before the close of escrow if the property served by that well has a title transfer made upon resale and change of ownership after June 30, 1992. Exceptions to this requirement may apply pursuant to a variance granted under Rule 57.

**A. PROOF OF RETROFIT UPON CHANGE OF OWNERSHIP.** Before the transfer of title for any change of ownership (defined by Rule 141) of real property within the District, the selling owner(s) or his/her/their authorized agent shall, in the form and manner specified by the District, certify compliance with the well meter requirements of this ordinance by each of the following methods which may apply:

- (1) Certify that there are no wells on the property.
- (2) Certify that each well on the property has been registered and metered in compliance with this Regulation.
- (3) Certify that each well which is not metered has been registered, and is exempt from the meter requirement pursuant to a variance granted under Rule 57.

Each certification required by Rule 56A shall be forwarded to the District before the close of escrow.

**B. CERTIFICATION OF COMPLIANCE REQUIRED BEFORE CLOSE OF ESCROW.** It shall be a violation of this Regulation for any buyer or seller to instruct an escrow agent to close escrow for any sale of property in the District prior to compliance with paragraph A of Rule 56A. After the transfer of title for any change of ownership (defined by Rule 141) of real property within the District, it shall be unlawful for the purchasing owner(s) to produce water from that well unless:

- (1) that well has been registered with the District, and
- (2) that well has been equipped with a water meter as required by Rules 54 and 56 of this Regulation, or
- (3) that well is exempt from the meter requirement pursuant to a variance granted under Rule 57.



A violation of this Regulation shall also be a violation of Section 360 of the District law (production without a required water meter) and shall be punishable by a fine not to exceed five hundred dollars (\$500); each day of well operation in violation shall constitute a separate offense.

- C. **LIMITATION OF LIABILITY FOR TITLE INSURANCE COMPANIES.** Rule 56A shall not impose any affirmative or discretionary duty upon an escrow agent, real estate agent, or other individual acting exclusively in the capacity of escrow officer. Nothing in this ordinance shall be construed, either expressly or by implication, to provide for a criminal proceeding or create a civil liability against a title insurance company, as defined in Insurance Code Section 12340.10, or an underwritten title company, as defined in Insurance Code Section 12402, or their officers, directors, or employees, by reason of an alleged violation of this ordinance by a party or parties to an escrow at such a corporation.
- D. **RECORDATION OF NOTICE BY DISTRICT.** After June 30, 1992, whenever a well is situated upon property which has had a title transfer upon resale or change of ownership, and that well is not equipped with a meter (unless exempt under Rule 57), the District shall, in addition to any other enforcement means available to the District, record a notice of violation with the Office of the County Recorder. The owner(s) of the property, as revealed on the most recent assessment roll, on which the well is situated shall be notified of the recordation, if their address is known. A notice of correction shall thereafter be recorded once the property owner had fully complied with the registration and meter installation requirements of this Regulation, including the payment of any applicable fees due thereon.

**SECTION FIVE: DELETION OF FORMER RULE 57 "POWER CONSUMPTION CORRELATION METHOD"**

Former Rule 57 of the District Rules and Regulations, entitled "Power Consumption Correlation Method", shall be deleted in its entirety.

**SECTION SIX: ADDITION OF RULE 57 "CRITERIA AFFECTING WATER METER INSTALLATION REQUIREMENTS".**

A new Rule 57, entitled "Criteria Affecting Water Meter Installation Requirements", shall be added to the District Rules and Regulations as follows:

A. CRITERIA TO REQUIRE WELL METER INSTALLATION BASED UPON QUANTITY OF WATER USE. To determine whether or not a water meter is required on a well under Rule 54 (paragraph D), the District shall use the following presumptions regarding quantity of water used by each well for the 12 month period commencing on July 1 of the preceding calendar year, and concluding on June 30 of the current calendar year.

(1) Burden of Proof When Permission to Inspect Has Been Granted. If a property owner grants permission to the District to inspect the property, and any well on that property is unmetered, the District shall presume that water use on that property is less than 5 afa unless the District can establish a preponderance of evidence to prove greater annual water use on that site.

(2) Burden of Proof When Permission to Inspect Has Been Denied. If a property owner refuses a reasonable request by the District to inspect the property made under the provisions of Rule 58, and any well on that property is unmetered, the District shall presume that water use on that property exceeds 5 afa unless that property owner can establish proof by clear and convincing evidence that the annual water use is less than 5 afa.

(3) Burden of Proof Regarding Location of Well. District staff shall make an initial determination regarding whether each well is located within or outside the boundaries of the Monterey Peninsula Water Resource System (MPWRS) as defined by Rule 11. That determination shall be presumed correct, except as may be rebutted by a preponderance of evidence submitted by the owner or operator of that well.

B. VARIANCE FROM WELL METER REQUIREMENTS.

(1) Written Application. Any property owner or well operator may apply by written application for a variance from the requirement to meter wells under Rules 54 and 56 of this Regulation V. A variance shall be granted only upon clear and convincing evidence which proves the water production from all wells serving that property does not equal or exceed 5 af in any single reporting year (the 12 month period commencing on July 1 of the preceding calendar year, and concluding on June 30 of the current calendar year).

The District shall not charge a fee for staff review and action on this variance.

The variance application shall be in the form and manner provided by the District, shall be signed by the property owner under penalty of perjury, and shall include the following: (1) data to verify the specific type, location,

and character of the applicant's water use, (2) the actual historical uses of water use at that site, (3) data to verify limitations on production capacity on that site, and (4) data substantiating any claimed change in water use.

(2) Action by Staff on the Application. Staff shall expedite review and action on the application. The General Manager, or his delegated agent, is authorized to grant a variance from the well meter requirements of Regulation V based upon clear and convincing evidence which proves the water production from all wells serving that property does not equal or exceed 5 af in any single reporting year. The General Manager, or his delegated agent, is authorized to conduct a field investigation pursuant to Rule 58 to verify facts surrounding any variance application. The presumptions set forth in paragraph A of this Rule shall apply, but those presumptions shall be rebuttable. The decision to grant or deny the variance shall be mailed to the applicant, together with an explanation of the appeal process set forth in paragraph B (3) below.

(3) Appeal of Staff's Decision to the Board of Directors. The decision under paragraph B (2) of this Rule shall be reviewed on appeal by the Board of Directors if a written request is received from the applicant on or before fourteen (14) days from the date staff's decision under subparagraph (2) was mailed. The written request to appeal must include payment by the applicant of the fee for an appeal set by Rule 63. [\$125.00] The Board shall conduct the hearing as a de novo review in accord with Rule 70 "Appeals" and shall grant the variance from the well meter requirements of Regulation V only upon clear and convincing evidence which proves the water production from all wells serving that property does not equal or exceed 5 af in any single reporting year. The presumptions set forth in paragraph A of this Rule shall apply, but those presumptions shall be rebuttable.

**SECTION SEVEN: AMENDMENT OF RULE 52 "REGISTRATION REQUIRED"**

Rule 52, entitled "Registration Required", shall be amended by adding two new paragraphs to the District Rules and Regulations as follows:

**C. FEES FOR DELINQUENT WELL REGISTRATION** The District shall impose the following schedule of fees and charges on or after July 1, 1992 upon the registration of each well to defray the costs of administration and enforcement of the well

registration requirement set forth by Regulation V.

<u>Date of Registration</u>	<u>Delinquent Registration Fee</u>
July 1, 1992 to September 30, 1992:	\$ 250.00
October 1, 1992 and thereafter:	\$ 500.00

The delinquent registration fee required by this Rule shall not apply to the registration of any new well, provided that well is registered within 90 days of its completion, or within 90 days of its first use, or within 90 days of the date the well first becomes operable, whichever date occurs first.

- D. **USE OF UNREGISTERED WELLS IS PROHIBITED.** On and after October 1, 1992, the General Manager shall use the best efforts of the District to enforce Section 357 of the Water Management District Act as applied to each well that has been completed for at least 90 days, and which has not been registered with the District as required by this Regulation. Section 357 states, in part,

"The superior court... may issue a temporary restraining order prohibiting operation of any water producing facility upon the filing by the district with such court of a petition or complaint setting forth that... [the] water-producing facility... has not been registered with the district... ."

In each such action, the District shall also request that the court award fees to the Water Management District in accord with Section 348 and Section 360 of the Water Management District Act, in addition to the schedule of fees and charges set forth in paragraph C of this Rule for the administrative costs of delinquent well registration.

Prior to initiating any action under this provision, in addition to any other notice required by law, the District shall first publish the name of the owner and operator (if known) and location of the unregistered well on the District's consent calendar.

**SECTION EIGHT: DELETION OF FORMER RULE 62 (4) "LATE REGISTRATION FEE"**

Former Rule 62 (4) of the District Rules and Regulations, entitled "Late Registration Fee" shall be deleted in its entirety.

**SECTION NINE: EFFECTIVE DATE AND DEADLINE FOR WELL METER INSTALLATION**

This ordinance shall take effect ninety (90) days following its adoption. The installation of all water meters required by this ordinance shall be completed on the schedule set forth in Rule 56 E.

**SECTION TEN: DEFINITION OF "MONTEREY PENINSULA WATER RESOURCE SYSTEM" ADDED TO RULE 11**

The phrase "Monterey Peninsula Water Resource System" and "MPWRS" shall be defined in Rule 11 as follows:

MONTEREY PENINSULA WATER RESOURCE SYSTEM - "Monterey Peninsula Water Resource System" shall refer to lands which overlie or are contiguous to (in whole or in part) water in the Carmel River (mainstem and tributaries), groundwater within the alluvial aquifer, and groundwater within the Seaside Coastal Groundwater Subbasin, as identified on MPWMD Boundary Map #1, as that map may be amended from time to time.

MPWRS - "MPWRS" shall refer to the phrase "Monterey Peninsula Water Resource System".

**SECTION ELEVEN: 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 TWELVE: 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.

**SECTION THIRTEEN: PUBLICATION**

The provisions of this ordinance shall cause modifications as indicated to the published Rules and Regulations of the Water Management District.

On motion of Director Long and second by Director Franco, the foregoing ordinance is adopted this 25th day of November, 1991, by the following votes:

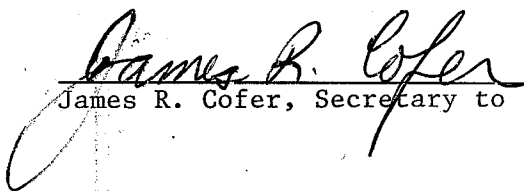
AYES: Directors Hekhuis, Long, Heuer, Hughes, Farina, and Strasser Kauffman

NAYS: None

ABSENT: Director Franco

I, Jim Cofer, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify that the foregoing is a full, true and correct copy of an ordinance duly adopted this 25th day of November, 1991.

Witness my hand and seal of the Board of Directors this 10th day of January, 1992.

  
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James R. Cofer, Secretary to the Board