

RULE 40 - DETERMINATION OF SYSTEM CAPACITY AND EXPANSION CAPACITY LIMITS

A. DETERMINATION OF SYSTEM CAPACITY AND EXPANSION CAPACITY LIMITS

Pursuant to Rule 20, the District shall determine both the System Capacity (annual production) Limit and the Expansion Capacity (Connection) Limit for Water Distribution Systems that do not meet the requirements for a Confirmation of Exemption. The term "System Limits" is used to refer to the System and Expansion Capacity (production and Connection) Limits.

1. Water Distribution Systems with System Limits Previously Determined by MPWMD

The District need not re-determine the System Limits for Water Distribution Systems that have been issued Permits that include defined System Limits. For Water Distribution Systems that meet either of the criteria in Rule 40-A-3 below, the Applicant may request that the District waive the System Limits through the Confirmation of Exemption process specified in Rule 22.

2. Water Distribution Systems with System Limits Not Previously Defined by MPWMD

The District General Manager shall determine the System Limits for all Water Distribution Systems that meet either of the following two characteristics:

- a. the system was issued an MPWMD Water Distribution System Permit prior to April 18, 2001 (the effective date of MPWMD Ordinance No. 96) that did not include defined System Limits; or
- b. the system existed prior to January 15, 2003 (the effective date of MPWMD Ordinance No. 105) and never received an MPWMD Permit, but is considered lawful due to age or an exemption described in Rule 20.

3. Water Distribution Systems with System Limits Not Previously Defined by MPWMD that Meet Criteria to Be Treated as a Class

Properties with Water Distribution Systems which meet either of the two criteria specified below in this paragraph A-3 shall be treated as a class. The District does not calculate individual numerical System Limits for each property within this class. The System Limits for this class may be defined by the Monterey County Environmental Health Bureau.

- a. The Water Distribution System is located outside of, and more than 1,000 feet from, any component of the Monterey Peninsula Water Resource System or Sensitive Environmental Receptor as defined in Rule 11; or

- b. the Water Distribution System is located outside of, and less than 1,000 feet from, any component of the Monterey Peninsula Water Resource System or Sensitive Environmental Receptor as defined in Rule 11, and the well log(s) shows no connectivity to these components as determined by qualified MPWMD staff.

Other valid reasons may be considered by the District Board on appeal (Rule 70).

4. New or Amended Water Distribution Systems Located Within the Carmel Valley Alluvial Aquifer with System Limits Not Previously Defined by MPWMD Must Be Treated on a Case-by-Case Basis

Water Distribution Systems located within the Carmel Valley Alluvial Aquifer which do not meet the criteria specified in paragraph A-3 above shall be treated on a case-by-case basis. The System Limits shall be determined as follows as described more fully in the Implementation Guidelines:

- a. For a Vacant Lot, or conversion of agricultural use, to a single Residential Connection, the System Capacity (production limit) is determined by the existing Consumptive Use on the Site as adjusted for the new Project's Consumptive Use;
- b. For a Vacant Lot, or conversion of agricultural use, or conversion of a single Residential Connection to two or three Residential Connections, the System Capacity (production limit) is determined by eighty-five percent (85%) of the existing Consumptive Use on the Site as adjusted for the new Project's Consumptive Use; the remaining 15% is designated for environmental benefits;
- c. For a Vacant Lot, or conversion of agricultural use, or conversion of two or three Residential Connections to four or more Residential Connections, or to Non-Residential Use, or to a Mixed-Use Project, the System Capacity (production limit) is determined by seventy-five percent (75%) of the existing Consumptive Use on the Site as adjusted for the new Project's Consumptive Use; the remaining 25% is for environmental benefits.

5. Existing New or Amended Water Distribution Systems Located Outside of the Carmel Valley Alluvial Aquifer but within the Monterey Peninsula Water Resource System with System Limits Not Previously Defined by MPWMD Which Must Be Treated on a Case-by-Case Basis

Water Distribution Systems which do not meet the criteria specified in paragraph A-3 above shall be treated on a case-by-case basis. The System Limits shall be determined based on an assessment that may consider any or all of the following information:

- a. Historical consumptive water use and/or water production records (especially the 10-year period prior to the date of assessment).
- b. The physical capabilities of the existing system.
- c. Anticipated future water use based on new or expanded activities that could occur without the need for permits by any Governmental agency other than the District.
- d. Anticipated future water use based on development plans approved by the Jurisdiction in which the property is located prior to submittal of the Water Distribution System application.
- e. Conclusions about environmental effects.
- f. Water rights, including Seaside Groundwater Basin Adjudication determinations made by the Superior Court, or other relevant determinations.
- g. Any other information submitted by the system Owner and deemed relevant by the General Manager.

Other valid reasons may be considered by the District Board on appeal (Rule 70).

The System Limits of any system may be amended by the Board upon request by the Permit holder pursuant to Rule 22.

B. MODIFICATION OF SYSTEM CAPACITY (PRODUCTION) AND EXPANSION CAPACITY (CONNECTION) LIMITS (“SYSTEM LIMITS”)

1. Monitoring. As to each Water Distribution System with ten (10) or more connections, the General Manager shall monitor the physical ability of that Water Distribution System to supply water within the System Capacity or the Expansion Capacity for that System, as those terms are defined in Rule 11, and as those Capacities are determined by this Rule. The General Manager shall convene a hearing to review the System Capacity or the Expansion Capacity, or both, for each such Water Distribution System for which physical water supplies do not appear sufficient to support either the System Capacity or the Expansion Capacity for that System. The General Manager shall base his or her determination upon credible information presented by a certified hydrogeologist, a registered geologist with a specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or a registered civil engineer with a specialty in hydrogeology.
2. Notice. If, in accord with paragraph B.1 above, the General Manager determines that physical water supplies do not appear sufficient to support either the System Capacity or the Expansion Capacity for that water distribution system, the

General Manager shall:

- a. Suspend receipt and processing of expansion or extension applications for that Water Distribution System pending a hearing on modification of the System Capacity or Expansion Capacity for that Water Distribution System.
 - b. Notify the Owner or Operator of a Water Distribution System that (i) the System Capacity or Expansion Capacity, or both, for that Water Distribution System that appears to not be in balance with the physical ability of that System to supply water, and (ii) convene a hearing before the Board of Directors to determine whether, and to what extent, modifications shall be made to either the System Capacity or Expansion Capacity, or both, for that Water Distribution System.
3. Hearing. Upon notice that physical water supplies do not appear sufficient to support either the System Capacity or the Expansion Capacity, or both, for a Water Distribution System, the Board of Directors shall hold a public hearing to consider whether, and to what extent, modifications shall be made to either the System Capacity or Expansion Capacity, or both, for that Water Distribution System. Modification of these limits shall be supported by substantial evidence that establishes physical water supplies available to the Water Distribution System are not sufficient to meet permitted System Capacity or Expansion Capacity limits. Upon such a finding, the Board shall determine a new System Capacity or Expansion Capacity, or both, for that Water Distribution System. The Board's determination shall be based upon substantial evidence, including credible expert evidence.
4. Action Following Hearing.

Where a Water Distribution System has reached or exceeded its System Capacity or Expansion Capacity limit, as modified, the General Manager shall not receive or process any application for a permit to expand or extend that system until the further amendment, based upon credible expert analysis, is made to the System Capacity or Expansion Capacity, or both, for that Water Distribution System.

Once a Water Distribution System presents credible expert analysis to the satisfaction of the General Manager that the system has returned to full compliance and can operate within both the System Capacity or Expansion Capacity for that system, the General Manager shall again be authorized to receive and act upon permits to expand or extend that system within the amended System Capacity and Expansion Capacity limits.

C. ANNUAL WATER DELIVERY SYSTEM REPORT

The General Manager shall annually compile a report stating the quantity of water delivered from each Source of Supply, the total water produced, the average daily number

of Connections in the system, and the number of new Connections in the system, and the number of new Connections and disconnections in the previous water year for each Water Distribution System in the District. The General Manager shall compile this report from the reports submitted by the Owner or Operator of Water Distribution Systems pursuant to Rule 22 and other sources as appropriate. The General Manager shall identify all Water Distribution Systems that meet all three of the following criteria: (i) have ten (10) or more Connections, and (ii) of these Connections, at least fifty percent (50%) are active Connections, and (iii) the System (production) Capacity exceeds the Pro Rata Expansion Capacity as defined in Rule 11. Such report shall be submitted to the Board.

D. SYSTEMS EXCEEDING PRO RATA EXPANSION CAPACITY

If the General Manager determines that a Water Distribution System exceeds its Pro Rata Expansion Capacity and meets all other criteria stated in Section C above, the General Manager shall:

1. Notify the Owner or Operator of a Water Distribution System that (i) the Pro Rata Expansion Capacity is not in balance with the System Capacity, and (ii) that the Owner or Operator is required to prepare and implement a plan to bring the system back into balance. Plan measures may include installation of Low Water-Use Plumbing Fixtures, Landscape Audits, removal of turf/landscape acreage, modification of rate structure, or other measures deemed acceptable by the General Manager;
2. Require systems with multiple use types to provide a detailed breakdown of consumption reporting by individual use types (e.g., Single-Family Dwellings in each area of the system, Multi-Family Residential, Public Authority, Commercial, and Industrial) together with comparison of trends in average use per Connection type over time;
3. Increase system reporting for all times system water use exceeds the Pro Rata Expansion Capacity, and for twelve (12) consecutive months after the system water use is less than its Pro Rata Expansion Capacity;
4. Suspend receipt of Expansion or Extension applications for any system that exceeded its Pro Rata Expansion Capacity within the preceding twelve (12) months;
5. For any system that exceeds its authorized Pro Rata Expansion Capacity on more than one occasion, the suspension on receipt of Expansion or Extension applications shall continue after the system again returns to compliance until the General Manager has reviewed and concurs with credible expert analysis that the system can and will remain in compliance; and
6. Collect administrative fees as required by Rule 60 for services required to implement these requirements.

E. HEARINGS FOR SYSTEMS THAT EXCEED THE PRO RATA EXPANSION CAPACITY

1. For systems which have not exceeded their System or Expansion Capacity Limit but have exceeded their Pro Rata Expansion Capacity limit on more than one occasion, and a credible expert indicates the Water Distribution System cannot sustain the Pro Rata Expansion Capacity, the Board of Directors shall provide notice and hold a public hearing to consider an adjustment to the System Limits based on credible evidence and make modifications in accordance therewith.
2. The Board of Directors shall hold a public hearing to review the annual water delivery system report and other evidence as necessary, and determine if any Water Distribution System has reached or exceeded its System or Expansion Capacity Limit or that the System Limits require modification. Where a Water Distribution System has reached or exceeded its System or Expansion Capacity Limit or where the System Limits have been modified, the Board shall direct the General Manager or the delegated agent to deny any application for Permit to Expand or Extend that system until the Permit is amended.

F. NOTIFICATION

The General Manager shall, within thirty (30) days, notify all delegated agents and the Owner or Operator of the findings of the Board regarding any Water Distribution System that has reached or exceeded its System or Expansion Capacity Limit or that the System Limits have been modified. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the Responsible Party, or when personally delivered to the Applicant or his representative.

Rule added by Ordinance No. 1 (2/11/80); amended by Ordinance No. 3 (7/11/80); Ordinance No. 6 (5/11/81); Ordinance No. 105 (12/16/2002); Ordinance No. 118 (12/13/04); Ordinance No. 125 (9/18/2006); Ordinance No. 136 (8/18/2008); Ordinance No. 175 (11/14/2016)