

RULE 22 - ACTION ON APPLICATION FOR PERMIT TO CREATE/ESTABLISH A WATER DISTRIBUTION SYSTEM

A. PROCESS

1. Review of Application Package

The General Manager shall review each Application Form (and attachments) to Create/Establish a Water Distribution System or Mobile Water Distribution System, or to amend such a system. If the application is determined to be complete pursuant to the Implementation Guidelines, the General Manager shall confirm the proper Permit Review Level as defined in Rule 11, Definitions. The General Manager shall notify the Applicant in writing to confirm the Permit Review Level determination and the associated process steps, including the required recordation of notice on the title of the property, if applicable, and potential additional fees. If the application is determined to be incomplete, the General Manager shall notify the Applicant in writing of the missing or deficient information, and request the Applicant to submit that information.

2. Determination of Permit Review Level

Based on the information in the application package, the General Manager shall determine the Permit Review Level as follows, using Table 22-A as a guide and consistent with the protocol provided in the Implementation Guidelines, and with the California Environmental Quality Act (CEQA). The Permit Review Levels are as follows:

Exempt: A system meets the criteria identified in Rule 20.

Level 1 Water Distribution System Permit (Basic Non-MPWRS): For a Water Distribution System or Mobile Water Distribution System located outside of the Monterey Peninsula Water Resource System that does not meet the exemption criteria specified in Rule 20, but does qualify for a Permit to be issued without System Limits as a condition of approval, consistent with the criteria in these Rules and the Implementation Guidelines.

Level 2 Water Distribution System Permit (Basic Seaside Basin): For a Water Distribution System or Mobile Water Distribution System located within the Seaside Groundwater Basin that does not meet the exemption criteria in Rule 20, but does qualify for a Permit to be issued with System Limits consistent with production triggers in the Seaside Basin Adjudication Final Decision (March 2006 as amended), and consistent with the criteria specified in Rules 21, 22 and 173, and the associated Implementation Guidelines specified in those rules.

Level 3 Water Distribution System Permit (Project-Specific Limits in MPWRS/Other): For a Water Distribution System or Mobile Water Distribution System located within the Monterey Peninsula Water Resource System, or a system located outside the Monterey Peninsula Water Resource System that does not meet the exemption criteria in Rule 20, or does not meet the criteria for a Level 1 or Level 2 Permit, in Rules 21, 22 and 173, and the associated Implementation Guidelines specified in those rules. The Level 3 Permit is issued with System Limits as a condition of approval, and other restrictions as necessary to protect the MPWRS.

Each application shall be reviewed pursuant to CEQA, except those projects which meet the CEQA criteria for a ministerial or categorical exemption (CEQA Guidelines Section 15268 and Article 19).

3. Protocol for Exempt System

Unless specified otherwise in Rule 20, the General Manager shall provide a written Confirmation of Exemption to the Applicant in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. A notice on the title of the property shall be recorded by the District prior to issuance of the written Confirmation of Exemption. District action is ministerial and is exempt from the requirements of CEQA (Guidelines Section 15268). Notice of the staff action shall be provided to the public via the "Appealable Decisions" section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, "Appeals."

4. Protocol for Level 1 Permit (Basic Non-MPWRS)

The General Manager shall review the application package in the form and manner prescribed in Rule 21 to determine if the submitted application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the application is determined to be incomplete, the General Manager shall notify the Applicant concerning that information in which the application is deficient and request the Applicant to submit that information, in compliance with Rule 22-F. If the application is determined to be complete, and all criteria specified in Rule 22-A-2 and the Implementation Guidelines are met, the General Manager shall issue a Level 1 Permit within a goal of sixty (60) days that specifies terms and conditions that are independent of, but consistent with, Rules 22-B, 22-C and 22-D. The Level 1 Permit does not set System Limits. However, a mandatory condition of approval shall state, "There shall be no permanent intertie to any other water system, and there shall be no intertie to the California American Water system under any circumstances, including a temporary emergency, until there is full compliance with SWRCB Order WR 95-10 (as amended), compliance with the Seaside Groundwater Basin Adjudication Final Decision of 2006 (as amended), and water is available in the respective Jurisdiction's Allocation for release to the Parcel(s)." District action is discretionary and the application is subject to CEQA review unless the

project qualifies for a CEQA categorical exemption (CEQA Guidelines Article 19). Notice of the staff action shall be provided to the public via the “Appealable Decisions” section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, “Appeals.”

5. Protocol for Level 2 Permit (Basic Seaside Basin)

The General Manager shall review the Application package in the form and manner prescribed in Rule 21 to determine if the submitted application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the application is determined to be incomplete, the General Manager shall notify the Applicant concerning that information in which the application is deficient and request the Applicant to submit that information, in compliance with Rule 22-F. If the application is determined to be complete, and all criteria specified in Rule 22-A-2 and the Implementation Guidelines are met, the General Manager shall issue a Level 2 Permit within a goal of sixty (60) days that specifies terms and conditions that are consistent with Rules 22-B and 22-C, and in compliance with Rule 22-D unless a specific condition is not applicable. District action is discretionary and the application is subject to CEQA review unless the project qualifies for a CEQA categorical exemption (CEQA Guidelines Article 19) or unless the project is covered by the previous action of the Superior Court, which supersedes CEQA. Notice of the staff action shall be provided to the public via the “Appealable Decisions” section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, “Appeals.”

6. Protocol for Level 3 Permit (Project-Specific Limits in MPWRS/Other)

a. The General Manager shall review the application package in the form and manner prescribed in Rule 21 to determine if the submitted application is complete, pursuant to the Implementation Guidelines, within thirty (30) days of receipt. If the application is determined to be incomplete, the General Manager shall notify the Applicant concerning that information in which the application is deficient and request the Applicant to submit that information, in compliance with Rule 22-F. If the application is determined to be complete, and all criteria specified in Rule 22-A-2 and the Implementation Guidelines are met, the General Manager shall issue a Level 3 Permit within a goal of 120 days that specifies terms and conditions that are consistent with Rules 22-B and 22-C, and in compliance with Rule 22-D unless a specific condition is not applicable. Unusually complex applications may take longer than 120 days. District action is discretionary and the application is subject to CEQA review unless the project qualifies for a CEQA categorical exemption (CEQA Guidelines Article 19).

- b. The General Manager shall consult with the Board Chairperson to determine if the project is large, complex or controversial enough to be taken directly to the Board of Directors as a public hearing. If a hearing is scheduled before the Board of Directors, the standard Board protocol for such a quasi-judicial hearing shall be followed. The Chairperson may direct that a hearing be scheduled before the General Manager (or his designee) as the sole hearing officer, as described in subsections (c), (d) and (e) below. The Chairperson could direct that certain Single-Parcel Connection Systems do not require a public hearing. In that case, notice of the staff action shall be provided to the public via the “Appealable Decisions” section of the District website. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, “Appeals.”
- c. At a hearing before the staff hearing officer, the Applicant shall be entitled to present evidence in support of the application. Interested Persons may present evidence in opposition or support of the application. The hearing officer, in conducting the public hearing, may request hydrologic, geologic, legal opinions or other studies necessary to obtain information required for his/her decision. The cost of such studies shall be borne by the Applicant. For every application for which a Controversy, based on factual evidence already in the record or introduced into the record, arises concerning the extent or adequacy of water rights, the hearing officer may require and will specify additional documentation needed to support each water right claim. The hearing officer shall continue the public hearing on the application until the specified information is provided by the Applicant.
- d. The staff hearing officer may deny, approve, or continue the Permit Application based on the minimum standards as set forth in Rule 22-C and its findings pursuant to Rule 22-B. The hearing officer may impose such conditions on the Permit that he/she deems necessary and proper, which must include the “Mandatory Conditions of Approval” specified in Rule 22-D, unless a specific condition is not applicable. The General Manager shall notify the Applicant within thirty (30) days in writing by mail or in person of the hearing officer action taken; namely continuance, approval, conditional approval, or denial of the application. 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 address shown on the Application, or when personally delivered to the Applicant or the Applicant’s representative. Notice of the hearing officer’s action shall be provided to all MPWMD Board members.
- e. The staff hearing officer’s decision may be appealed to the MPWMD Board of Directors pursuant to Rule 70, “Appeals,” upon payment of the fee specified in Rule 60. Permits granted under this provision may be appealed to the Board of Directors for a *de novo* hearing. That hearing

shall convene under the rules of process set in Rule 70, "Appeals."

Added by Ordinance No. 122 (8/15/2005); amended by Ordinance No. 128 (6/18/2007); Ordinance No. 160 (4/21/2014)

B. FINDINGS

In order to protect public trust resources, prior to making its discretionary decision to grant or deny any Permit to Create or Establish any Water Distribution System, or to Create or Establish any Mobile Water Distribution System, the Board (or the General Manager for certain systems) shall determine:

1. Whether the system for which a Permit is sought would cause unnecessary duplication of the same types of services by any existing system; and
2. Whether the Permit would result in exportation or importation of water outside or into the District; and
3. Whether the proposed Water Distribution System would result in significant environmental effects that cannot be mitigated by conditions attached to the Permit; and
4. Whether the application adequately identifies the claim of right for each Source of Supply for the Water Distribution System, whether it provides adequate supporting verification documentation thereto, and/or whether the system relies on any non-existent or questionable claim of right; and
5. Whether the application demonstrates the existence of a long-term reliable Source of Supply; as demonstrated by standard methodology adopted by the Monterey County Environmental Health Bureau and/or MPWMD testing procedures identified in the Implementation Guidelines; and
6. Whether the Source of Supply is shared by any other Water Distribution System, and if, the system affects the Monterey Peninsula Water Resource System, the extent to which cumulative impacts may affect each Source of Supply, and species and habitat dependent upon those Sources of Supply; and
7. Whether the Source of Supply derives from (a) the Monterey Peninsula Water Resource System, and/or (b) waters within the jurisdiction of the State Water Resource Control Board, and/or (c) waters tributary to the Source of Supply for any other system; and
8. Whether the proposed Water Distribution System (a) shall intertie to any other system, (b) shall be able to obtain emergency supplies in the event of system failure, (c) shall provide fire flow requirements for development served by that system; and (d) the extent other Water Distribution Systems shall be required to provide emergency supplies and/or meet fire flow requirements; and
9. Whether the proposed Water Distribution System shall incorporate adequate

cross contamination and backflow measures to protect other systems and Sources of Supply.

C. MINIMUM STANDARDS FOR GRANTING PERMIT

An application may be considered for approval if it complies with each of the following minimum standards; if any one of the following standards is not met, the application shall be denied:

1. The application identifies at least one Responsible Party who, at all times, will be available and legally responsible for the proper performance of those things required of a Permit holder by this regulation.
2. The ability of the Source of Supply for any Water Distribution System designed to deliver water for any Potable use to other than a Single-Parcel Connection System, to provide water that complies with the standards set forth in Title 22 of the California Administrative Code or standards set forth by the Monterey County Environmental Health Bureau.
3. The application identifies the location of each Source of Supply for the Water Distribution System or Mobile Water Distribution System, and the location of each use supplied by the system.
4. The proposed Water Distribution System will not create an Overdraft or increase an existing Overdraft, unless a valid superior right is proven.
5. The proposed Water Distribution System will not adversely affect the ability of existing systems to provide water to Users unless a valid superior right is proven.

D. MANDATORY CONDITIONS OF APPROVAL

1. The Level 2 or Level 3 Permit shall establish for each system: (i) an Expansion Capacity Limit, which sets the total number of Connections which can be served; (ii) a System Capacity, which sets the maximum annual production in Acre-Feet per year; and (iii) a Municipal Unit (Jurisdiction) Allocation, if applicable. The Level 1 Permit shall not set an Expansion Capacity Limit or a System Capacity. In addition to the following mandatory conditions, the District may impose other conditions in granting the Permit. Conditions that are not applicable to Mobile Water Distribution Systems need not be imposed:
 - a. Permit shall designate geographic boundary of Water Distribution System Service Area, including Assessor's Parcel Numbers;
 - b. Permit shall identify authorized use of Water Distribution System (e.g., Potable, Sub-potable, Residential, Commercial, and/or other types of use);
 - c. Permit shall identify approvals by other agencies that shall be obtained before Water Distribution System Permit is finalized or vested;

- d. Applicant shall execute an indemnification agreement that holds the District harmless, and promises to defend the District from any claims, demands, or expenses of any nature or kind arising from or in any way related to the adequacy of the water supply of the system;
- e. Applicant shall comply with all District Rules relating to water Well registration, metering and reporting;
- f. Applicant shall comply with all District water conservation regulations; this may include requirements for installation of low-flow fixtures or drought tolerant Landscaping;
- g. Applicant shall comply with District regulations that govern water meter Connections, including payment of applicable fees;
- h. Permit shall identify whether interties to other systems are allowed and shall identify restrictions or prohibitions on such interties, including devices to prevent cross-contamination of systems. MPWMD shall not approve any amendment to the California American Water system due to the inability of a permitted Non-California-American Water Company Water Distribution System to deliver adequate water quality or quantity to Parcels within its Service Area until there is full compliance by California American Water with State Water Resources Control Board Order No. WR 95-10 (as amended); California American Water compliance with the March 2006 Final Decision of the Seaside Groundwater Basin Adjudication (as amended); and water is available in the respective Jurisdiction's Allocation for release to the Parcel(s);
- i. Permit shall identify which mitigation measures, if any, are required to address potential adverse environmental impacts associated with the proposed Water Distribution System, and specify funding mechanism, if applicable;
- j. Applicant shall provide copy of agreement(s) to serve water to recipient Parcels, if a Multiple-Parcel Connection System;
- k. Applicant shall receive a District Permit prior to Intensifying or Expanding the approved Water Distribution System;
- l. Applicant shall pay to the District the invoiced cost for MPWMD staff time and/or its agents as well as direct costs (pursuant to Rule 60) to process the Permit, as documented in billing logs, before the Permit is finalized;
- m. Applicant shall sign an "Acceptance of Permit Conditions" form upon finalization of Permit conditions, wherein the Applicant states that he/she understands and accepts the conditions as a binding part of the Permit

approval, and agrees to carry out the conditions in good faith; the Permit is not valid until the signed form is received from the Applicant;

- n. Applicant shall execute a Notice and Deed Restriction prepared and recorded by the District regarding the limitation on water use as set forth in the conditions of approval prior to issuance of the final Permit;
 - o. Upon notice to the Water Distribution System Owner or Operator in writing, e-mail or by telephone, reasonable access to the Site shall be given to MPWMD staff or its designated representative to inspect and document Water-Gathering Facilities and Water-Measuring Devices, obtain hydrogeologic data, and take readings from Water-Measuring Devices.
 - p. Permit shall state that the Permit is subject to Revocation in the event the Applicant does not comply with the provisions set forth in each condition in this Rule.
2. Every Applicant, as a condition to holding a Permit pursuant to this Rule, shall report annually in the form and manner prescribed by the District: (i) the quantity of water delivered from each Source of Supply, (ii) the total water produced, (iii) the maximum number of Connections in the system, (iv) the number of new Connections and disconnections, (v) provide a map or maps of the Service Area, and (vi) list the identity and address of each Responsible Party as of September 30th of the previous year.
3. As a condition precedent to use or enjoyment of any Permit pursuant to this Rule, each Applicant shall be required to first obtain and comply with any required approval from the local Jurisdiction in which the property is located; and if applicable, obtain and comply with a certificate from the California Public Utilities Commission, or a coastal development permit or other approvals pursuant to the California Coastal Act. Failure to comply with this prerequisite shall provide cause for Revocation of any Permit issued pursuant to this Rule.
4. For Permits issued after January 15, 2003, construction tasks for facilities authorized in the MPWMD Water Distribution System Permit (e.g., Well, pipelines, storage tanks and water treatment) shall be initiated within one year from the date the Permit is issued. The Permit shall expire if no action is taken within that year. Construction of permitted Water-Gathering Facilities shall be completed and Water Distribution System operation shall commence within two years from the date the Permit is issued. The permittee may apply in writing to the General Manager for up to a one year extension to the Project initiation deadline and/or the system operations commencement deadline, to be approved at the discretion of the General Manager. Multiple extensions may be requested with good cause.

E. AMENDMENTS TO PERMIT

No Owner or Operator of a Water Distribution System shall modify, add to or change his/her Source of Supply, location of uses, Expand the system beyond the System Capacity (annual production limit), if applicable, or the Expansion Capacity (Connection) Limit, if applicable, or Expand the Service Area including annexations, unless that Person first files an application to do so with the District and receives an amended Creation/Establishment Permit. Such applications shall be made pursuant to Regulation II (Permits), shall comply with each Rule therein, and shall be investigated, considered, determined and acted upon on the same terms and conditions as provided for the approval, conditional approval, or denial of a Permit, as provided in this Rule.

F. CANCELLATION OF APPLICATIONS

In processing an application for a Permit to Create/Establish a Water Distribution System, an Applicant who receives an “incomplete” letter must provide the needed information within the period of time specified in the letter. Failure to comply shall result in cancellation of the application, without prejudice.

G. CANCELLATION OF UNISSUED PERMITS

A successful Applicant must execute the indemnification agreement required by Rule 22-D-1-d, pay all applicable fees as required by Rules 22-D-1-g and l, sign the Acceptance of Permit Conditions pursuant to Rule 22-D-1-m, and comply with all conditions precedent within sixty (60) days from Permit approval. The General Manager shall cancel, without prejudice, any unissued Permit that does not meet these requirements.

Rule added by Ordinance No. 1 (2/11/80); amended by Ordinance No. 2 (3/11/80), Ordinance No. 6 (5/11/81), Ordinance No. 8 (1/14/81); Ordinance No. 96 (3/19/2001); Ordinance No. 105 (12/16/2002); Ordinance No. 118 (12/13/2004); Ordinance No. 122 (8/15/2005); Ordinance No. 125 (9/18/2006); Ordinance No. 128 (6/15/2007); Ordinance No. 145 (9/20/2010); Ordinance No. 160 (4/21/2014); Ordinance No. 170 (5/16/2016)

**TABLE 22-A
MPWMD Water Distribution System Permit Matrix**

No. of Parcels	Location				MPWMD Permit Process ^{1,2}							
	Non- MPWRS	W/in 1,000 ft. of MPWRS	MPWRS		Effect on MPWRS		Testing Required	Production History	Set Limit	CEQA Review	Exemption	WDS Permit
			SGB		None	Potential effect						
			< 5	> 5								
< 4	X				X						Exemption ³	
< 4				X	X						Exemption ³	Level 2 ⁵
< 4		X			X						Exemption ³	Level 1 ⁴
< 4		X										Level 3 ⁶
< 4			X									Level 3 ⁶
< 4				X	X							Level 2 ⁵
4 or more	X				X							Level 1 ⁴
4 or more				X	X							Level 2 ⁵
4 or more		X										Level 1 ⁴
4 or more			X									Level 3 ⁶
4 or more				X								Level 3 ⁶

Notes

AFY acre-feet per year

CEQA California Environmental Quality Act

CVAA Carmel Valley Alluvial Aquifer

MPWRS Monterey Peninsula Water Resource System (CVAA + SGB)

SER Sensitive Environmental Receptor (e.g., a stream)

SGB Seaside Groundwater Basin

App Application materials similar to existing application (map, property information, etc.)

1. Staff to review materials for location, hydrogeologic connection to MPWRS, potential title complications. Exemption recorded.
2. Counsel to review complicated property titles and all Permit materials for CEQA compliance.
3. Exemption - ministerial action, CEQA exemption, no production limit.
4. Level 1 Permit - staff assessment of hydrologic connectivity and adverse effects, no production limit if no adverse effects.
5. Level 2 Permit - for SGB only, production limits associated with Court and Watermaster determinations; CEQA addressed by Court.
6. Level 3 Permit - requires testing, CEQA determination, production limit.

Table added by Ordinance No. 160 (4/21/2014)