

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

A. PROCESS

1. Review of Pre-Application Request Form for All Systems

The General Manager shall review each Pre-Application Request Form to Create/ Establish a Water Distribution System. If the Pre-Application is determined to be complete pursuant to the Implementation Guidelines, the General Manager shall determine the proper Permit Review Level (i.e., Exempt, Level 1, Level 2, Level 3, or Level 4 as defined in Rule 11, Definitions). The General Manager shall notify the Applicant in writing of the Permit Review Level determination (to be confirmed by information in the formal Application Form), the required recordation of notice on the title of the property, applicable Permit application fee, and provide the proper written Application Form and associated materials pursuant to the Implementation Guidelines. If the Pre-Application Request Form is determined to be incomplete, the General Manager shall notify the Applicant concerning 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 Pre-Application Request Form (as confirmed by the formal Application Form), the General Manager shall determine the Permit Review Level as follows, using Table 22-A.

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

Level 1 (Categorical) Permit: A system meets all of the following criteria: (a) Well site is located in the Carmel Valley Upland area as shown in maps provided in the Implementation Guidelines; (b) property is comprised of one or two Residential Parcels totaling less than 2.5 acres; (c) property is not within the California American Water Service Area as shown in maps provided in the Implementation Guidelines, or is not served by California American Water as a remote meter; (d) Well site is located more than 1,000 feet from any Sensitive Environmental Receptor as defined in Rule 11; (e) Well site is located more than 1,000 feet from any existing Well that is registered with the District and/or included in the District Well database at the time of the application; and (f) a review by District staff determines that the application falls within one of the classes listed for a CEQA categorical exemption as described in CEQA Guidelines Article 19, Categorical Exemptions (15300-15333). See also Table 22-A.

Level 2 (Administrative) Permit: A system meets the criteria for a Level 2 Permit as shown in Table 22-A.

Level 3 Permit (Hearing Officer Review): A system meets the criteria for a Level 3 Permit as shown in Table 22-A.

Level 4 Permit (MPWMD Board Hearing): A system meets the criteria for a Level 4 Permit as shown in Table 22-A.

Each application shall be reviewed pursuant to CEQA, except those ministerial actions determined to be exempt from the application of CEQA (Guidelines Section 15268).

3. Protocol for Exempt System

No Application Form or Permit processing is required for an exempt system. 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 all MPWMD Board members.

4. Protocol for Level 1 (Categorical) Permit

The General Manager shall provide an Application Form for a Level 1 system in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. The Application Form shall require written documentation that the system meets all of the Level 1 criteria described in Rule 22-A-2 above. The General Manager shall 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 are met, the General Manager shall issue a Level 1 Permit within thirty (30) 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. 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 full compliance with SWRCB Order WR 95-10 is achieved." District action is discretionary and the application is subject to CEQA review. Notice of the staff action shall be provided to all MPWMD Board members. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, "Appeals."

5. Protocol for Level 2 (Administrative) Permit

The General Manager shall provide an Application Form for a Level 2 system in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. The Application Form shall require written documentation that the system meets the Level 2 criteria described in Rule 22-A-2 above, and enables compliance with Rules 21-A, 22-B and 22-C. The General Manager shall 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 complies with Rules 21-A, 22-B and 22-C, the General Manager shall issue a Level 2 Permit. The Level 2 Permit shall include conditions of approval in compliance with Rule 22-D. The Level 2 process does not require a public hearing. District action is discretionary and the Application is subject to CEQA review. Notice of the staff action shall be provided to all MPWMD Board members. The staff determination may be appealed to the MPWMD Board pursuant to Rule 70, "Appeals."

6. Protocol for Level 3 Permit (Hearing Officer Review)

a. The General Manager shall provide an Application Form for a Level 3 system in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. The Application Form shall require written documentation that the system meets the Level 3 criteria described in Rule 22-A-2 above as well as enable compliance with Rules 21-A, 22-B and 22-C. The General Manager shall 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.

b. If the Application is determined to be complete, the General Manager shall act within thirty (30) days following satisfaction of CEQA requirements to set a public hearing on the Application for such Permit, and shall notify the Applicant in writing and give public notice of the hearing date in the manner and form prescribed in the Implementation Guidelines. District action is discretionary and the Application is subject to CEQA review. At the hearing, the General Manager shall sit as the sole hearing officer. At the hearing, 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.

- c. The 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. 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.
- d. The 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."

7. Protocol for Level 4 Permit (MPWMD Board Hearing)

- a. The General Manager shall provide an Application Form for a Level 4 system in the form and manner prescribed in the Implementation Guidelines, including the applicable fee described in Rule 60. The Application Form shall require written documentation that the system meets the Level 4 criteria described in Rule 22-A-2 above as well as enable compliance with Rules 21-A, 22-B and 22-C. The General Manager shall 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.

- b. If the Application is determined to be complete, the Level 4 Permit review procedures are identical to those described for Level 3 in Rule 22-A-6 above, except the MPWMD Board of Directors, not the staff hearing officer, shall conduct the public hearing. Also, there is no appeal of the MPWMD Board's decision (i.e., Rule 22-A-6-d does not apply). District action is discretionary and the Application is subject to CEQA review.

Added by Ordinance No. 122 (8/15/2005); Ordinance No. 128 (6/18/2007)

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; and
6. Whether the Source of Supply is shared by any other Water Distribution System, and if so, 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.
3. The Application identifies the location of each Source of Supply for the Water Distribution System, and the location of each use supplied by a Mobile Water Distribution 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. When the Board or hearing officer approves the Permit, it 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 Limit, which sets the maximum annual production in Acre-Feet per year; and (iii) a Municipal Unit (Jurisdiction) Allocation. In addition to the following mandatory conditions, the Board or hearing officer may impose other conditions in granting the Permit:
 - 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;
- 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 (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. 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 shall be initiated within one year (365 days except 366 days for leap years) from the date the Permit is issued. The Permit shall expire if no action is taken within that year. Permitted construction tasks 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 a 180-day extension to the Project initiation deadline and/or the system operations commencement deadline, to be approved at the discretion of the General Manager.

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 or the Expansion Capacity (Connection) Limit, 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)

**TABLE 22-A
MATRIX OF PERMIT REVIEW LEVELS**

USE			SETTING							
			Carmel Valley Basin/Watershed		Sensitive Use Areas			Non-California American Water Areas	California American Water Area	
Project Type	Parcel Size (acres)	Estimated Water Use (AFY)	Uplands >1000' from well or SER*	Uplands <1000' from well or SER*	Laguna Seca Subarea	Seaside Coastal Subarea	C.V. Alluvium	Misc. area; see Rule 20-C-3 for Exempt	Min. review if within "Main" California American Water Service Area (MPWRS)	
A	B	C	D	E	F	G	H	I	J	
1	1 Parcel - Residential	=1	=1	1	2	3	3	3***	Exempt	2
2	1 Parcel "	>1-2.5	>1-2.5	1	2	3	3	3***	Exempt	2
3	1 Parcel "	>2.5-10	>2.5-10	2	2	4	4	4***	2	2
4	1 Parcel "	>10	>10	2	3	4	4	4	3	3
5	2 Parcels - Residential	=1**	=1	1	2	3	3	3***	Exempt	2
6	2 Parcels "	>1-2.5	>1-2.5	1	2	3	3	3***	Exempt	2
7	2 Parcels "	>2.5-10	>2.5-10	2	3	4	4	4	2	2
8	2 Parcels "	>10	>10	2	3	4	4	4	3	3
9	3+ Parcels - Residential	=1**	=1	3	3	3	3	4	3	2
10	3+ Parcels "	>1-2.5	>1-2.5	3	3	3	3	4	3	2
11	3+ Parcels "	>2.5-10	>2.5-10	4	4	3	3	4	3	2
12	3+ Parcels "	>10	>10	4	4	4	4	4	4	4
13	New Subdivision	=2.5**	=2.5	3	3	4	4	4	4	3
14	New Subdivison	>2.5	>2.5	4	4	4	4	4	4	4
15	Non-Residential	--	=1	3	3	3	3	3	3	3
16	Non-Residential	--	>1-10	4	4	3	3	4	3	4
17	Non-Residential	--	>10	4	4	4	4	4	4	4

Review Level Numbering:

Exempt = No WDS Permit needed; ministerial action exempt from CEQA (Guidelines Section 15268)

1= Categorical Permit (discretionary and subject to staff review of CEQA categorical exemption, Guidelines Section 15300 et seq)

2= Administrative Permit (discretionary and subject to CEQA review, Findings etc)

3= Public Hearing by Hearing Officer (discretionary and subject to CEQA review, Findings etc)

4= Public Hearing by Board of Directors (discretionary and subject to CEQA review, Findings etc)

* "SER" = Sensitive Environmental Receptor defined by Rule 11 (CV alluvium, CR tributary, Seaside Basin, Pacific Ocean mean high tide)

** Acreages for 2+ Parcel systems are analyzed based on total acreage for all Parcels

*** If applicant submits either a SWRCB "Domestic Registration" or adequate documentation of riparian rights, then Level 2 applies.