

DRAFT ORDINANCE NO. 175

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AMENDING REGULATION OF THE SYSTEM CAPACITY OF WATER DISTRIBUTION SYSTEMS IN THE CARMEL VALLEY ALLUVIAL AQUIFER (RULES 11, 20, 20.4, 21, 22, 40 AND 60)

FINDINGS

1. The Monterey Peninsula Water Management District (MPWMD or District) is charged under the District Law with the integrated management of the ground and surface water supplies in the Monterey Peninsula area.
2. The District has enacted, by ordinance, a set of Rules and Regulations to implement its statutory authority. District Rule 11 defines the terms used in the regulation of Water Distribution Systems (WDS). District Rules 20, 20.4, 21, 22, 40, 54-56, 60 and 173 further define procedural and substantive rules that regulate these systems. Regulation of WDS first occurred in 1980 with the adoption of Ordinance No. 1 and the District Rules governing WDS have since been amended from time to time. Significant changes and additions to the Rules and Regulations governing WDS were adopted as part of Ordinance No. 96 in March 2001, Ordinance No. 105 in December, 2005, Ordinance No. 122 in August 2005, Ordinance No. 124 in July 2006, Ordinance No. 128 in June 2007, Ordinance No. 145 in September 2010, Ordinance No. 150 in May 2012, and Ordinance No. 160 in April 2014.
3. In August 1993, Monterey County approved the *Amended Memorandum of Agreement No. A-06181 with Monterey Peninsula Water Management and Pajaro Valley Water Management Agency Regarding Exercise of Jurisdiction in Overlapping Territories* (MOA). The parties entered into the MOA "... in order to prevent any conflicts that might otherwise occur as a result of this overlap, to encourage and facilitate cooperation with one another, to insure that resource management efforts are not inappropriately duplicated, and to insure that public funds are used effectively."
4. Since Water Year 1995, when the State Water Resources Control Board first ordered California America Water (Cal-Am) to reduce its unauthorized diversions from the

Carmel Valley Alluvial Aquifer (CVAA), Cal-Am has reduced production from the CVAA by 46%, which has made a significant contribution to reversing the trend of seasonal dewatering. During the same time period, non-Cal-Am pumping in the CVAA has generally remained at or above the 1995 level of production and there has been no trend toward a reduction of seasonal dewatering of the Carmel River due to this group of pumpers.

5. On October 26, 2010, Monterey County adopted a General Plan Update that included Policy PS-3.2, which requires that the General Manager of the Monterey County Water Resources Agency make a determination of a “Long Term Sustainable Water Supply” for new development. A key factor in making such a determination is the ability to reverse trends contributing to an overdraft condition and effects of diversion of water on the environment. The District has a joint interest with Monterey County in reversing the trend of seasonal dewatering in the Carmel River and environmental degradation due to the combined effects of Cal-Am and non-Cal-Am pumping in the CVAA.
6. On August 15, 2016, the MPWMD Board of Directors approved a revised policy for WDS that draw from the CVAA when there is a new or changed use. The Board’s intent is to provide regulatory consistency with Monterey County for alluvial water systems and further MPWMD’s environmental stewardship of the Carmel River Basin.
7. This ordinance would amend the regulatory process described in Rule 40-A for certain WDS dependent on the CVAA for water supply, based on policy direction provided by the MPWMD Board of Directors at their August 15, 2016 meeting. Other rules are also amended to clarify their intent, provide internal consistency among rules, or correct minor errors.
8. This ordinance shall amend the MPWMD Rules and Regulations. Specifically, this ordinance shall revise or add certain terms in Rule 11 (Definitions). This ordinance shall amend certain text for Rule 20-A (Permits to Create/Establish a Water Distribution System), Rule 20-C (Exemptions for Water Distribution System Permit), Rule 20.4 (Permit Rule Non-Compliance), Rule 21-A (Application for Permit to Create/Establish a Water Distribution System), Rule 22 (Action on Application to Create/Establish a Water Distribution System), Rule 40 (Determination of System Capacity and Expansion Capacity Limits), and Rule 60 (Fees and Charges). Several rules refer to Implementation Guidelines for specific protocols. The Implementation Guidelines shall also be revised to reflect these Rule changes.

9. The District Board of Directors determines that this ordinance is not considered to be a “project” under California Environmental quality Act (CEQA) Guidelines Section 15378 because the function of the ordinance (and its associated Implementation Guidelines) is to refine permit processing protocol, and the ordinance does not have the potential to result in either a direct physical effect or reasonably foreseeable indirect physical effect on the environment. Each future WDS application received will continue to be subject to environmental review in order to determine what action the District must take pursuant to the applicable CEQA sections.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the Carmel Valley Alluvial Aquifer System Capacity Ordinance (Rules 11, 20, 20.4, 21, 22, 40 and 60).

Section Two: Purpose

This ordinance shall revise the permanent Rules and Regulations of the District concerning procedures used to set the System Capacity (water production limit) for Water Distribution Systems in the Carmel Valley Alluvial Aquifer. It also clarifies the intent of certain rules, and makes corrections to ensure internal consistency among rules.

Section Three: Amendment of Rule 11 (Definitions)

District Rule 11 shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

CONFIRMATION OF EXEMPTION - “Confirmation of Exemption” shall mean a ~~written approval~~ ***document issued by the MPWMD that exempts certain Water Distribution Systems identified in Rule 20 from the requirement for a Water Distribution System Permit*** ~~staff of the Monterey Peninsula Water Management District based on an application package which complies with Rules 20 and 21.~~

CONSUMPTIVE USE -- “Consumptive Use” shall mean the amount of water produced by a Water Distribution System, as measured at the Project Site, that is not returned to the water-bearing aquifer or geologic formation beneath the property. Consumptive Use is determined as described in the Implementation Guidelines for Water Distribution Systems.

MONTEREY PENINSULA WATER RESOURCE SYSTEM – “Monterey Peninsula Water Resource System” (“MPWRS”) shall mean the surface water in the Carmel River and its tributaries (*as listed in the definition of “Sensitive Environmental Receptor”*), Groundwater *flowing in known and definite channels* in the Carmel Valley Alluvial Aquifer which underlies the Carmel River, and Groundwater in the Seaside Groundwater Basin, *including shallow brackish Groundwater from the Aromas Sands Formation used by the Sand City Desalination Facility.*

The District shall maintain a current list of Water Distribution Ssystems within the Monterey Peninsula Water Resource System.

Section Four: Amendment of Rule 20-A (Permit to Create/Establish a WDS)

District Rule 20-A shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

RULE 20 - PERMITS REQUIRED

A. PERMIT TO CREATE/ESTABLISH A WATER DISTRIBUTION SYSTEM

Before any Person Creates or Establishes a Water Distribution System or a Mobile Water Distribution System, such Person shall ~~first~~ ***either*** obtain a written Confirmation of Exemption ***from the Water Distribution System Permit requirements*** or ***a Water Distribution System Permit*** from the District, ~~execute and record a notice on the title of the property, and pay all applicable fees.~~

Desalination, reclamation or importation facilities located within the District are not exempt because the Source of Supply is considered to be the water emanating from a facility within the District.

Persons who hold a valid permit for construction and operation of a Water Distribution System from the Monterey County Health Department (*Monterey County Environmental Health Bureau*), prior to March 12, 1980, or a Water Distribution System in existence prior to that date, shall be deemed to have been issued a Permit in compliance with these Rules and Regulations. Persons who filed a completed application to the Monterey County Health Department (*Monterey County Environmental Health Bureau*), date-stamped by the Department on or before March 19, 2001, for construction of a Well serving a Single-Parcel Connection System shall be deemed to have been issued a Permit in compliance with these Rules and Regulations provided all of the following actions were taken: (1) the Applicant received a valid well construction permit from the Monterey County Health Department (*Monterey County Environmental Health Bureau*), made the Well active, metered the Well, had the Well inspected by MPWMD and received an approved MPWMD Water Meter Installation Inspection form issued on or before October 15, 2001; and (2) each Water-Gathering Facility of that system was registered with the District on or before October 15, 2001.

No Mobile Water Distribution System shall be issued a Permit under the provisions of the previous paragraph. Each such system shall be required to apply for and obtain a written Confirmation of Exemption or Permit in accord with Rules 21 and 22.

The Expansion Capacity Limit and System Capacity of ~~previously existing~~ *Water Distribution* Systems shall be determined pursuant to Rule 40-A, *which considers the system location in relation to the Monterey Peninsula Water Resource System, and whether criteria are met* ~~unless they meet the criteria~~ for a Confirmation of Exemption or Level 1 WDS Permit, or *whether* ~~do not have a~~ water rights *are* specified in the Seaside Basin Adjudication Final Decision (as amended), or in a permit issued by the State Water Resources Control Board, *or other water rights are determined to apply*.

An Owner or Operator of a Water Distribution System shall not modify, add to or change his/her Source of Supply, location of uses, change the System Capacity (if applicable) or Expansion Capacity Limit (if applicable), or expand the Service Area unless that Person first files an application to do so with the District and receives an amended creation/establishment Permit or written Confirmation of Exemption.

Section Five: Amendment of Rule 20-C (Exemptions for Water Distribution System Permit)

District Rule 20-C shall be amended by deleting the following provisions shown in strikeout text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

C. EXEMPTIONS FOR WATER DISTRIBUTION SYSTEM PERMIT

Exemptions for a Water Distribution System Permit for a Well shall only be considered following receipt of a ***complete Request for Confirmation of Exemption package as described in Rule 21 and in the Implementation Guidelines for Processing Applications for Water Distribution Systems and Mobile Water Distribution Systems***. ~~Well Construction Permit from the Monterey County Environmental Health Bureau and a State Department of Water Resources Well Completion Report. The Well must be properly registered with MPWMD, metered, inspected, and have an approved MPWMD Water Meter Installation Inspection form on file.~~ ***The application package shall be processed as described in Rule 21 (Applications) and Rule 22 (Action on Application for Permit to Create/Establish a Water Distribution System)***. ~~Additional requirements are described in the Implementation Guidelines.~~

An MPWMD Water Distribution System Permit is not required for the situations enumerated below. Unless noted otherwise, a written and recorded Confirmation of Exemption prepared by MPWMD staff is required.

1. For properties that lie outside the District boundary, where both: (a) the property to be served is wholly outside of the boundaries of the Monterey Peninsula Water Management District; and (b) the water source is also located outside of the District boundary. A written Confirmation of Exemption is not required.
2. For properties that straddle the District boundary, where both: (a) the portion of the property served by the Water Distribution System is outside of the District boundary; and (b) the Source of Supply is outside of the District boundary. A written Confirmation of Exemption is not required.

3. For a Well (or Wells) which serves fewer than four Parcels and is located more than 1,000 feet from the boundary of any component of the Monterey Peninsula Water Resource System as defined in Rule 11.
4. For a Well (or Wells) that serves fewer than four Parcels located less than or equal to 1,000 feet from components of the Monterey Peninsula Water Resource System for which the well log shows no connectivity to these components as determined by qualified MPWMD staff.
5. For a Single-Parcel Connection System located within the Seaside Groundwater Basin with overlying water rights to percolating Groundwater for which annual production shall total less than 5.0 Acre-Feet per year.
6. To Reactivate, Refurbish or Replace existing Wells that are registered with the District, as defined in Rule 11. To qualify for this exemption, the Reactivated, Refurbished or Replacement Well must have substantially the same or lower Capacity of the *existing Well*. ~~structure replaced~~. The replacement structure must be consistent with other MPWMD Rules and Regulations. This exemption from the MPWMD permitting process does not *remove* ~~affect in any way~~ the Applicant's obligation to comply with permit requirements by other regional, state or federal agencies. This exemption shall not apply to an Abandoned Well, or replacement or refurbishment of an Abandoned Well, or Wells that have been Inactive for more than three *consecutive* years from the date of receipt of the ~~Application~~ ~~Form~~ described in Rule 21-A.

[Note: Subsections #7 through #14 remain unchanged]

Section Six: Amendment of Rule 20.4-A (Permit Rule Noncompliance Notice)

District Rule 20.4-A shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (*bold face*).

RULE 20.4 - PERMIT RULE NON-COMPLIANCE

A. NOTIFICATION

When the General Manager first becomes aware that a Water Distribution System is operating without a Permit or is in violation of current Permit conditions, particularly the System Limits, he/she shall provide written notification to the Owner or Operator, if known, of the Water Distribution System that District Rule 20 has been violated. Copies of this notice shall be provided to each property owner receiving water from the unpermitted or non-complying Water Distribution System, to the extent known. Notice shall be deemed to have been given when the written notification has been deposited in the U.S. mail, postpaid, addressed to the Responsible Party, or when personally delivered. The Owner of the Water Distribution System shall file an application for a Permit to Create or Amend a Water Distribution System in accord with District Rule 21 or take action in accordance with District Rule 40 within sixty (60) days of notification.

For incomplete applications submitted in response to this Rule, failure to submit all information requested within the time limit specified by the General Manager shall result in enforcement pursuant to Rule 20.4-B, 20.4-C, and 20.4-D, unless due diligence is demonstrated and a written extension with a revised deadline is approved by the General Manager.

If a Water Distribution System had System Limits imposed prior to May 21, 2014 (the effective date of Ordinance No. 160), and meets the criteria for a Confirmation of Exemption without System Limits or a Level 1 Water Distribution System Permit without System Limits, the Owner may submit an application to remove the System Limits pursuant to the procedures specified in Rule 21-A and the Implementation Guidelines.

Section Seven: Amendment of Rule 21-A (Permit Applications)

District Rule 21-A shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

RULE 21 - APPLICATIONS

A. APPLICATION PACKAGE FOR PERMIT TO CREATE/ESTABLISH A WATER DISTRIBUTION SYSTEM AND APPLICATION PACKAGE FOR A CONFIRMATION OF EXEMPTION

1. The Applicant for a Permit to Create/Establish a Water Distribution System ~~or for a Confirmation of Exemption~~ shall submit the following **information**, based on guidance provided in the Implementation Guidelines *for Processing Applications for Water Distribution Systems and Mobile Water Distribution Systems*. **The application package shall include the following:**
 1. **a.** A completed written ~~A~~ application ~~Form~~ signed by the system Owner, ~~in the manner and form prescribed by the Implementation Guidelines. Based on the information provided in the Application, the General Manager shall determine: (a) whether the application qualifies for an exemption under Rule 20; (b) whether ministerial or discretionary action is needed by MPWMD; and (c) which type of Permit is applicable to the project as prescribed by Rule 22 and the Implementation Guidelines. Depending on the situation, the Application package may be required to include some or all of the remaining numbered elements of this Rule 21-A; and~~
 2. **b.** Environmental information as required by the California Environmental Quality Act (CEQA); ~~and~~
 3. **c.** Zoning and land use designations for the property; ~~including identification of~~ identify land-use approvals which may be required for the proposed Project by the ~~Municipal Unit Jurisdiction~~ in which the proposed system would be located (i.e., tentative map, use permit, etc.), or by other Governmental agencies, consistent with state and local regulations that require proof of available water supply; ~~and~~
 4. **d.** Identify type of water right claimed to exist with each Water-Gathering Facility and each Source of Supply for the system (e.g., riparian, pre-1914, appropriative, overlying or other). Provide written verification of legal water rights applicable to type of right claimed (*see Implementation Guidelines for further detail*). The verification shall include, but shall not be limited to the following forms of documentation, **as applicable**:

- (1a) Condition of Title Report, prepared by a title company at the Applicant’s expense, and any and all supporting documentation to indicate whether legal water rights have been subordinated or severed; this documentation may include a judicial declaration of right or a full title opinion prepared by an attorney with expertise in water law;
 - (2b) ~~I~~nformation that describes the legal basis or authority for diversion and extraction of water;
 - (3e) ~~I~~f Groundwater is being pumped from a Groundwater basin that has not been adjudicated, **or declared to be in a state of overdraft**, a statement to that effect in addition to a copy of the current deed to the property is sufficient documentation to satisfy this requirement; or
 - (4d) ~~I~~f the source of the water is subject to permit requirements under the State Water Resources Control Board, a copy of the SWRCB water rights permit or domestic registration must be included. ~~;~~ **and**
- 5. e. A copy of: ~~(a)~~ an approved Water Well Construction Permit issued by the Monterey County Environmental Health Bureau, including the associated impact assessment ~~conducted~~ **conducted** by the Monterey County Water Resources Agency (if applicable). ~~;~~ ~~(b)~~
 - f. **A copy of** the State of California Well Completion Report submitted to the California Department of Water Resources (“well log”). ~~;~~
 - g. **A copy of the** ~~and (e)~~ Monterey County Environmental Health Bureau “Source Water Quality and Quantity Analysis Certification Form,” **“Source Capacity Test,”** or similar approval document from that agency (if applicable). ~~;~~ **and**
 - 6. h. The name and address of each Responsible Party. ~~;~~ **and**
 - 7. i. The results of Well Capacity ~~(Aquifer Pumping)~~ Tests (**Aquifer Pumping Tests**) as specified by the Implementation Guidelines,

the cost of which shall be borne by the Applicant, and which may be observed by a District representative or agent. ~~;~~ ~~and~~

- ~~8.~~ *j.* The results of water quality tests as specified by the Implementation Guidelines, the cost of which shall be borne by the Applicant. ~~;~~ ~~and~~
- ~~9.~~ *k.* An evaluation of the hydrogeologic information in the manner and form required in the Implementation Guidelines. This evaluation shall be prepared by a qualified individual or firm as determined by the District. Qualified consultants shall include a certified hydrogeologist, a licensed professional geologist with a specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or a registered civil engineer with a specialty in hydrology; these specialists shall be certified in, registered or licensed by the State of California. The costs of this evaluation shall be borne by the Applicant. ~~;~~ ~~and~~
- ~~10.~~ *l.* Documentation regarding notification to Neighboring Well owners, if applicable. If required by the District, the Applicant shall provide notice to Neighboring Well owners regarding the opportunity to monitor Wells as specified in the Implementation Guidelines. Applicant shall provide documentation of notice to, and responses (if any) by, Neighboring Well owners to the District prior to the commencement of Well Capacity (Aquifer Pumping) Tests, as specified in the Implementation Guidelines.
 - m.* ***Current Well registration with MPWMD, and the Well must be metered and in compliance with Regulation V, Well Monitoring.***
- ~~11.~~ *n.* For a Mobile Water Distribution System, documentation about the Ssource of Ssupply, quantity and intended uses, including written approval from the agency with regulatory authority over the source (if source is located outside of the MPWMD boundary). ~~;~~ ~~and~~
- ~~12.~~ *o.* The applicable fees prescribed in Rule 60.

2. Application for a Confirmation of Exemption.

The Applicant for a Confirmation of Exemption shall submit the following shall submit the following information, based on guidance provided in the Implementation Guidelines for Processing Applications for Water Distribution Systems and Mobile Water Distribution Systems. The application package shall include the following:

- a. A completed written Request for Confirmation of Exemption signed by the system Owner.*
- b. A copy of an approved Water Well Construction Permit issued by the Monterey County Environmental Health Bureau, including the associated impact assessment conducted by the Monterey County Water Resources Agency.*
- c. A copy of the State of California Well Completion Report submitted to the California Department of Water Resources (“well log”).*
- d. A copy of the Monterey County Environmental Health Bureau “Source Water Quality and Quantity Analysis Certification Form,” “Source Capacity Test,” or similar approval document from that agency as applicable.*
- e. The name and address of each Responsible Party.*
- f. Current Well registration with MPWMD, and the Well must be metered and in compliance with Regulation V, Well Monitoring.*
- g. An evaluation of the hydrogeologic information in the manner and form required in the Implementation Guidelines. This evaluation shall be prepared by a qualified individual or firm as determined by the District. Qualified consultants shall include a certified hydrogeologist, a licensed professional geologist with a specialty in hydrogeology, a certified engineering geologist with a specialty in hydrogeology, or a registered civil engineer with a specialty in hydrology; these specialists shall be certified in, registered or licensed by the State of California. The costs of this evaluation shall be borne by the Applicant.*

11. *For a Mobile Water Distribution System: Documentation about the Source of Supply, quantity and intended uses, including written approval from the agency with regulatory authority over the source (if source is located outside of the MPWMD boundary).*
12. *The applicable fees prescribed in Rule 60.*

Section Eight: Amendment of Rule 22-A (Process for Application for WDS Permit)

District Rule 22-A shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (*bold face*).

RULE 22 - ACTION ON APPLICATION FOR PERMIT TO CREATE/ ESTABLISH OR AMEND A WATER DISTRIBUTION SYSTEM, REQUEST A CONFIRMATION OF EXEMPTION

A. PROCESS

1. Review of Application Package and Notification to Applicant

The General Manager shall review each ~~Application Form (and attachments)~~ *application package* to Create/Establish a Water Distribution System or Mobile Water Distribution System, or to amend such a system. If the ~~A~~ *application package* is determined to be complete pursuant to ***Rule 21 and the Implementation Guidelines for Processing Applications for Water Distribution Systems and Mobile Water Distribution Systems***, the General Manager shall confirm the proper Permit Review Level as defined in Rule 11, Definitions. The General Manager shall notify the ~~a~~ *Applicant* in writing ***within 30 days*** 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 ~~A~~ *application package* is determined to be incomplete, the General Manager shall notify the ~~a~~ *Applicant* ***within 30 days*** in writing of the missing or deficient information, and request the Applicant to submit that information ***within thirty days***. ***Additional extensions of time may be granted at the discretion of the General Manager. Application packages that are not completed within the specified time may be subject to Rule 22-F.***

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. *An exemption is a ministerial action not subject to review under CEQA or to requirements of the Permit Streamlining Act.*

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. *Unless the proposed project qualifies for a CEQA categorical exemption, Level 1 permits are a discretionary action subject to requirements of the Permit Streamlining Act.*

Level 2 Water Distribution System Permit (~~Basic~~—Seaside Groundwater 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 2 permits are subject to the Permit Streamlining Act and CEQA review unless the project qualifies for a CEQA categorical exemption or unless the project is covered by the previous action of the Superior Court which supersedes CEQA.*

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. ***Unless the proposed project qualifies for a CEQA categorical exemption, Level 3 permits are a discretionary action subject to requirements of the Permit Streamlining Act.***

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). ***Government Code §65941 (c) requires the responsible agency to begin processing an application for Level 1, 2, and 3 permits for a development project if so asked by the Applicant “to the extent that the information necessary to commence the processing is available.” Information necessary to begin permit processing is described in the Implementation Guidelines.***

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 Water Distribution System located within the Carmel Valley Alluvial Aquifer that qualifies for a Confirmation of Exemption is potentially subject to a System Capacity (annual production) limit pursuant to Rule 40-A. A Notice of Deed Restriction Regarding Confirmation of Exemption 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 Rules 21 *and* 22. ~~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 ~~A~~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 *that is required to reduce water use*, and there shall be no intertie to the California American Water system *that relies on Cal-Am water rights*, ~~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 *Groundwater* Basin)

The General Manager shall review the ~~A~~application package in the form and manner prescribed in Rules 21 *and* 22. ~~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 ~~A~~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 ~~A~~application is subject to CEQA review unless the project qualifies for a CEQA categorical exemption (CEQA Guidelines Article 19) or unless the ~~p~~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 ~~A~~application package in the form and manner prescribed in Rules 21 *and* 22. ~~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. A *Water Distribution System located within the Carmel Valley Alluvial Aquifer is subject to a System Capacity (annual production) limit pursuant to Rule 40-A. Usually complex applications may take longer than 120 days.* District action is discretionary and the ~~A~~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/*her* 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 ~~A~~application. Interested Persons may present evidence in opposition or support of the ~~A~~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 ~~A~~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 ~~A~~application until the specified information is provided by the Applicant.
- d. The hearing officer may deny, approve, or continue the Permit ~~A~~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 ~~A~~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 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.”

Section Nine: Amendment of Rule 22-B (Findings)

District Rule 22-B shall be amended by deleting the following provisions shown in strikeout text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

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 ~~A~~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 ~~A~~application demonstrates ~~the existence of a long-term reliable Source of Supply~~ ***that the proposed Water-Gathering Facility***

produces a long-term reliable supply as ~~demonstrated~~ *required* 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 the Carmel Valley Alluvial Aquifer, and if the MPWMD protocol established in Rule 40-A has been applied to setting the System Capacity.*
67. 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
78. 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
89. 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
910. Whether the proposed Water Distribution System shall incorporate adequate cross contamination and backflow measures to protect other systems and Sources of Supply.

Section Ten: Amendment of Rule 22-C (Minimum Standards for Granting Permit)

District Rule 22-C shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

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 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.~~
3. *The application demonstrates that the proposed Water-Gathering Facilities produce a long-term reliable supply for the intended purposes; and for any Potable use other than a Single-Parcel Connection System, that the system 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.*
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.
6. *The proposed Water Distribution System, if its Source of Supply is the Carmel Valley Alluvial Aquifer (CVAA), is consistent with the MPWMD Policy for the CVAA adopted on August 15, 2016.*

Section Eleven: Amendment of Rule 22-F (Cancellation of Applications)

District Rule 22-F shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

F. CANCELLATION OF APPLICATION

In processing an application for a Permit to Create/Establish a Water Distribution System, an Applicant who receives an “incomplete” letter *or interim Permit processing fee invoice* must *respond to the District’s request* ~~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.

Section Twelve: Amendment of Rule 40-A (Determination of System Limits)

District Rule 40-A shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

RULE 40 - DETERMINATION OF SYSTEM CAPACITY (~~PRODUCTION~~) AND EXPANSION CAPACITY (~~CONNECTION~~) LIMITS (“SYSTEM LIMITS”)

A. DETERMINATION OF SYSTEM CAPACITY (~~PRODUCTION~~) AND EXPANSION CAPACITY (~~CONNECTION~~) LIMITS (“SYSTEM LIMITS”)

Pursuant to Rule 20, the District shall determine both the System Capacity (annual production) Limit and the Expansion Capacity (Connection) Limit for ~~existing~~ 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. ~~The term “existing” in this context refers to systems existing prior to April 18, 2001, the effective date of MPWMD Ordinance No. 96.~~

1. Existing 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 ~~prior to April 18, 2001~~ 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. Existing 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.

Paragraphs A-3 and A-4 below describe two possible scenarios.

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

~~Properties with *W*water *Distribution* *S*systems existing prior to January 15, 2003 and which meet *either of the two-three* 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 are *may be* defined by the Monterey County Environmental Health Bureau, as the water use associated with the structures and activities allowed by the zoning and land use regulations of the Jurisdiction in which the property is located. All of the following three criteria must be met in order for the system to be treated as part of this class:~~

- a. ~~*T*he *Water Distribution* *S*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 a Single Parcel Connection System that existed prior to April 18, 2001; 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. ~~the single Parcel is zoned primarily for single family Residential use (such as R1, RDR, LDR zoning designations); and~~*

- c. ~~the single Parcel is no larger than 2.5 acres in size.~~

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 existing prior to January 15, 2003 but 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. ~~H~~istorical *consumptive* water use *and/or water production* records (especially the 10-year period prior to the date of assessment).;
- b. ~~T~~he 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 January 15, 2003 *submittal of the Water Distribution System application.*;
- e. ~~C~~onclusions about environmental effects.;
- f. ~~W~~ater rights, *including Seaside Groundwater Basin Adjudication determinations made by the Superior Court, or other relevant determinations.*; and/or
- g. ~~A~~ny 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).

- ~~6. New Water Systems Created or Amended on or After January 15, 2003 Are to Be Treated on a Case-by-Case Basis~~

~~Determination of System Limits for any Water Distribution System Created or Amended on or after January 15, 2003 and requiring an MPWMD Permit is guided by MPWMD Rules and Regulations. Each system shall be considered on a case by case basis. The System Limits shall be determined based on an assessment that may consider the relevant criteria described in paragraph A 4 above, in addition to documentation regarding any or all of the following:~~

- ~~a. anticipated future water use;~~
- ~~b. the physical capabilities of the proposed system;~~
- ~~c. new or expanded activities or development plans for which permit applications submitted to Governmental agencies have been deemed complete and are being processed by those entities;~~
- ~~d. findings on environmental effects;~~
- ~~e. water rights, *including Seaside Groundwater Basin Adjudication determinations made by the Superior Court, or other relevant litigation;* and/or~~
- ~~f. 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.

Section Thirteen: Amendment of Rule 60 (Fees and Charges)

District Rule 60 shall be amended by deleting the following provisions shown in ~~strikeout~~ text (~~strikeout~~), and by adding the following provisions set forth in italicized and bold face type (***bold face***).

RULE 60 – FEES AND CHARGES

[Note: Sections A through I, Section L and Section M remain unchanged]

J. FEES RELATING TO CHALLENGES TO PERMITS

1. An Administrative Fee based on MPWMD staff time shall be imposed and collected at a ~~the~~ rate of ~~\$70.00 per hour~~ *shown in the Fees and Charges Table* for all activity associated with any challenge to the issuance, validity or denial of any Permit under the District Rules and Regulations, including, but not be limited to, efforts expended by District staff pursuant to any indemnification agreement.
2. A Legal Defense Fee shall be imposed and collected for any legal work performed by MPWMD Counsel associated with responding to any challenge to the issuance, validity or denial of any Permit under the District Rules and Regulations, to the imposition or validity of any condition imposed on such a Permit, or to any defect in process relating to the review and action on the Permit or Permit conditions. This fee shall be charged at actual cost, based on the hourly rate of retained MPWMD legal counsel at the time services are rendered. This fee shall include, but not be limited to, efforts expended by District Counsel pursuant to any indemnification agreement.

K. FEES RELATING TO PERMIT MODIFICATION OR ENFORCEMENT

1. An Administrative Fee based on MPWMD staff time shall be imposed and collected at ~~the~~ rate of ~~\$70.00 per hour~~ *shown in the Fees and Charges Table* for any Permit violation, condition compliance, Water Distribution System or Expansion Capacity Limit modification, or other enforcement activity.
2. A Legal Enforcement Fee shall be imposed and collected for any legal work performed by MPWMD Counsel associated with any Permit violation, condition compliance, Water Distribution System or Expansion Capacity Limit modification, or other enforcement activity. This fee shall be charged at actual cost, based on the hourly rate of retained MPWMD legal counsel at the time services are rendered. This fee shall include, but not be limited to, efforts expended by District Counsel pursuant to any indemnification agreement.

Section Fourteen: Publication and Application

The provisions of this ordinance shall cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District. Section titles and captions are provided for convenience and shall not be construed to limit the application of the text.

Section Fifteen: Effective Date and Sunset

This ordinance shall be given effect at 12:01 a.m. on the 30th day following the date of its adoption on second reading.

Section Sixteen: Severability

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion of Director _____, and second by Director _____, the foregoing ordinance is adopted upon this ____th day of _____, 2016 by the following vote:

AYES: Directors _____

NAYS: Directors _____

ABSENT: Directors _____

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the ____th day of _____, 2016.

Witness my hand and seal of the Board of Directors this __ day of _____, 2016.

David J. Stoldt, Secretary to the Board