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**BEFORE THE STATE WATER
RESOURCES CONTROL BOARD**

In the Matter of the State Water Resources)
Control Board (State Water Board))
Hearing to Determine whether to Adopt a)
Draft Cease & Desist Order against)
California American Water Regarding its)
Diversion of Water from the Carmel River)
in Monterey County under Order WR 95-10)
_____)

Hearing Date: July 23 - 25, 2008

Carmel River in Monterey County

EXHIBIT MPWMD-SP7

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

ORDINANCE NO. 52

AN ORDINANCE OF THE
BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
IMPLEMENTING THE WATER ALLOCATION PROGRAM,
MODIFYING THE RESOURCE SYSTEM SUPPLY LIMIT,
AND CAUSING A TEMPORARY LIMIT ON THE
ISSUANCE OF WATER CONNECTION PERMITS

RECEIVED
DEC 18 1990
M.P.W.M.D.

FINDINGS

1. The Water Allocation Program EIR is the core environmental document concerning water supply and water distribution issues affecting the Monterey Peninsula. That document assesses cumulative impacts caused by each individual water meter permit or connection which allows new or expanded water use.
2. The Water Allocation Program EIR substantially alters past assumptions regarding the quantity of water available from the Monterey Peninsula Water Resource System. Even the lowest supply option and the recommended mitigation program will not avoid all significant environmental impacts caused by water use. Annual non-rationed Cal-Am production as of the end of this calendar year is estimated to exceed available water supplies by 230 acre feet. This situation will remain until new water supplies can be developed.
3. The District considered overriding considerations to continue granting new water use permits despite the fact that normal water demand exceeds the available supply. The District chose not to adopt those findings, and instead the Board of Directors made a firm commitment to allocate only supplies of water that are presently developed for use.
4. The Board also determined that the present water supply emergency, and water rationing, is intensified because of past deficit spending of water supplies, and the past allocation of "paper water." District water systems have mined area groundwater basins with significant adverse impact upon both human and environmental habitats. Although water rationing has temporarily decreased demand, normal unrationed demand exceeds the supply of water which is available for use.
5. Adverse impacts caused by current water supply practices cannot be mitigated to a less than significant degree by

anything short of eliminating the basic problem caused by withdrawing too much water from Carmel Valley. Other mitigations constitute only temporary, stopgap measures. As such, the District is committed to a set of mitigations that increase the available water supply and limit water demand. Included among these is the commitment to pursue as the District's highest priority the construction of a major, long-term water supply project to provide water for restoration of the environment as well as for public water supply. The District shall also pursue a series of interim water projects that can be developed faster than a new dam.

6. In addition to the area's chronic water supply shortage, a temporary water emergency has also been caused by the present drought. This drought is one of the most severe in the historical record of the Monterey Peninsula. The District has experienced four consecutive years of substandard (less than average) rainfall. Historic evidence indicates that this area periodically experiences droughts of 5 to 7 year duration, and longer.
7. Because of this drought, the District imposed mandatory conservation measures during the summer of 1988, and instituted mandatory water rationing on January 1, 1989. During 1989, however, the District continued to grant permits for new or intensified water use. In further response to the continuing water supply emergency, the District then limited the number of new water connection permits to 110 acre feet per year of increased water use by adoption of Ordinance 47 in January, 1990.
8. The Water Allocation EIR now shows that each additional water connection and expanding use from existing connections intensifies demand on existing water supplies, and further endangers citizens of the Monterey Peninsula during times of water shortage. Increased water use during a drought exacerbates detrimental environmental impacts caused by the extraction of water. This ordinance limits new water use to protect existing water supplies, to ensure sufficient supplies are available to meet the human and environmental needs, and to motivate existing water consumers to achieve the reduction of water use necessitated by the water rationing program.
9. Due to the present danger posed by limited water supplies during the continuing drought, and due to the limited nature of the area's water supply as shown by the Water Allocation EIR, time is of the essence and limits on new and expanded uses of water are urgently required. This water shortage constitutes a water supply emergency which is a present and extraordinary threat to the health and safety of the citizens of the Monterey Peninsula. Without a limitation on

growing water demand, and without an increase in the available supply, each additional water connection and each expansion of use from existing connections in the Monterey Peninsula Water Resource System intensifies the significant impacts upon both human and environmental habitats. Increased demand on existing water supplies further endangers citizens of the Monterey Peninsula, and intensifies detrimental effects of any drought or other water shortage emergency.

10. The District shall allocate only that supply of water which is presently available. This ordinance implements select mitigations identified in the District's Water Allocation Program EIR and imposes limitations on new water uses which are necessary to protect existing water supplies, to ensure sufficient supplies are available to meet the human and environmental water use needs. These actions shall also provide additional incentives to existing water consumers to achieve the reduction of water use necessitated by the water rationing program.
11. Until new supply is developed, the total water demand within the Monterey Peninsula Water Resource System shall be limited to 19,881 acre-feet per year, with a water production limit of 16,744 acre-feet per year for the Cal-Am system.
12. A select category of new connections shall nonetheless be permitted by this ordinance, however, where the proposed new use of water clearly balances the benefit the project will confer upon the community at large against the burden that project shall place upon the water supply. This category is limited to those projects which are permanently and exclusively dedicated to promoting public health, safety, or welfare.
13. Increased demand without additional water supply can only intensify the present danger posed by over dedication of existing limited water supplies. The present over dedication of the existing water supply constitutes a water supply emergency in accord with Section 332 of the District Law. Limits on new and expanded uses of water are therefore urgently required.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Statement of Purpose, Selection of Water Supply Option, and Finding of Water Supply Emergency

The Monterey Peninsula Water Management District enacts this ordinance to implement the water allocation program, to modify standards for the issuance of water connection permits, and to enact a temporary limit on new uses of water. This interim measure is enacted due to the present over-dedication of the existing water supply. This circumstance constitutes a water supply emergency in accord with Section 332 of the District Law. This measure is also required to maintain a balance between water demand and the limited water available for consumption.

This ordinance implements the water allocation program, water supply option, and select mitigation measures consistent with evidence presented by the District's Water Allocation Program EIR. The District confirms its selection of Supply Option V as identified in the Water Allocation Program EIR. This Supply Option means that the total annual production from the Monterey Peninsula Water Resource System shall be limited to 19,881 acre-feet, and Cal-Am's annual water supply capacity limit shall not exceed a production level of 16,744 acre-feet. Only 15,572 acre-feet shall be available for annual water sales to consumers within the Cal-Am system due to system losses and unmetered consumption. Non Cal-Am water production shall not exceed a level of 3137 acre-feet per year.

This ordinance enacts temporary measures to ensure that consumption of potable water does not exceed existing water supplies available to the District. This ordinance is required to meet the health and safety requirements of the communities served by the District.

Section Two: Water Distribution Systems Affected

A. Systems affected. The provisions of this ordinance shall apply to each of the following water distribution systems which derive their source of supply from the Monterey Peninsula Water Resource System, and water users within those systems:

- Californian American (Cal-Am) Water Company, and all Cal-Am sub-units except as exempted below in part B of this Section.
- Water West
- Seaside Municipal

- Carmel Valley Road
- Riverside Park
- Saddle Mountain
- Rancho Fiesta Road 1 & 2
- Rancho San Carlos Road
- any water system which derives its source of supply from one or more subunits of the Monterey Peninsula Water Resource System.

B. Systems exempted. This ordinance, however, shall not apply to any of the following water distribution systems, or water users within those systems:

- Ryan Ranch
- Country Club Rd.
- Los Robles Road
- P & M Ranch
- Rancho Fiesta Mutual
- Carmel Valley Mutual
- Schulte Road
- Sleepy Hollow
- Tao Woods Mutual
- Cachagua Rd. 1
- Brannan
- Prince's Camp
- Cachagua Rd. II
- Jones
- Jensen Mobile Home
- Moro Mini
- Nason Road

- Los Ranchitos de Aguajito
- Bishop Water Company
- properties which rely upon reclamation or conservation based water entitlements for the Cal-Am Water Company pursuant to Rule 23.5.
- properties in the Quail Meadows subdivision (AP No. 157-121-17) which rely upon reclamation or conservation based water entitlements (not to exceed 33.4 acre feet) deriving from the October 9, 1989 annexation to the Cal-Am Water Company.
- any water system which derives 100% of its source of supply from water resources other than the Monterey Peninsula Water Resource System.

The water systems and water users referenced in part B of this Section shall be exempt from the limitations effected by this ordinance.

Section Three: Limitation on Select New Water Uses

A. General Limit on Permits which Intensify Water Use.

Upon the effective date of this ordinance, a temporary limit shall take effect for those water systems listed in Part A of Section Two above with respect to the issuance of all permits for new or expanded water use. Except as may be provided for in Part B (exemptions) or in Part C and Part D (variances) of this Section Three, District staff shall suspend all action to receive applications after the effective date of this ordinance. This limitation, however, shall not inhibit staff's authority to process complete applications received prior to the effective date of this ordinance, or to issue a permit based upon each such application.

B. Exemption for Permits for development which do not Intensify Water Use on that Site.

Notwithstanding the limit on the issuance of permits set forth by this ordinance, the District may continue to receive and process applications, and grant permits pertaining to existing water meters and water connections which cause no net increase in water demand on the site served by that water meter or connection. Projects for development which do not intensify water use shall only include those applications relating to water use through existing water connections: (1) where the applicant can prove by clear and convincing evidence that the development shall not

expand or intensify water use capacity on that site, or (2) where the expansion of commercial water use through an existing water connection results from the changed use of an existing structure, and does not require any addition of space to the structure.

Applications based on conserved water must clearly document that water savings are real, and permanent. Offsite water credit transfers shall not be allowed by this exemption.

Any application for a new water meter or connection which is based upon a reduction in prior demand shall only be allowed in accord with the variance process set forth in Part D of this Section.

Based on the above criteria, the following water meter and water connection permits may be issued pursuant to this Part B during the limitations set by this ordinance:

development based on documented water conservation measures:

- all permits for the expansion of water use through existing water connections which are based on conserved water which can be documented to be permanently withdrawn from use on that same site.

applications for changed commercial water use in existing structures:

- all permits for the expansion of commercial water use through existing water connections which result from changed use of existing structures, and which do not require any addition of space to the structure.

development based upon documented pre-existing water use:

- all permits for the placement of new water meters or water connections relating to any subdivision of property wholly located in the California American Water Company service area and (1) which property currently utilizes water from existing on-site wells in addition or in lieu of water supplied by Cal-Am, and (2) which causes no resulting net increase in the overall use of water by reason of this offsetting supply which can be documented to be permanently withdrawn from use on that same site, (3) which does not adversely impact developed water uses of the Monterey Peninsula Water Resource System, and (4) which pre-existing use had been accounted for as "non Cal-Am production" in the Water Allocation Program EIR.

C. Variance for Applications to Intensify Demand for Public Health, Safety or Welfare.

This variance category shall apply to applications benefiting public health, safety or welfare which may increase consumptive demand from the Monterey Peninsula Water Resource System, but which do not propose to increase water supplies. Each application for a project listed in this paragraph C shall be reviewed by the Board of Directors under the notice and hearing process set forth in District Rule 70 for Permit Appeals.

In its exercise of discretion on the variance application, the Board of Directors shall weigh the benefit a project would confer upon public health, safety or welfare of the Monterey Peninsula against the water use burden that the project shall place upon the Monterey Peninsula Water Resource System and shall find that the proposed project meets an overriding community need. Thereafter, the Board may choose to grant approval, deny approval, or place conditions upon the quantity or nature of water use on that site.

Based on the above criteria, the following water permits may be issued during the limitations set by this ordinance only upon the grant of a discretionary variance by the Board of Directors:

governmental projects:

- all permits for the placement of new water meters or connections which are permanently and exclusively dedicated to public ownership and use which promote the public health, safety, or welfare of the Monterey Peninsula.
- all permits for the expansion of water use through existing water meters or connections which are permanently and exclusively dedicated to public ownership and use which promote the public health, safety, or welfare of the Monterey Peninsula.

non-governmental community projects:

- all permits for the placement of new water meters or connections which are permanently and exclusively dedicated to community non-profit uses which promote the public health, safety, or welfare of the Monterey Peninsula.
- all permits for the expansion of water use through existing water meters or connections which are permanently and exclusively dedicated to community non-

profit uses which promote the public health, safety, or welfare of the Monterey Peninsula.

D. Variance for Applications to Intensify Demand which also Propose to Increase Water Supplies or which Propose to Offset New Demand with On-site Water Use Savings.

This variance category shall apply to projects which propose to increase consumptive demand from the Monterey Peninsula Water Resource System, but which also propose a parallel increase in water supplies, or which propose a new water use which is offset by water use savings created at that same site. Each application for a project listed in this paragraph D shall be reviewed by the Board of Directors under the notice and hearing process set forth in District Rule 70 for Permit Appeals.

In its exercise of discretion on the variance application, the Board of Directors shall weigh the general benefit a project would confer upon the Monterey Peninsula against the water use burden that the project could place upon the Monterey Peninsula Water Resource System in the event the new water supply were not sufficient to meet all demand caused by the new development, or in the event the on-site water use reduction was not permanently achieved. Applications in this category shall only be approved where the applicant can prove by clear and convincing evidence that the increase in new water supply (or reduction in past use at that site) has been caused by that applicant and is in addition to any program or standard otherwise pursued by the District.

Applications which develop new water supplies must clearly document an augmentation of firm yield which is additional to that presently available from the Monterey Peninsula Water Resource System. Applications based on conserved water must clearly document that water savings are real, and permanent. Offsite water credit transfers shall not be allowed by this exemption.

The Board may choose to grant approval, deny approval, or place conditions upon the quantity or nature of water use on that site, provided however, that the Board shall ensure no more than one-half of the new water supply, or no more than one-half of the reduction in prior demand on that site is allowed for use under this provision.

Based on the above criteria, the following water permits may be issued during the limitations set by this ordinance only upon the grant of a discretionary variance by the Board of Directors:

expansion of water distribution systems:

- all permits to add new water production facilities to a water distribution system where those production facilities derive from a subunit of the Monterey Peninsula Water Resource System.
- all permits to add new water distribution facilities to a water distribution system whose production facilities derive from a subunit of the Monterey Peninsula Water Resource System.

development based on new water supplies:

- all permits for the placement of new water connections or meters which are based on newly developed water which can be documented to augment other existing supplies from the Monterey Peninsula Water Resource System.
- all permits for the expansion of water use through existing water meters or connections which are based on newly developed water which can be documented to augment other existing supplies from the Monterey Peninsula Water Resource System.

development based on documented water conservation measures:

- all permits for the placement of new water meters or connections which are based on conserved water which can be documented to be permanently withdrawn from use on that same site.

Section Four: Definitions

The following phrases, as used in this ordinance, shall be given the definition set forth below.

"Monterey Peninsula Water Resource System" - shall mean the ground water and surface water supplies which serve major water distribution systems within the District, including the surface water and groundwater resources of the Carmel Valley (both the Carmel River and the Carmel Valley aquifer) and the resources of the Seaside Coastal groundwater subbasin. The Monterey Peninsula Water Resource System shall exclude resources of the Seaside Inland groundwater subbasin, and the Carmel Valley upland formation.

"Parcel" and "Site" - shall mean any unit of land which qualifies as a parcel or lot under the Subdivision Map Act, and shall include all units of land: (1) which are contiguous to any other parcel (or are separated only by a road or easement), and (2) for which there is unity of ownership, and (3) which have a similar present use.

Section Five: Effective Date

This ordinance shall be given effect at 12:01 a.m., January 1, 1991.

Section Six: Revocation of Ordinance 47

Effective at 11:59 pm, December 31, 1990, this ordinance shall cause the revocation of Ordinance 47, entitled "An Urgency Ordinance of the Board of Directors of the Monterey Peninsula Water Management District Causing a Temporary Limit on the Issuance of Water Connection Permits" which was adopted as an urgency ordinance on the 22nd day of January, 1990. On or after January 1, 1991, water connection permits shall issue only on this Ordinance 52; none shall issue based on Ordinance 47.

Section Seven: Review and Sunset Provision for this Ordinance

The standards enacted by this ordinance to limit the issuance of water connection permits shall be reviewed at the time any new supplies of water have been developed which augment the available supply from the Monterey Peninsula Water Resource System. Until new supplies of water are developed, this ordinance shall have no sunset provision.

Section Eight: Publication and Application

The provisions of this ordinance shall not be published in the permanent Rules and Regulations of the Monterey Peninsula Water Management District, but shall be separately distributed together with those Rules. This Ordinance shall be read in conjunction with and complement those provisions of the District's Rules and Regulations, provided, however that the provisions of this measure shall take precedence and supersede any contradictory provision of those rules.

Section Nine: 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 or unenforceability 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 Heuer, and second by Director Hekhuis, the foregoing ordinance is adopted upon second reading this 13th day of December, 1990, by the following vote:

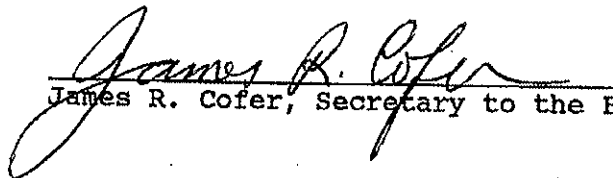
AYES: Directors Hekhuis, Long, Strasser Kauffman and Heuer

NAYS: Director Hughes

ABSENT: Director Davis abstained

I, James R. Cofer, 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 this 13th day of December, 1990.

Witness my hand and seal of the Board of Directors this 18th day of December, 1990.


James R. Cofer, Secretary to the Board

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Final Version