

A-81-12-501

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

December 30, 1981

Alexander T. Henson, Esq.
Law Offices of Robert W. Tuttle
26485 Carmel Rancho Blvd.
Carmel, CA 98923

Dear Mr. Henson:

Mr. Prim asked me to respond to your letter of November 11, 1981, requesting advice from this office. The following advice is provided to you pursuant to Government Code Section 83114(b).^{1/}

My understanding of the situation is as follows. You are on the Board of Directors of the Monterey Peninsula Water Management District. The Board is charged with regulating the water companies that operate within the District. The Board has authority over the methods used for water recovery, the quantity and quality of service provided to the water companies, and annexations by the water companies to their service areas.

You are also an attorney in private practice. You represent seven Carmel Valley property owners who are suing California-American Water Company ("Cal-Am"). Your clients contend that Cal-Am caused severe erosion damage to their property by depleting the groundwater and thereby killing the riparian vegetation.

Cal-Am is subject to the jurisdiction of the Water Board, and you asked whether you could participate in Board decisions which would require Cal-Am to irrigate the riverbank or otherwise compensate for their groundwater pumping which has allegedly damaged your clients' property.

^{1/} All statutory references are to the Government Code unless otherwise stated.

The basic prohibition against conflicts of interest contained in the Political Reform Act states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87100.

An official has a financial interest in a governmental decision when it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally on:

. . .

(c) Any source of income, . . . aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

. . .

Section 87103.

Assuming that you have received, or been promised, more than \$250 from your clients within the past 12 months, they are a "source of income" to you within the meaning of Section 87103(c). Accordingly, you must refrain from participating in decisions when it is reasonably foreseeable that the decision will have a material financial effect on your clients. A material financial effect is generally defined as a significant effect. Commission Regulation 2 Cal. Adm. Code Section 18702(b)(3) defines a material financial effect on a source of income as follows:

(A) The effect of the decision will be to directly increase or decrease the amount of income (other than rents) to be received by the official by one hundred dollars (\$100) or more; or

(B) There is a nexus between the governmental decision and the purpose for which the official receives income; or

(C) In the case of a source of income which is a business entity, the business entity will be affected in a manner described in subsection (b)(1) above; or

(D) If the source of income is not a business entity, the decision will have a significant effect on the source.

. . .

In this situation, three potential grounds for your disqualification on Board matters pertaining to Cal-Am exist. First, if the decision could foreseeably affect the amount of fees you are to receive from your clients, your disqualification under 2 Cal. Adm. Code Section 18702(b)(3)(A) would be required. Second, if the decision will affect your clients directly by determining, for example, whether they will sustain further erosion damage to their property or whether the damage will be repaired by Cal-Am, there would be a significant effect on your clients within the meaning of 2 Cal. Adm. Code Section 18702(b)(3)(D) and your participation would be prohibited. Under this section you also could not participate in any Board decisions that could foreseeably affect the litigation with Cal-Am including any effects on the possible settlement of the matter.

The third potential ground for disqualification is 2 Cal. Adm. Code Section 18702(b)(3)(B): an official is required to disqualify himself from participating in a decision when there is a nexus between the decision and the purpose for which the official receives income. This has been interpreted to mean that if a person is paid to promote or advocate the policies or position of an individual or group, he may not then participate in a governmental decision which draws into consideration that policy or position.

The underlying rationale for the "nexus" test is that when a connection exists between a person's job and his role as a public official, there is a presumption that the value of the person's services to the client is based at least in part on the fact that the person is a public official. If a person is being paid to do something similar to what he does as a public official, we presume that the client is getting something of value from the situation.

Alexander T. Henson, Esq.
December 30, 1981
Page Four

Accordingly, since your clients have retained you for the purpose of representing their interests vis-a-vis Cal-Am, you cannot participate in any Board decisions regarding Cal-Am where your clients' interests are at stake. On the one hand, you cannot be paid to advocate a certain policy or position and, on the other hand, determine the official policy which will be applied to the situation. Your disqualification would be required from any participation in such decisions.

I hope that this letter answers your question. If I can be of further assistance, please feel free to contact me at (916) 322-5901.

Very truly yours,



Diane Maura Fishburn
Counsel
Legal Division

DMF:plh

ROBERT W. TUTTLE
XXXXXXXXXXXX

LAW OFFICES OF
ROBERT W. TUTTLE
26485 CARMEL RANCHO BLVD.
CARMEL, CALIFORNIA 95023

TELEPHONE
(408) 625-1321

NOV 13 9 36 AM '81

November 11, 1981

21501

Ted Prim
Executor Director
Fair Political Practices Commission
1100 K Street, P. O. Box 805
Sacramento, CA 95804

Dear Mr. Prim:

I am not aware of whether the FPPC has any formal procedure for those wishing to solicit an opinion, but I am in need of such an opinion and any help you can provide would be most appreciated.


I have recently been elected to the Monterey Peninsula Water Management District Board of Directors. As a member of that Board, I am charged with regulating the various water companies operating within the boundaries of the district. Such regulation includes the methods of water recovery and quantity and quality of service. It includes authority over annexations to each water company's service area.

Prior to my election and continuing now, I have been the attorney for seven Carmel Valley property owners suing California-American Water Company for erosion damage to their property. Their contention is that Cal-Am used its wells to supply water to the Monterey Peninsula in such a fashion that the groundwater was depleted thereby killing the riparian vegetation. Without said vegetation in place, there was nothing to protect the unconsolidated sand and gravel of the riverbank thereby causing severe erosion.

The question is, based upon these facts, do I have a conflict of interest in serving on the Water Board and as the attorney for these plaintiffs? My perception is that I can vote on proposals that might require Cal-Am to irrigate the riverbank or take other action to ameliorate the damage caused by their groundwater pumping. I would think I could not use my official position to obtain information otherwise kept secret by the company, but that I could use information gleaned in discovery in my official capacity.

I would appreciate any analysis you may be able to provide as several people have questioned this possibility of a conflict.

Thank you for your consideration of this issue.

Sincerely,

Alexander T. Henson

ATH:kgc



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

187 Eldorado • Suite E • P.O. Box 85 • Monterey, CA 93940 • (408) 649-4866

DRAFT

CARMEL RIVER MANAGEMENT PROGRAM

- I. INTRODUCTION
- II. PROBLEMS, GOALS AND SOLUTIONS
- III. PROGRAM ACTIVITY
- IV. PROGRAM FINANCING
- V. PROCESS FOR INITIATION

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
BRUCE BUEL, GENERAL MANAGER

Revised 1/8/82

DRAFT

CARMEL RIVER MANAGEMENT PROGRAM

I. INTRODUCTION

The MPWMD Board of Directors on November 10, 1980 formed the Carmel River Advisory Committee to "Propose a comprehensive program of activities, institutional arrangements and financing mechanisms to manage and maintain the health of the Carmel River riparian corridor". The CRAC has met fifteen times and has developed the following set of activities and arrangements to implement this assignment.

II. PROBLEMS AND GOALS

In reviewing the status of the Carmel River, the CRAC developed the following listing of problems and goals:

<u>PROBLEM</u>	<u>GOAL</u>
1. EROSION	
A. Loss of banks	1.1 Minimize property damage while maintaining character of river.
B. Damage to property and improvements	1.2 Define the river channel.
C. Loss of vegetation	1.3 Optimize channel width and bank steepness to depth relationships.
D. Buildup of sediment in channel and lagoon	1.4 Identify potential erosion areas and periodically warn property owners of hazard.
E. Loss of spawning habitat	1.5 Enhance the habitat value of the lagoon and the river.
F. Unco-ordinated individual actions	1.6 Minimize buildup of sediment in the river.
G. Flood Hazard	1.7 Minimize counter productive activities of individuals.
	1.8 Minimize activities that create water flood hazards while promoting bank stabilization.
2. LOSS OF RIPARIAN VEGETATION	
A. Erosion of river banks	2.1 Preserve and enhance existing vegetation. Eliminate removal of desirable riparian vegetation.
B. Loss of wildlife habitat	2.2 Identify (map) desirable vegetated areas and prioritize preservation.
C. Loss of scenic values	2.3 Re-establish vegetation in priority areas. Determine appropriate riparian species for vegetation.
D. Degredation of Fisherey Habitat	2.4 Maintain and re-establish the desired aesthetic and wildlife character of the riparian corridor.

PROBLEMGOAL

3. LACK OF COORDINATION AND ENFORCEMENT

- | | |
|--|--|
| <ul style="list-style-type: none"> A. Lack of coordination among agencies B. Lack of comprehensive regulations and review procedures C. Lack of enforcement of existing regulations D. Confusion among property owners as to procedures and duties | <ul style="list-style-type: none"> 3.1 Achieve a comprehensive permit process with standards for works and vegetation removal that is the minimum hazard to the property owner with routine quick approval by one agency. 3.2 Achieve high enforcement to prevent damage. 3.3 Inform property owners of procedure and regulations 3.4 Enact regulations controlling access to river banks and stream channel by vehicles and people. |
|--|--|

III. PROGRAM ACTIVITIES

In response to the problems and goals listed above, the CRAC recommends the program outlined in Exhibit A and detailed below. This program assumes that some zone should be formed to coordinate these activities. The zone should automatically expire in 10 years unless reenacted by the electorate. The zone should also have a maximum annual budget with specified adjustment for increased revenue needs. An advisory council should be formed to guide implementation of all activities performed relative to the Carmel River. The following narrative describes the activities and recommends the implementing authority:

1. EROSION CONTROL AND PREVENTION. This component addresses the following specific activities intended for minimizing property damage while maintaining the character of the river:

(A) The Formulation of Standards - Technical standards and a structural master plan (see Item 9) should be developed to guide all stream bank and channel modification projects. These guidelines should (1) set the optimum channel width and bank steepness to depth relationships, (2) address coordination requirements among nearby property owners, (3) evaluate the cost and effectiveness of alternative bank stabilization approaches, (4) establish preferred approaches, (5) define acceptable circumstances and processes for sediment removal, (6) set general engineering requirements for material and design, and (7) establish requirements for covering, replanting and maintaining works once completed. These tasks will also evaluate the measures necessary to prevent erosion prospectively and propose an on-going program of activities and works.

These standards should be developed for the zone by a knowledgeable fluvial geomorphologist/engineer and reviewed by the advisory committee. These standards should be revised annually to reflect the experiences gained during implementation of the program.

(B) Annual Review and Advisory - Aerial photos should be taken annually in spring and the entire alluvial reach of the river should be walked by a fluvial geomorphologist. Based on the aeriels and the inspection,

this expert should determine those areas that are subject to erosion during the next storm season. Property owners should be notified and priorities should be set for areas that require bank or channel modification.

This annual review should be implemented by the zone with review by the advisory committee.

(C) Removal of Hazardous Trees - During the spring inspection, trees that are diseased or likely to fall into the river should be identified. These trees should be removed and replaced where their removal does not conflict with the shade requirements. Potentially dangerous trees that are not removed should be monitored during the winter and removed if they are likely to fall into the river.

This activity should be implemented by the zone.

(D) Snag Removal - Annually in summer or fall, snags and debris should be removed from the channel or secured with cables where appropriate. This removal should be done carefully with a minimum of damage to the streambed and banks.

This activity should be implemented by the zone.

(E) Technical Assistance - The following types of technical assistance should be provided:

1. PERMITS - The District should assume the permit process on regulation of stream works from Monterey County. Personnel should coordinate the issuance of this permit with the requirements of California Fish and Game and the U.S. Corps of Engineers.

2. Design of Works - Personnel should provide design, engineering and construction supervision support to landowners proposing bank protection projects. This support should respond to the standards formulated by the zone.

3. Coordination of Landowners - Personnel should assist in acquiring right of way and participation of affected property owners. Personnel should also assist groups of landowners to select projects by providing information on standards and costs.

4. Coordination of Government - the zone should monitor the availability of outside funding. The zone should also review all proposed legislation affecting the zone and lobby for passage of legislation beneficial to the interests of the river.

5. Funding - The zone should participate financially in specific projects as feasible and desired by the advisory committee. This financial participation could be partial or full.

These activities should be implemented by the zone.

(F) PROJECT SPONSOR - The zone should be the public agency sponsor for administration of outside funds and for projects with multiple property owner participation.

(G) Construction - The zone should manage the construction of streambank works and channel modification restoration where feasible and desired by the advisory committee.

(H) Maintenance of Works - The zone should manage the operation and maintenance of all projects and works related to bank erosion along the river. This maintenance should include inspection and repair as necessary.

(I) FLUSHING AND OPERATION OF RIVER FLOW - To the extent feasible, the flow of the river should be regulated so as to restore the pre-1967 stream profile recommended by Dr. Robert Curry. Such a regulatory system would require the management of groundwater and would be in part dependent on the construction of a new reservoir upstream from the alluvium.

This activity should be conducted by the MPWMD.

2. MAINTENANCE OF VEGETATION. This component addressed the following specific activities necessary to preserve and enhance the health of desirable vegetation for aesthetic, wildlife and stream bank protection purposes.

(A) Monitoring - The zone should annually interpret aerial photos and inspections of the entire riparian corridor to determine changes in the health of the riparian vegetation. The sampling should include permanent transects as well as measurement of physiological parameters. Monitor disturbed areas to determine progress in revegetation. A file should be maintained of photos and maps showing changes in the riparian corridor over time and annual losses of vegetation. In addition, during drawdown periods close monitoring of groundwater levels and plant water potential should be conducted.

(B) Planting and Revegetation - The zone should replant in areas that have experienced plant mortality and should plant in denuded areas and on improvement projects. Replanting should be done with desirable species and according to the density and sizing recommended by a physiological ecologist. The advisory committee should prioritize areas for planting. Costs of planting may be borne fully or partially by the zone.

(C) Technical Assistance - The following types of technical assistance should be provided:

1. Permits - Support should be provided for individuals seeking permits to revegetate and change the vegetation type along the riparian corridor.

2. Design - Personnel should provide design, engineering, and construction support to landowners proposing irrigation systems for watering riparian vegetation in the corridor.

3. Coordination with Government - Determine a desirable set-back zone that varies along the length of the river to reflect the vegetated pattern along the river for use in new subdivision and permit decisions.

(D) Construction of Irrigation Systems - The zone should design and construct irrigation systems where such irrigation is necessary to the health of the riparian corridor. The advisory committee should prioritize areas for irrigation. Costs of developing these systems may be borne fully or partially by the zone.

(E) Operation and Maintenance - The zone should manage the operation and maintenance of irrigation systems. This operation should be integrated with the monitoring of plant health. Maintenance should include inspection and repair as necessary.

(F) Operation of River Flow - To the extent feasible, the flow of the river should be regulated so as to maximize in-bank storage and natural root watering. Such a system would require the management of groundwater and would be dependent on the construction of a new reservoir upstream from the alluvium. This action should be conducted by the MPWMD.

3. ENFORCEMENT. This component addresses the following activities related to increasing the level of compliance with standards and regulations.

(A) Flood Control Works - Zone personnel should inspect bank work and channel modification projects to obtain compliance with standards and permit conditions.

(B) Vegetation Removal - Zone personnel should monitor activities along the river to prevent unauthorized removal of desirable vegetation.

(C) Grading - Zone personnel should monitor activities along the river to prevent unauthorized grading and works.

4. REGULATION. This component addresses the following activities related to new legislation regulating groundwater withdrawal, access, rationing and river flow.

(A) Groundwater Withdrawal/River Flow - The MPWMD should develop an ordinance regulating the location, timing and amount of groundwater withdrawn from the Carmel Valley for export out of the Valley. Such an ordinance would be intended to maximize stream flows in the river and minimize drawdowns so as to improve the health of riparian vegetation. Exporters should operate their wells so that the groundwater table stays within the root zone of the dominant riparian vegetation when possible, and river flows are uninterrupted by the dewatering of the river bed when possible. Additionally, river flows should be allowed to travel as far down the riparian corridor as possible prior to extraction. *

(B) Rationing - Concurrently, the District should enact an ordinance requiring rationing any time groundwater tables are lowered below the root zone of the dominant riparian vegetation over a significant un-irrigated reach of the river between Carmel Bay and Camp Stephanie. Rationing should be phased to minimize the impact on the riparian vegetation.

(C) Access - Prevent damage to vegetation from vehicles entering the river channel by limiting the use of bulldozers, recreational and other motorized

vehicles in the river channel and regulating the access of those that do enter. Such regulation should take the form of a permit to access the channel. Violation of this permit should be an infraction or a misdemeanor. This ordinance could be adopted either by the MPWMD or Monterey County.

(D) BANK WORK, CHANNEL MODIFICATION AND VEGETATION - The MPWMD should work with Monterey County to transfer the regulation of stream works from the County to the District. The ordinance should be reworked to integrate the management plan and standards developed through the zone.

5. EDUCATION. This component addresses the following activities related to educating the landowners, river dwellers and river-using public.

(A) Erosion Works and Prevention - The zone should conduct an educational campaign explaining the do's and don'ts of river management and promoting erosion prevention. This program should be developed for mailing and presentation to schools, clubs, groups, etc. Forums should be held with landowners providing information on the cost, effectiveness and liabilities involved with bank modification. Additionally, signing should be installed and maintained at access points to warn individuals of the requirements for passage.

(B) Vegetation - The zone should also work with property owners to encourage planting of desirable species and to discourage removal of vegetation. Information on desirable species, spacing and maintenance should be distributed.

(C) Grading - Zone personnel should develop and distribute information on grading.

6. RESEARCH. The zone and the MPWMD should jointly conduct research on stream geomorphology, erosion potential, fishery and vegetation to obtain the best possible understanding of the dynamics of the system and to maintain appropriate standards.

7. ACQUISITION - The zone should acquire or accept lands in and along the river within the riparian zone for maintenance of aesthetic/vegetative communities. A land trust should be established to hold or used to transfer title to these deeds. Additionally, easements will be needed to provide right of way for irrigation systems and access for works.

8. FINANCE AND ADMINISTRATION. The zone will require financial, legal and personnel administration. The zone should be insured for liability. (Financial details will be discussed in Section IV forthcoming.)

9. DEVELOPMENT OF MANAGEMENT PLAN. One of the first activities of the zone should be the development of a management plan that develops the specific details of management and standards discussed in this proposal. This management plan should set forth a blueprint for management of the river and incorporate community goals and values. It should establish the erosion control and prevention, vegetation maintenance and other programs.

10. EMERGENCY - The zone should provide emergency response to remove snags and to minimize damage where the river is causing erosion or threatening to flood.

11. OTHER RELATED ACTIVITIES. The zone should conduct whatever related activities not specified above that are necessary for management of a healthy riparian corridor.

IV. PROGRAM FINANCING - (forthcoming)

V. PROCESS FOR INITIATION - (forthcoming)

PROPOSED CARMEL RIVER MANAGEMENT PROGRAM SUMMARY

<u>ACTIVITY</u>	<u>IMPLEMENTING AGENCY</u>
1. Erosion Control and Prevention	
a. Formulation of Standards	Zone
b. Annual Review and Advisory	Zone
c. Removal of Hazardous Trees	Zone
d. Snag Removal (Annual and Emergency)	Zone
e. Technical Assistance	
1. Permits	Zone
2. Design of Works	Zone
3. Coordination of Landowners	Zone
4. Coordination of Government	Zone
5. Funding	Zone/Landowner
f. Project Sponsor	Zone
g. Construction	
1. Stream Bank Works	Zone/Landowner
2. Channel Modification/Restoration	Zone/Landowner
h. Maintenance of Works	Zone
i. Flushing and Operation of River Flow	MPWMD
2. Maintenance of Vegetation	
a. Monitor Health	Zone/MPWMD
b. Planting and Revegetation	Zone/Landowner
c. Technical Assistance	
1. Permits	Zone
2. Design of Irrigation	Zone
d. Construction of Irrigation Systems	Zone/Landowner
e. Operation and Maintenance	Zone
f. Operation of River Flow	MPWMD
3. Enforcement	
a. Flood Control Works	Zone
b. Vegetation Removal	Zone
c. Grading	Zone
4. Regulation	
a. Groundwater Withdrawal Regulation	MPWMD
b. Access Permit	Monterey County
c. Rationing	MPWMD
d. Future Control of River Flow	MPWMD
5. Education	
a. Bank and Channel Works	Zone
b. Vegetation	Zone
c. Grading	Zone

ACTIVITY

IMPLEMENTING AGENCY

- | | |
|------------------------------------|-----------------|
| 6. Research | |
| a. Stream Geomorphology | Zone/MPWMD |
| b. Erosion Potential | Zone/MPWMD |
| c. Works Standards | Zone/MPWMD |
| d. Fishery | Zone/MPWMD |
| e. Vegetation | Zone/MPWMD |
| 7. Acquisition | |
| a. Easements or Acquisition | Zone |
| b. Aesthetic and Plant Communities | Zone |
| c. Acceptance of Land - Trust | Zone/Land Trust |
| 8. Finance and Administration | Zone |
| 9. Development of Management Plan | |
| a. Fishery Works - Pools | Zone |
| b. Desedimentation | Zone |
| 10. Other Related Activities | Zone |

FINANCING MECHANISMS

	<u>FORMATION PROCESS</u>	<u>LIMITS ON FUNCTION</u>	<u>COMMENTS</u>
1. GENERAL FUND	Already existing	None	Politically difficult due to funding limitations. Could supplement and do regulation and enforcement
2. IMPROVEMENT ZONE	Majority Vote	None	Requires Approval by Cities
3. EXTRACTION FEE	Cannot be used for River Management	Cannot be used for River Management	Cannot be used for River Management
4. BENEFIT ASSESSMENT ZONE	Majority Vote	1-a, 1-f, 3 & 4	1 year's funding prior to election Per Acre Charge Benefit Zone
5. LIGHTING AND LANDSCAPE ZONE	Protest Hearing	1-a, 1-f, 3 & 4	Possible political reaction to No Vote
6. SPECIAL TAX	2/3's Majority Vote	None	Unlikely politically
7. ASSESSMENT DISTRICT	Majority Election	None	Requires Precise Benefit
8. UTILITY SURCHARGE	District Ordinance	None	Requires Utility Implementation
9. COMBINATION OF ABOVE	See Above	See Above	See Above

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

February 10, 1982

David C. Laredo, Esq.
DeLay, Laredo & McGowan
3855 Via Nona Marie, Suite 204
Carmel, CA 93923

Re: Your Opinion Request

Dear Mr. Laredo:

Thank you for agreeing to accept an advice letter instead of the opinion you requested in your letter of January 14, 1982, on behalf of Alexander Henson. I trust that the following advice provided pursuant to Government Code Section 83114(b)^{1/} will answer all of your questions and concerns.

In my letter of December 30, 1981, I advised Mr. Henson that he must disqualify himself with respect to certain Board decisions that could have a significant financial effect on his clients. This conclusion was based on the fact that he has received \$250 or more from these clients to represent them in a lawsuit against California-American Water Company ("Cal-Am"), and thus they are a "source of income" to Mr. Henson within the meaning of Section 87103. Accordingly, his participation in Board decisions which can foreseeably affect his clients in a material manner is prohibited. Sections 87100 and 87103. These decisions include decisions to require Cal-Am to repair or to otherwise compensate for the damage done to his clients' riverfront property.

However, the advice letter of December 30, 1981, did not state that Mr. Henson had to disqualify himself from participating in all Board decisions which materially affected Cal-Am. I stated only that Mr. Henson would have to disqualify himself as to those decisions involving Cal-Am that could also affect his clients in a significant manner. In your letter, you list a series of possible Board decisions affecting Cal-Am and ask whether Mr. Henson's participation would be prohibited as to these decisions. However, Cal-Am is not a

^{1/} All statutory references made are to the Government Code unless otherwise noted.

source of income to Mr. Henson, nor does Mr. Henson have an investment in Cal-Am. Not all decisions affecting Cal-Am will foreseeably affect Mr. Henson's clients. Thus he does not have a financial interest in all decisions affecting Cal-Am, but only in those decisions which also affect Mr. Henson's clients in a manner differently than the public generally. Under this analysis, as to all of the decisions listed in your letter except those listed under (5), Mr. Henson does not have a "financial interest" within the meaning of Section 87103 and need not disqualify himself.

The decisions you listed in (5)^{2/} involve improvement works upon riverfront properties. The improvement works are a part of the comprehensive Carmel River Masterplan and are funded in part from District General Fund Revenues and an improvement zone approved by the voters. The general purpose of the Masterplan is to ensure the health of the Carmel River Riparian corridor. Mr. Henson's clients are riverfront property owners, and the lawsuit which he is pursuing for them involves damage to their properties which would be ameliorated by the contemplated improvement works. These facts suggest that these decisions may foreseeably have a significant financial effect on his clients. Thus, the question which is crucial to the instant analysis is whether the effect of the District's funding of riverfront improvement projects on the riverfront property owners (including Mr. Henson's clients) is distinguishable from its effect "on the public generally." Section 87103.

The "public generally" doctrine is the only exception to the rule that public officials must not make or participate in making decisions in which they have a material financial interest. This doctrine provides that a public official

^{2/} "May Mr. Henson participate in any MPWMD decision to fund improvement works upon properties fronting on the Carmel River including bank works such as irrigation of riparian vegetation, construction of bank abutments, and installation of rip-rap, where such improvements were accomplished pursuant to Section 118-327, to

'...protect from damage from [] flood or storm waters the watercourses, watersheds, public highways, life and property in the district...'

and were funded in part from District general fund revenues pursuant to a comprehensive Carmel River Masterplan (District Ordinance) and an improvement zone approved by the voters as contemplated by Sections 118-453 and 118-471?"

David C. Laredo, Esq.
February 10, 1982
Page Three

need not disqualify himself or herself from making or participating in the making of a decision which will affect his or her financial interest in a manner which is not distinguishable from its effects on the public generally or a significant segment thereof. See Section 87103 and 2 Cal. Adm. Code Section 18703.

The term "public generally" means the persons subject to the jurisdiction of the agency in question. See Owen opinion, 2 FPPC Opinions 77 (No. 76-005, June 2, 1986). In this case, the public generally is comprised of the entire population of the Monterey Peninsula Water Management District. In order for any decision of the District to fall within this narrow exception, the effect of that decision on the official's financial interest must be indistinguishable from its effect on the people in the District, or a significant segment of the District's population.

My understanding is that the good health of the Carmel River inures to the general benefit of all persons in the District. However, the approximately 40 riverfront property owners will foreseeably receive a specific financial benefit or advantage to the District's maintenance of the river in good condition; their property values would foreseeably be affected, and their use of the property could be enhanced. This benefit is distinguishable from the general benefit conferred on all other residents of the District.

Therefore, the decisions on the improvement works upon riverfront properties cannot be said to equally affect all of the public or any significant segment of the public. Only a relatively small number of people will directly be affected by these decisions. Accordingly, so long as there are riverfront property owners who are a "source of income" to Mr. Henson within the meaning of Section 87103(c), he may not participate in Board decisions on riverfront improvement projects. This is true even if these decisions are a part of a plan approved as a whole by the Board and the voters.

Please feel free to contact me at 916/322-5901 if you would like to discuss this letter or if you have further questions.

Very truly yours,



Diane Maura Fishburn
Counsel
Legal Division

DMF:km
cc: Alexander Henson



**MONTEREY PENINSULA
WATER MANAGEMENT DISTRICT**

187 Eldorado • Suite E • P.O. Box 85 • Monterey, CA 93940 • (408) 649-4866

**RULES AND REGULATIONS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT**

ORDINANCE NO. 1, FEBRUARY 11, 1980
ORDINANCE NO. 2, MARCH 11, 1980
ORDINANCE NO. 3, JUNE 9, 1980
ORDINANCE NO. 4, FEBRUARY 9, 1981
ORDINANCE NO. 5, APRIL 13, 1981
ORDINANCE NO. 6, MAY 11, 1981
ORDINANCE NO. 7, JULY 13, 1981
ORDINANCE NO. 8, JANUARY 14, 1982

DISTRICT BOARD

Chairman, Alfred Gawthrop

Director, Edwin B. Lee

Director, Nancy McClintock

Director, John Williams

Director, William Woodworth

Director, Gerald Fry

Director, William Peters

DISTRICT STAFF

*General Manager, Bruce Buel
Resource Analyst, Frances Krebs
Secretary, Gladys McKillop
Clerk Typist, Pat Nahin
District Counsel, David C. Laredo*

(408) 624 4151

November 10, 1981

AMENDMENTS TO THE RULES AND REGULATIONS OF THE MONTEREY PENINSULA WATER

MANAGEMENT DISTRICT

TABLE OF CONTENTS

REGULATION I. GENERAL PROVISIONS

- RULE 10 Title
- RULE 11 Definitions
- RULE 12 Effective Date
- RULE 13 Responsibility of Applicant
- RULE 14 Severability
- RULE 15 Captions
- RULE 16 Immunity
- RULE 17 Environmental Guidelines

REGULATION II. PERMITS

- RULE 20 Permits Required
- RULE 21 Applications
- RULE 22 Action on Application for Permit to Create/Establish a Water Distribution System
- RULE 23 Action on Application for Permit to Expand/Extend a Water Distribution System
- RULE 24 *Connection Charges*
- RULE 25 *Cancellation of Applications*
- RULE 26 *Rehearing*
- RULE 27 *Revocation*
- RULE 28 *Transfer*
- RULE 29 *Suspension of Permit*

REGULATION III. MUNICIPAL UNIT ALLOTMENT

- RULE 30 Determination of Municipal Unit Allotment

REGULATION IV. MONITORING

RULE 40 Determination of Expansion Capacity Limit

RULE 41 Review of Municipal Unit Compliance with Allotment

REGULATION V. WELL MONITORING

RULE 50 General Provisions of the Well Monitoring Program

RULE 51 Registration Process

RULE 52 Registration Required

RULE 53 Abandonment of Well

RULE 54 Reporting

RULE 55 Land Use Method

RULE 56 Water Meter Method

RULE 57 Power Consumption Method

RULE 58 Access to Wells

RULE 59 Well Construction Standards

REGULATION VI. FEES

RULE 60 Permit Fees

RULE 61 Publication Fees

RULE 62 Well Monitoring Fees

RULE 63 Miscellaneous Fees

REGULATION VII. APPEALS

RULE 70 Appeals

REGULATION VIII. PENALTIES

RULE 80 Registration

RULE 81 Metering

RULE 82 Reporting

RULE 83 Rationing Penalties

REGULATION IX. VARIANCES

RULE 90 Variance

TABLE OF CONTENTS, Continued

RULE 91 Short Term Variance

RULE 92 Rationing Variance

REGULATION X. RATIONING AND WATER SHORTAGE EMERGENCIES

RULE 100 Determination of Water Emergency

RULE 101 Rationing

RULE 102 Moratorium on New Connections

RULE 103 Regulation of Mobile Water Distribution Systems
During a Water Emergency

RULE 104 Regulation of Well Owners/Operators and Extractors

REGULATION XI. ENFORCEMENT

RULE 110 General Enforcement

RULE 111 Charges and Penalty Assessments

RULE 112 Administration of Rationing Penalties

RULE 113 Liens

RULES AND REGULATIONS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT

REGULATION I. GENERAL PROVISIONS

RULE 10. Title - These rules and regulations shall be known as the Rules and Regulations of the Monterey Peninsula Water Management District.

RULE 11. Definitions - Except as otherwise specified in the Monterey Peninsula Water Management District Law, and except where the context otherwise indicates, the following words shall be defined as indicated:

AQUIFER - "Aquifer" means a geologic formation that stores, transmits, and yields significant quantities of water to wells and springs.

BOARD - "Board" and "Board of Directors" means the governing Board of Directors of the Monterey Peninsula Water Management District.

COMPLETION OF A WELL - "Completion of a Well" means the completion of all physical tasks necessary, so that the well is producing or is capable of producing ground water, including an operable pumping facility.

CONNECTION - "Connection" means the point of intersection where a user gains access to the water distribution system. Where a water measuring device is installed, the water distribution system shall include the water measuring device and the connection shall be the nearest point of user access beyond the water measuring device.

~~Where a water measuring device has been removed for more than five years, the connection shall cease to exist.~~ Where any water

measuring device is removed, relocated or resized, the former connection shall cease to exist. Where any permit is transferred in contravention of Rule 28, the connection(s) affected by said permit shall cease to exist. For the purpose of

these rules and regulations, service for fire protection shall not be deemed a connection. Each new connection, based upon projected quantity of water use, shall be categorized as either "Residential", "Commercial", or "Industrial".

Residential Connection: Unless otherwise determined by the General Manager, on a case by case determination, any house, apartment or

other living quarters intended for residential use.

Commercial Connection: Unless otherwise determined by the General Manager, on a case by case determination, any business or manufacturing company that requires a separate water service where the water is not used principally in the manufacturing or processing function including but not limited to, offices, retail stores, hospitals, churches, gas stations and service businesses.

Industrial Connection: Unless otherwise determined by the General Manager, on a case by case determination, any manufacturing or processing establishment where the water is used principally in the manufacturing or processing function, including but not limited to factories, refineries, bottling plants, nurseries, laundries and golf courses.

CONTINUE - "Continue" means to postpone action on an item to a specific date.

CREATE - "Create" means the construction and operation of a water distribution system including the addition of new water gathering facilities or the annexation of new service area after June 11, 1981 to existing water distribution systems.

~~DELEGATED AGENT - "Delegated Agent" means a municipal unit building inspector acting pursuant to Rule 211.~~

DELEGATED REGISTRAR - "Delegated Registrar" means an official acting pursuant to Regulation V.

DISTRICT - "District" means the Monterey Peninsula Water Management District.

ENVIRONMENTAL REVIEW - "Environmental Review" means the consideration of environmental impacts of a project pursuant to the California Environmental Quality Act and the Monterey Peninsula Water Management District Environmental Guidelines (Resolution 79-7).

ESTABLISH - "Establish" means the construction and operation of a water distribution system including the addition of new water gathering facilities or the annexation of new service area after June 11, 1981 to existing water distribution systems.

EXPAND or EXTEND - "Expand or Extend" means the addition and/or enlargements of connections or water works to a water distribution system, including but not limited to the addition of all meters, conduits, mains, pipes, pipelines, reservoirs, and other facilities used in the storage, transmission, or distribution of water from the source of supply to the connection excluding the replacement of existing water works for purposes of maintenance. Any change in size, location, or relocation of a connection or a water-measuring device which may allow increased water consumption, or any permit transfer pursuant to Rule 28 which may allow increased water consumption shall be deemed an expansion or extension of a water distribution system.

EXPANSION CAPACITY LIMIT - "Expansion Capacity Limit" means the maximum number of connections beyond which a water distribution system is not authorized to expand.

EXTRACTOR - "Extractor" means a user, or consumer of water delivered by a water well or water gathering facility which is not a part of any water distribution system.

FLAGRANT VIOLATION - "Flagrant Violation" means any willful or wanton disregard of the water conservation and/or rationing Rules and Regulations of the District which results in unreasonable waste, contamination, or pollution of District waters by any extractor, user, or by the owner/operator of a well, water gathering facility, or water distribution system.

GROUND WATER - "Ground Water" means nonsaline and saline water beneath the natural surface of the ground, whether or not flowing through known and definite channels.

MAY - "May" is permissive.

MOBILE WATER DISTRIBUTION SYSTEM - "Mobile Water Distribution System"

means any mobile water supply process, including but not limited to trucked water, used for distribution of water from a source of supply to a user for utilization upon the user's property. This definition shall not apply to systems furnishing domestic water to three or fewer parcels in the District serving three or fewer users.

MUNICIPAL UNIT ALLOTMENTS - "Municipal Unit Allotment" means the maximum quantity of water that can be delivered by a particular water distribution system within a municipal unit in one water year beyond which permits for creation or establishment and permits for expansion or extension of a water distribution system are not authorized for approval in that municipal unit.

MUNICIPAL UNIT - "Municipal Unit" means the Cities of Carmel, Del Rey Oaks, Monterey, Pacific Grove, Sand City, Seaside and the portion of the County of Monterey and the City of Marina inside the District.

MONTEREY PENINSULA WATER MANAGEMENT DISTRICT LAW - "Monterey Peninsula Water Management District Law" means Statutes of 1977, Chapter 527, found a West's California Water Code Appendix, Section 118-1 et. seq., as amended.

NONSALINE WATER - "Nonsaline Water" means water having chemical properties meeting the drinking water standards of Chapter 15, Division 4, Title 22 of the California Administrative Code, including the maximum contaminant levels specified in Table 7 of said Chapter.

OVERDRAFT - "Overdraft" means the condition of a ground water basin where the amount of water withdrawn by pumping exceeds the amount of water replenishing the basin over a period of time, or where the amount of water withdrawn by pumping results in an unacceptable degradation of water quality of the ground water within the basin.

OWNER or OPERATOR - "Owner or Operator" means the person to whom a water-gathering facility is assessed by the County Assessor, or, if not separately assessed, the person who owns the land upon which a water-gathering facility is located.

PERSON - "Person" means public entities, public utilities, private corporations, firms, partnerships, individuals or groups of individuals, whether organized or not.

PUMP TEST - "Pump Test" means an experimental pumping of a well to determine yield of that well.

PUBLIC UTILITY - "Public Utility" means a water distribution system subject to regulation by the State Public Utilities Commission.

RESPONSIBLE PARTY - "Responsible Party" means the person or persons who assume through the permit process legal responsibility at all times for the proper performance of the things required of a permit holder by this ordinance.

REVOKE - "Revoke" means to permanently withdraw authority to act as previously provided by a valid permit.

SALT WATER INTRUSION - "Salt Water Intrusion" means the movement of saline water into nonsaline water aquifers.

SERVICE AREA - "Service Area":

(a) For public utilities means the area served by a privately owned public utility in which the facilities have been dedicated to public use and in which territory the utility is required to render service to the public as further defined by the service area map maintained by the utility;

(b) For water distribution systems other than public utilities means the area or properties for which approvals have been secured for ser-

vice from Monterey County and the Monterey Peninsula Water Management District.

SHALL - "Shall" is mandatory.

SOURCE OF SUPPLY - "Source of Supply" means the ground water, surface water, or reclaimed water sources where a person, owner or operator gains access by a water gathering facility.

SUSPEND - "Suspend" means to temporarily withdraw authority to act as previously provided by a valid permit.

SUSTAINED YIELD OF WELL - "Sustained Yield of Well" means the continuous production capacity of a well as determined from a pump test.

SYSTEM CAPACITY - "System Capacity" is the amount of water in gallons, cubic feet or acre feet that can be produced for annual delivery to a water distribution system based on the cumulative sustained yield of wells adjusted for periodic lowering of the water table and the projected yield of other sources of supply.

USER - "User" means a customer or consumer of water delivered by a water distribution system. User does not include any owner or operator of a water distribution system. Each residence, commercial enterprise, or industrial enterprise shall be deemed a separate and distinct user.

WATER DISTRIBUTION SYSTEM - "Water Distribution System" means all works within the District used for the collection, storage, transmission or distribution of water from the source of supply to the connection of a system providing water service to two or more connections including all water-gathering facilities and water-measuring devices, but excluding the user's piping.

WATER-GATHERING FACILITY - "Water-Gathering Facility" means any device or method, mechanical or otherwise, for the production of water.

from dams, ground water, surface water, water courses, or reclaimed water sources within the Monterey Peninsula Water Management District or a zone thereof. Water-gathering facilities shall include any water-production facility as defined in the Monterey Peninsula Water Management District Law.

WATER-MEASURING DEVICE - "Water-Measuring Device" means any water meter or other measuring device intended to measure water usage by a user of the water distribution system.

WATER TABLE - "Water Table" means the surface where ground water would be encountered in a well in an unconfined aquifer.

WATER YEAR - "Water Year" means the period from July 1 of one year to June 30 of the succeeding year.

WELL - "Well" means any device or method, mechanical or otherwise, for the production of water from ground water supplies within the District excluding seepage pits and natural springs. "Existing Well" means a completed well which is producing or capable of producing ground water on July 9, 1980, or a well which is completed subsequent to such date pursuant to an unexpired well construction permit which had been issued prior to such date. The term "existing well" shall not apply to any well which ceases to produce water for 364 days or to any facility for which a Notice of Abandonment has been filed. "New Well" means a well for which a construction permit is issued (or is required to be issued) by the Monterey County Department of Health after July 9, 1980, and shall also mean the reactivation of any existing well which ceased water production of 364 days or more, or which was abandoned.

WORK or WORKS - "Work or Works" includes, but is not limited to, dams and dam sites, reservoirs and reservoir sites, and all conduits

and other facilities useful in the control, collection, conservation, storage, reclamation, treatment, or disposal of sewage, waste, or storm waters, and all land, property, franchises, easements, rights-of-way, and privileges necessary or useful to operate, maintain, repair, or replace any of the foregoing.

RULE 12. Effective Date - These Rules and Regulations are operational as of March 12, 1980. Future amendments to these Rules and Regulations shall take effect on the date as specified in the order by which they are adopted.

RULE 13. Responsibility of Applicant - Nothing in these Rules and Regulations shall be deemed to preclude the responsibility of the applicant to secure other such permits as required by law.

RULE 14. Severability - If any provision of these Rules and Regulations or the application of these Rules and Regulations to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these Rules and Regulations, and to this end, the provisions of these Rules and Regulations are severable.

RULE 15. Captions - Section titles and captions are provided for convenience and shall not be construed to limit the applicability of the text to other contents.

RULE 16. Immunity - The provisions of the Code of Civil Procedure, Section 1094.6 shall hereinafter be adopted and made applicable to the judicial review of any decision of the Monterey Peninsula Water Management District or any commission, board, officer, employee or agent thereof.

RULE 17. Environmental Guidelines - The Monterey Peninsula Water Management District Environmental Guidelines as required pursuant to the California Environmental Quality Act shall henceforth be those guidelines adopted by the State of California and published in the State Administrative Code, Title 14, Section 15000 et. seq. and as these may be amended.

REGULATION II. PERMITS

RULE 20. Permits Required

A. Permit to Create/Establish a Water Distribution System.

Before any person creates or establishes a water distribution system, such person shall obtain a written permit from the District. Persons who hold a valid permit for construction and operation of such a water distribution system from the Monterey County Health Department, prior to March 12, 1980, or a water distribution system in existence prior to that date operated by a public utility, shall be deemed to have been issued a permit in compliance with these Rules and Regulations. The expansion capacity limit and system capacity of previously existing systems shall be determined pursuant to Rule 40 (A).

B. Permits to Expand/Extend a Water Distribution System.

Before any person expands/extends a water distribution system, such person shall obtain a written permit from the District or the District's delegated agent. The addition of any connection to a water distribution system shall be deemed an expansion or extension of that system. Any change in size, location, or relocation of a connection or water-measuring device which may allow increased water consumption, or any permit transfer pursuant to Rule 28 which may allow increased water consumption, shall be deemed an expansion or extension of that system.

A proper applicant for such an expansion/extension permit may be either the owner or operator of the water distribution system, the prospective user of the proposed connection as the real party in interest, or any agent thereof.

RULE 21. Applications.

A. Application for Permit to Establish/Create a Water Distribution System.

The applicant shall submit the following:

- (1) A completed written application in the manner and form prescribed by the General Manager; and

- (2) Environmental information as required by the District Environmental Guidelines; and
- (3) Proof of land use approval by municipal unit in which proposed system would be located; and
- (4) A copy of application submitted to Monterey County Environmental Health Department for Creation of a Water Distribution System; and
- (5) The name and address of each responsible party; and
- (6) The results of a pumping test, the cost of which shall be borne by the applicant, and which shall be observed by a District representative or agent; and
- (7) Applicable fees prescribed in Rule 60.

B. Application for Permit to Extend/Expand a Water Distribution System.

The applicant shall submit the following:

- (1) A completed written application in the manner and form prescribed by the General Manager.
- (2) Proof of Building Permit by municipal unit in which extension or expansion is proposed, or statement of need for proposed expansion/extension.
- (3) Applicable fees prescribed in Rule 60.
- (4) The connection charge prescribed in Rule 24.

C. Application for Amendment to Permit.

The applicant shall submit the following:

- (1) A completed written application in the manner and form prescribed by the General Manager under Rule 22 or Rule 23 as appropriate to the proposed amendment.
- (2) The fee prescribed in Rule 60.
- (3) The applicable connection charge prescribed in Rule 24.

D. Application for Appeal.

- (1) A complete written application in the manner and form prescribed by the General Manager.
- (2) The fee prescribed in Rule 63.

E. Application for Variance.

- (1) A complete written application in the manner and form prescribed by the General Manager.
- (2) The fee prescribed in Rule 63.
- (3) Applicable fees prescribed in Rule 60.

RULE 22. Action on Application for Permit to Create/Establish a Water Distribution System.

A. Process.

The General Manager shall review the application, and if he determines the application to be complete, he shall act within thirty (30) days subsequent to satisfaction of Environmental Review, to set a public hearing by the Board on the application for such permit, and shall notify the applicant in writing and give public notice of the hearing date. 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. At the hearing, the applicant shall be entitled to present evidence in support of his application. Interested persons may present evidence in opposition or support of the application. The Board, in conducting the public hearing, may request hydrologic, geologic or other studies necessary to obtain information required for its decision. The cost of such studies shall be borne by the applicant. The Board may deny, approve, or continue any permit based on the minimum standards as set forth in Rule 21B and its finds pursuant to Rule 21C. The Board may impose such conditions on the permit that it deems necessary and proper. The General Manager shall notify the applicant within thirty (30) days in writing by mail or in person of the Board action taken; namely continuance, approval, conditional approval,

or denial. 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 his representative.

B. Minimum Standards for Granting Permit

- (1) An application shall be denied unless it complies with each of the following minimum standards:
 - (a) 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 ordinance; and
 - (b) The ability of the source of supply to provide water complies with the standards set forth in Title 23 of the California Administrative Code; and
- (2) Every applicant as a condition to holding a permit pursuant to this rule shall report annually by August 1st in the form and manner prescribed by the District, the quantity of water delivered from each source of supply, total water produced, and average daily number of connections in the system, and the number of new connections and disconnections, a map or maps of the service area, and a listing of permits filed in the previous water year (July 1 to June 30) in each municipal unit, and the identity and address of each responsible party as of June 30th of the previous water year.

C. Findings.

The Board 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.
- (3) Whether the permit would result in significant environmental affects that cannot be mitigated by conditions attached to the permit.

Notwithstanding the above determinations, no permit shall be granted if the Board finds and determines that the permit:

- (1) Will create an overdraft or increase an existing overdraft; or
- (2) Will adversely affect the ability of existing systems to provide water to users.

If the Board approves the permit, it shall establish an expansion capacity limit, the system capacity and municipal unit allocation for that water distribution system. The Board may impose other conditions in granting the permit.

D. Amendments to Permit.

No owner or operator of a water distribution system shall modify, add to or change his source of supply, expand the system beyond the expansion capacity limit, 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. Such applications shall be made pursuant to Rule 21, 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.

-16-

RULE 23. Action on Application for Permit to Expand or Extend a Water Distribution System.

A. Authority to Process Applications.

Applications to expand or extend a water distribution system and applications for amended expansion/extension permits shall be submitted to the General Manager. The General Manager shall process all applications and may issue the permit in accord with the procedure set forth in Rule 23 B except when the following applies.

- 1. The General Manager shall not issue an expansion/extension permit unless the applicant has previously obtained a valid municipal or county building permit which will allow the construction of an enclosed structure suitable for human occupancy on the parcel for which the application is proposed, unless the General Manager determines that the expansion is reasonably required to satisfy the near term potable water needs of the applicant.*
- 2. The General Manager shall not issue any single expansion/extension permit where such expansion or extension will utilize a single water measuring device to provide water to more than one user. Multiple users must seek individual permits pursuant to this Rule.*
- 3. The General Manager shall not issue an expansion/extension permit when the District Board has determined that the water distribution system affected by that permit has reached its expansion capacity limit as provided by Rule 40.*

4. *The General Manager shall not issue an expansion/extension permit when the municipal unit in which the expansion or extension is to be located has exceeded its municipal unit allocation for that water distribution system pursuant to Rule 30.*
5. *The General Manager shall not issue an expansion/extension permit when the General Manager determines such expansion or extension is not reasonably required to satisfy the near term needs of the applicant.*
6. *The General Manager shall not issue an expansion/extension permit when any portion of the expansion or extension lies outside of the affected water distribution system service area.*
7. *The General Manager shall not issue an expansion/extension permit until all fees and connection charges are paid by, or on behalf of, the applicant.*

Determinations of the General Manager under this Rule, either issuing or refusing to issue a permit, may be appealed to the Board pursuant to Rule 70.

B. Process.

The General Manager ~~or the delegated agent of the District~~ shall review the application, and if he determines the application to be incomplete, he shall request the applicant to submit additional information. When the application is complete, the General Manager ~~or Delegated Agent~~ shall classify any proposed connection as Residential Commercial, or Industrial as defined in these Rules. If such proposed connection cannot be adequately categorized pursuant to existing data, the General Manager may in his discretion define such connection as either Residential, Commercial, or Industrial based upon the quantity of anticipated water use by said connection. Determination of connection categorization by the General Manager may be appealed pursuant to Rule 70. After each connection is categorized, and when the General Manager ~~or delegated agent~~ is authorized to act on the application, pursuant to subdivision A of this Rule, he shall issue the permit within thirty (30) days.

G. -- Delegation of Permit Approval.

~~The District Board may delegate in writing the authority of granting permits for expansion or extension of a water distribution system to the Building Inspector of the Cities of Carmel, Del Rey Oaks, Monterey, Pacific Grove, Seaside, Sand City, Marina and the County of Monterey. Such delegated agent shall be required to:~~

- ~~(1) -- Process applications for permit to expand/extend a water distribution system pursuant to Rule 23 (A) and Rule 23 (B).~~
- ~~(2) -- Transmit daily to the District copies of all permits issued and monthly a summary of permits issued compiled in the form and manner prescribed by the District.~~
- ~~(3) -- Tender daily to the District all expansion surcharge fees collected pursuant to Rule 60 (3). -- Expansion surcharges shall be levied as a connection charge for any permit affecting the California American Water Company Water Distribution System. -- The fee set forth in Rule 60 (3) shall not be charged against a permit affecting any other water distribution system. ---~~

~~Such delegation of authority to approve permits may be revoked by the District after a public hearing by action of the Board of Directors for violation of the requirements of being a delegated agent or if the Board determines that the delegated agent's municipal unit has exceeded its municipal unit allotment pursuant to Rule 30. -- Where the delegated agent processes the application for permit, the permit process fee as prescribed in Rule 60 (2) shall be paid to his jurisdiction.~~

RULE 24. CONNECTION CHARGES

A. Determination of Charge

Each applicant for a permit to expand or extend a water distribution system, including applicants seeking to relocate or change the size of a connection or a water-measuring device and applicants for an amended permit shall, prior to issuance of such permit, deposit with the District a connection charge calculated pursuant to this rule in addition to the fees prescribed by Rule 60.

B. Calculation of Charge

The expansion/extension permit applicant shall provide the District the assigned improvement value determined by the Municipal or County planning or building department which relates to the building permit necessitating the water distribution system expansion or extension.

A connection charge shall be calculated for such permit by multiplying the assigned improvement value by the sum of .4% as follows:

$$(\$ \text{ improvement value} \times .4\% = \$ \text{ connection charge})$$

Where no assigned improvement value is available, or where the General Manager determines that the assigned improvement value for a particular application does not reasonably relate to the projected value or worth of the completed expansion/extension project, or where the General Manager determines that the assignment improvement value for a particular application does not reasonably relate to the value or burden caused by the projected increase in water consumption, then the General Manager shall either (1) propose an alternate improvement value (which may be lesser or greater than the assigned improvement value) and submit the question of connection charge calculation to

the Board pursuant to subdivision C of this Rule, or (2) levy a minimum connection charge in the amount of \$250 per residential connection, and \$500 per commercial or industrial connection, upon the application to expand or extend a water distribution system.

C. Connection Charge Hearing

Upon request of an applicant, together with the payment of any applicable fee, or upon referral of the General Manager, the Board shall conduct a hearing to determine the connection charge due under these rules and regulations. The Board hearing shall be conducted as a variance pursuant to Rule 90. Following this hearing, the Board may calculate the connection charge upon the assigned improvement value, the General Manager's alternate improvement value, or upon any other improvement value which is warranted by the circumstances and which would tend not to defeat the purpose of these rules and regulations. The Board need not make the findings required by Rule 90(a), (b), or (c) if the connection fee is calculated upon either the assigned improvement value or upon the alternate improvement value but shall make those findings to substantiate any other improvement value selected. The Board may take notice of prior connection charges paid pursuant to these rules and regulations by the applicant or his predecessor in interest with regard to the parcel or parcels on which the expansion or extension will occur and may adjust the applicable connection charge upon equitable grounds.

D. Connection Charge Refunds

The connection charge paid by any applicant for an expansion/extension permit under these rules and regulations shall be a fee retained by

the District in consideration of, and as reimbursement for, the District's costs for administration of the expansion/extension application, and for the costs and expenses incurred by the District in planning for, acquiring, reserving, and maintaining capacity in the water distribution facilities existing or to be constructed within the District. Should the Board hereinafter determine that the District will not undertake any project to augment the water resources and service capacity within the District, and if this Rule is subsequently amended to eliminate or substantially abandon the connection charge required for future expansion/extension permits, the Board may, in its sole discretion, provide for a refund of a portion of the connection charge paid by any applicant. The total amount of District monies subject to refund shall exclude all expenses and costs of the District in planning for, acquiring, reserving and maintaining capacity, and in administering the connection charge program. The amount of refund, if any, shall be determined by the Board at the time these rules are amended.

All refunds shall be determined strictly upon a pro rata basis, with the sole variables being (1) the initial fee(s) paid by any one applicant and (2) the total amount of monies to be refunded as determined by the Board. No provision of these rules and regulations shall confer a right upon any applicant to receive a refund as provided in this part.

²⁵
RULE -24- Cancellation of Applications - All permits issued pursuant to these regulations which are not completed within one year of date of issuance shall expire one year following the date of issuance. *Persons whose permits have expired may re-apply for a new permit pursuant to Rule 20. The General Manager may extend the time period in increments of one year where failure to complete was occasioned by good cause. Completion, as used within this rule, shall mean the creation, establishment, extension, or expansion of a water distribution system so that the system or expansion is capable of delivering water for consumption.*

²⁶
RULE -25- Rehearing - Permission of the District Board shall be secured prior to re-submission of any application denied within the preceeding twelve (12) months.

²⁷
RULE -26- Revocation of Permit - The District Board may suspend or revoke any permit issued pursuant to these Rules and Regulations whenever it finds any of the following:

- (1) That any requirement or condition of the permit is not being met.
- (2) That the permittee has violated any provision of these Rules and Regulations.
- (3) That the permittee has misrepresented intentionally or negligently any material fact in his application, or in any supporting documents, for his permit.

²⁸
RULE -27- Transfer - Any permit issued pursuant to these regulations may be transferred from one person to another, ~~but not from one location to another~~ upon *written notification to the District, except as follows:*

- (1) Permits may not be transferred from one location to another,*
- (2) Permits may not be transferred when the General Manager determines within thirty (30) days of the written notification required by this rule that the transfer may allow or facilitate increased water consumption of a water distribution system.*

Transferred permits shall be subject to all conditions attached to the original permit. Applicants who are not allowed to transfer a permit under this rule may apply for a new permit or an amendment to the existing permit pursuant to Rule 23. Determinations of the General Manager under this Rule, either allowing or refusing permit transfer, may be appealed to the Board pursuant to Rule 70.

RULE 29. Suspension of Permit - The General Manager shall suspend any permit issued pursuant to these Rules and Regulations whenever he finds any of the following:

- (1) Failure to report pursuant to Rule 22 B (2).

REGULATION III. MUNICIPAL UNIT ALLOTMENT

RULE 30 Determination of Municipal Unit Allotment - Annually by on or about June 30, the Board shall adopt a resolution establishing municipal unit allotments for each water distribution system for the next water year. These allotments shall be determined based on information regarding supply, demand, changes in jurisdiction, physical boundaries and other factors.

REGULATION IV. MONITORING

RULE 40. Determination of Expansion Capacity Limit.

A. Determination of Expansion Capacity Limit.

Systems with a valid permit for construction and operation of a water distribution system prior to March 12, 1980 shall have an expansion capacity limit equal to the maximum number of connections specified in that permit. For those systems existing prior to March 12, 1980, where no maximum number of connections has been specified, and for water utilities, the initial expansion capacity limit of that system shall be based upon the following formula:

Initial Expansion Capacity Limit =

$$\frac{\text{System Capacity}}{\text{Actual 1979 Production}} \quad \times \quad \begin{array}{l} \text{Average Daily Number} \\ \text{1979 Connections} \end{array}$$

The General Manager, by applying the above formula, shall determine the expansion capacity limit for previously existing systems and notify each system of that number within thirty (30) days of the effective date of this ordinance. Persons may appeal the General Manager's determination of expansion capacity limit pursuant to Rule 70.

The expansion capacity limit of new systems shall be determined by the Board pursuant to Rule 22 C.

Expansion capacity limit of any system may be amended by the Board upon request by the permit holder pursuant to Rule 22 D. Amendment of the expansion capacity limit shall be based upon changes in the system capacity of the water distribution system.

B. ANNUAL WATER DELIVERY SYSTEM REPORT

The General Manager shall annually by *on or about* October 1, compile a report stating the quantity of water delivered from each source of supply, the total water produced, the average daily number of connections in the system, and the number of new connections in the system, and the number of new connections and disconnections in the previous water year for each water distribution system in the District. The General Manager shall compile this report from the reports submitted by the owner/operator of water distribution systems pursuant to Rule 22 B (3) and other sources as appropriate. Such report shall be submitted to the Board.

C. Findings.

The Board of Directors shall hold a public hearing to review the annual water delivery system report and other evidence as necessary, and determine if any water distribution system has reached or exceeded its expansion capacity limit. Where a water distribution system has reached or exceeded its expansion capacity limit, the Board shall direct the General Manager or the delegated agent to deny any application for permit to expand or extend that system until the permit is amended.

D. Notification.

The General Manager shall, within thirty (30) days, notify all delegated agents and the owner/operator of the findings of the Board regarding any water distribution system that has reached or exceeded its expansion capacity limit. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the responsible party, or when personally delivered to the applicant or his representative.

RULE 41. Review of Municipal Unit Compliance with Allotment.

A. Annual Water Demand Report.

The General Manager shall annually by *on or about* October 1 compile a report stating the amount of water delivered to users, the number of new connections, and an estimate of the water demand from new connections in the preceding

water year for each water distribution system in the Cities of Carmel, Del Rey Oaks, Pacific Grove, Monterey, Sand City and Seaside and the portion of Marina and the County of Monterey inside the District. The report will further state the municipal unit allotment for each water distribution system determined by the Board for that year.

B. Findings.

The Board of Directors shall hold a public hearing to review the Annual Water Demand Report and other evidence as necessary, and determine if the previous water year's water delivery to any municipal unit exceeds that municipal unit's allotment for any water distribution system. Where the water deliveries in the previous water year have been exceeded, or where the Board finds that a municipal unit's usage exceeds any municipal unit's allotment for any water distribution system, the Board of Directors shall suspend the authority of that municipal unit to issue permits to expand or extend that water distribution system and direct the General Manager to deny any application for permit to expand or extend that water distribution system.

C. Notification.

The General Manager shall, within thirty (30) days, notify all municipal units of the findings of the Board regarding municipal unit compliance with that municipal unit's allotment. Notice of the action shall be deemed to have been given when the written notification has been deposited in the mail postpaid, addressed to the municipal unit, or when personally delivered to the municipal unit.

REGULATION V. WELL MONITORING

RULE 50. General Provisions of the Well Monitoring Program - This regulation shall govern the well monitoring program of the Monterey Peninsula Water Management District and shall apply to those water wells located in any ground water charge zone es-

established by the District pursuant to its authority under the Monterey Peninsula Water Management District Law.

RULE 51. Registration Process.

A. Authority to Process Registrations.

Well registrations may be submitted either to the General Manager or to a delegated registrar holding authority as set forth in this regulation. The General Manager shall process all registrations he receives. The delegated registrar may process any registration he receives except late registrations, or refer any registration to the General Manager. Any complete registration not acted upon within thirty (30) days of completion shall be deemed referred to the General Manager. The District shall maintain a current list available for public inspection of delegated registrars, together with the jurisdiction in which they are authorized to issue registrations.

B. Process.

The General Manager or the delegated registrar of the District shall review the registration, and if he determines the application to be incomplete, he shall request the well owner/operator to submit additional information. When the registration is complete, and where the general Manager or delegated registrar is authorized to act on the registration, he shall issue the registration within thirty (30) days.

C. Delegation of Registration Approval - The District Board may delegate

in writing the authority to process well registration. Such delegated registrar shall be required to:

- (1) Process registration of wells pursuant to Regulation V.
- (2) Transmit daily to the District copies of any registrations filed.
- (3) Forward any late registration received.

Where the delegated registrar processes the registration, the fee prescribed in Rule 62 shall be retained by the delegated registrar except where the registration is late.

RULE 52. Registration Required - All existing or new wells located within a ground water charge zone shall be registered by the owner and/or operator with the District or the District's delegated registrar. All existing wells shall be registered pursuant to Rule 52 (a). All new wells shall be registered pursuant to Rule 52 (b).

A. Existing Well Registration - On or before January 9, 1981, the owner and/or operator of any existing well shall register such well by filing with the District or the District's delegated registrar, for each such well:

- (1) A completed registration statement, of the form prescribed by the General Manager;
- (2) An executed Declaration of Reporting Status, as more fully described in Rule 54 (C); and
- (3) The fee prescribed in Rule 62.

Registration of existing wells after the above date must be submitted to the District along with the fee prescribed in Rule 62 (5).

B. New Well Registration - No later than thirty (30) days following the completion of the well, the owner and/or operator of any new well shall register such well by filing with the District or the District's delegated registrar, for each such well:

- (1) The completed application form(s) required by the Monterey County Department of Health prior to the issuance of a well construction permit pursuant to County Ordinance No. 1967;
- (2) An executed Declaration of Reporting Status, as more fully described in Rule 54 (C); and
- (3) The fee prescribed in Rule 62.

Registration of new wells later than thirty (30) days following completion of the well must be submitted to the District along with the fee prescribed in Rule 62 (5).

RULE 53. Abandonment of Well - The owner/operator of a well that has been destroyed, condemned or is permanently incapable of water production, shall file a notice of abandonment with the District or the District's delegated registrar, within thirty (30) days of such abandonment.

RULE 54. Reporting.

A. Reporting Required - Each owner and/or operator of a well shall file with the District a semi-annual water production statement of the form prescribed by the General Manager on or before the 31st day of January and on or before the 31st day of July. The statement shall set forth the water production for the preceding six month period excluding the month in which the statement is due.

B. Reporting Status - The reporting status of a well refers to the computation method selected for calculating production on the semi-annual water production statement. There shall be three categories of reporting status:

(1) Land Use Method - Every owner and/or operator of a well which is located on a parcel smaller than 2½ acres or which has a discharge opening smaller than two inches shall report by the Land Use Method as described in Rule 55 unless the owner and/or operator elects the water meter method.

(2) Water Meter Method - Every owner and/or operator of a well which is located on a parcel larger than 2½ acres and which has a discharge opening larger than two inches shall report by the water meter method as described in Rule 56 unless that owner and/or operator elects the power consumption correlation method.

(3) Power Consumption Correlation Method - Any owner and/or operator of a well which is located on a parcel larger than 2½ acres and which has a discharge opening larger than two inches may elect to report by the power consumption correlation method as described in Rule 57.

C. Declaration of Reporting Status - In accordance with Rule 52, the owner and/or operator of a well at the time of registration shall execute and file with the District or the District's delegated registrar, a Declaration of Reporting Status, or the form prescribed by the General Manager, which shall include among other things, a designation by the owner and/or operator of the reporting status of the well. The owner and/or operator of a well may amend the Declaration of Reporting Status from time to time by filing an amendment, along with the fee prescribed in Rule 62, with the District or the District's delegated registrar. The owner and/or operator of any well with a two inch (2") or less discharge opening who enlarges that opening to more than two inches (2"), shall file an amended Declaration of Reporting Status.

RULE 55. Land Use Method - Approximate water production of a well which is located on a parcel smaller than 2½ acres or which has a discharge opening smaller than two inches (2"), will be computed based on land use information provided by the owner and/or operator in the Semi-Annual Water Production Statement unless that owner and/or operator elects the water meter method. Among other things, the owner and/or operator of the well will report in the Semi-Annual Production Statement the use of the land and the area and type of irrigation during the reporting period.

RULE 56. Water Meter Method.

A. Water Meter Required - Each owner and/or operator of a well who has chosen the water meter method in the Declaration of Reporting Status, shall install an approved water meter on the well according to the time table set forth in this rule.

- B. Description of Method - Approximate water production of a well on which an approved water meter is installed will be computed by the District from the beginning and ending totalizer reading on the water meter during the period as reported on the Semi-Annual Water Production Statement filed by the owner/operator of the well.
- C. Water Meter Type - Water meters satisfactory to the District shall be capable of recording to within an accuracy of 98%. The General Manager shall maintain a list of meters satisfactory to the District. The water meter shall also be equipped with a totalizer, susceptible to correction only by changing mechanical gear equipment.
- D. Configuration of Water Meter Installation - The water meter shall be installed so as to permit access for such inspection and testing as the District may, from time to time, deem necessary. The installation configuration shall be in accordance with good design practices and, shall include the following elements to insure meter accuracy:
- (1) Eight diameters of straight pipe (no bends or valves) both upstream and downstream of the water meter, in order to limit turbulence at the meter point; and
 - (2) A minimum of one foot increase in elevation of the pipe from meter point to the discharge opening, in order to have a full pipe at the meter point.
- E. Timing of Water Meter Installation - In the case of an existing well for which the owner/operator has elected the water meter method, the water meter shall be installed on or before January 9, 1981. In the case of a new well, for which the owner and/or operator has elected the water meter method, the water meter shall be installed within one month of the completion of the well. In either case, the installation of the water meter shall be scheduled in such a timely fashion as to permit inspection and approval of the meter and the meter installation by the

District or the District's delegated registrar within the prescribed time period.

- F. Maintenance of Accuracy - The owner/operator of a well electing the water meter method shall maintain meter accuracy within approximately two percent accuracy. It shall be the owner/operator's responsibility to repair or replace the meter. Such actions shall be taken as necessary or where it is shown by the District that the meter fails to comply with this specification.

RULE 57. Power Consumption Correlation Method.

- A. Description of Method - Approximate water production of a well for which the owner/operator has elected the Power Consumption Correlation Method, will be computed by the District, provided the District is given access by the owner and/or operator to a current power company or private contractor pump efficiency test complying with the minimum standards prescribed by the General Manager, determining the kilowatt hours of electrical power necessary to produce an acre feet of water from the well (KWH/AF), together with the power company records of the consumption of kilowatt hours within the reporting period. In electing the Power Consumption Correlation Method on the Declaration of Reporting Status, the owner/operator of a well grants the District access to the power company records covering the well for the previous five years and as far into the future as the owner and/or operator shall elect this reporting method. By adjusting the KWH/AF factor for the well in accordance with the pumping water level from observation wells in the immediate area during the reporting period, the District can compute water production by the following formula:

$$\frac{\text{KWH consumed within reporting period}}{\text{KWH per AF (adjusted)}} = \text{Acre Foot of Water Produced}$$

B. Pump Efficiency Test - The owner/operator of a well using the power consumption correlation method must maintain on file with the District, a power company or private contractor pump efficiency test for the well which has been conducted no more than two years previous to the start of the reporting period to which the power consumption correlation method is to be applied, and which complies with the minimum standards prescribed by the General Manager.

C. Electrical Units on Power Meter - The power consumption correlation method can be used only if the well pump has a separate meter. If a double-throw switch, drier or any other electrical unit is using the same power meter as the well pump, these units must be metered separately from the well. However, if the only other use of the power meter is a booster pump motor, it can be included in the pump efficiency test.

RULE 58. Access to Wells - The owner and/or operator of a well shall allow access to the well by the District or its delegated registrar for the purpose of carrying out the inspections and test related to registration, reporting, and water meters, and for the purpose of carrying out other tests, studies, and investigations necessary and proper to the objects and purposes of the District, including investigations of water quality and depth to ground water.

In any circumstance where consent to inspect has been sought but is refused or is otherwise unobtainable, the General Manager, or his designee, may obtain an inspection warrant in accord with the Code of Civil Procedure, Section 1822.50 et seq., and may conduct such inspections as are necessary to enforce the provisions of these Rules and Regulations of the District.

RULE 59. Well Construction Standards - In addition to the water well standards of the State of California and the County of Monterey, all new wells within the District shall be equipped with a sounding tube. Where the well uses an electrical motor pump, that pump shall be metered separately from any other power use except booster pumps.

REGULATION VI. FEES

RULE 60. Permit Fees. Every applicant, excepting governmental agencies, shall pay such non-refundable fees at time of application as follows:

- (1) Fee for Permit to Create/Establish a Water Distribution System - ~~\$750.00.~~ \$500.00
- (2) Fee for Permit to Expand/Extend a Water Distribution System - ~~\$5.00.~~ \$10.00
- (3) Fee for Expansion Surcharge - Those fees established annually, on or about July 1, by a resolution of the Board establishing the fees to be paid by new Residential, Commercial, and Industrial users to pay for the projected costs of the irrigation program for the four wells in lower Carmel Valley.
- (4) Fee for Amendment of Permit - ~~\$25.00.~~ \$10.00.

RULE 61. Publication Fees - When other than a public agency, the maximum fees and charges for publications shall be set forth below:

- (1) Copies of Rules and Regulations - \$5.00.
- (2) Copies of Environmental Guidelines - \$5.00.
- (3) Copies of permits and other materials - 10¢ per page.

RULE 62. Well Monitoring Fees - Every applicant, excepting governmental agencies, shall pay up to the maximum a non-refundable fee as follows:

- (1) Fee for existing well registration - \$10.00.
- (2) Fee for new well registration - \$25.00.
- (3) Fee for amendment of Declaration of Reporting Status - \$25.00.
- (4) Fee for late registration - \$100.00 in addition to the above.

RULE 63. Miscellaneous Fees - Every applicant excepting governmental agencies, shall pay at time of application, a non-refundable fee as follows:

- (1) Fee for appeal of determination - ~~\$25.00.~~ \$125.00.
- (2) Fee for variance - ~~\$25.00.~~ \$125.00
- (3) Fee for short-term variance - ~~\$25.00.~~ \$75.00

REGULATION VII. APPEALS

RULE 70. Appeals - Determinations of the General Manager ~~or-delegated-agent~~ may be appealed to the District Board, in writing, within seven (7) days after any such determination. Such appeal shall specify in writing the grounds upon which it is taken and shall be accompanied by the fee prescribed in Rule 63. Within thirty (30) days of receipt of such appeal, the General Manager shall set a hearing on the appeal before the District Board and notify the appellant and/or applicant in writing of the time and place of the hearing at least five (5) days prior to the hearing and give public notice of the hearing date. An appeal may be filed by the applicant, the General Manager, or any other person. At said hearing the appellant and/or applicant and other persons may present evidence concerning the appeal. The Board may deny, approve or continue any appeal. The General Manager shall notify the appellant and/or applicant within ten (10) days in writing by mail or in person of the Board action taken; namely continuance, approval, conditional approval, or denial. 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 appellant and/or applicant or his representative. Unless the Board otherwise determines, any permit held by an applicant for which an appeal has been filed pursuant to these rules and regulations shall be deemed suspended until the appeal has been resolved.

REGULATION VIII. PENALTIES

RULE 80. Registration - Violation of Rule 52 may subject the owner and/or operator of a well to criminal prosecution for a misdemeanor and punishment by a fine not exceeding \$500.00 per separate violation, pursuant to Section 348 and Section 360 of the Monterey Peninsula Water Management District Law.

RULE 81. Metering - Violation Rule 56 may subject the owner and/or operator of a well to criminal prosecution for a misdemeanor and punishment by a fine not exceeding \$500.00 per separate violation, or by imprisonment in the County jail for a

period not exceeding six months, or by both such fine and imprisonment, pursuant to Sections 360 and 361 of the Monterey Peninsula Water Management District Law.

RULE 82. Reporting - Violation of Rule 54 may subject the owner and/or operator of a well to criminal prosecution of a misdemeanor and punishment by a fine not exceeding \$500.00 per separate violation or by imprisonment in the County jail for a period not exceeding six months, or by both such fine and imprisonment pursuant to Section 361 of the Monterey Peninsula District Law.

RULE 83. Rationing Penalties - Violation of any provision of Regulation X, or any provision of Rules 100 through 104 may subject the extractor/user to criminal prosecution for a misdemeanor, and shall subject said persons to the assessment of the following penalty for each and every violation:

- A. First Violation: A written warning explaining the violation and outlining the rationing program and the penalties for future violations.
- B. Second Violation: A fine of \$100.00.
- C. Third Violation: A fine of \$500.00.
- D. For each additional violation, or for any flagrant violation: A fine of \$500.00 and the placement of a restrictor at the connection for the duration of the water shortage emergency.

REGULATION IX. VARIANCES

RULE 90. Variance - The Board may, after holding a public hearing, in specific cases, grant a variance from any provision of the standards incorporated into these rules and regulations whenever it finds: (a) that special circumstances exist in a particular case, and (b) that practical difficulties of unnecessary hardship would result from the strict interpretation and enforcement of any such standard, and (c) that the granting of such a variance would not tend to defeat the purposes of these rules and regulations. The Board may place conditions upon such variances.

Each application for variance concerning Regulation X, Rules 100 - 104, and concerning Rule 83 shall be processed pursuant to the provisions of Rule 92.

RULE 91. Short Term Variance - Notwithstanding any other provision of these rules and regulations, the Board may, after holding a public hearing, in specific cases, grant a short term variance from the provisions of Rule 23, "Permits to Expand or Extend a Water Distribution System". A short term variance may only be granted when the Board finds:

- a. That special circumstances exist in a particular case, and
- b. That practical difficulties or unnecessary hardship would result from the strict application and enforcement of Rule 23, and
- c. That the grant of such a short term variance would not tend to defeat the purpose of these rules and regulations.

The short term variance shall not be valid beyond the date specified within the Board order, and in no instance shall a short term variance be granted for a term exceeding 365 days. During the term of a short term variance, the applicant may further apply for a permit pursuant to Rule 23 a variance pursuant to Rule 90, or a further short term variance pursuant to this Rule 91.

The grant of a short term variance shall not confer a property interest upon the grantee. Each short term variance is subject to revocation during its term without cause, without hearing, upon 10 days notice, and in no event shall the short term variance confer a right to obtain or use water upon expiration of the variance term. Any use of water following expiration shall be deemed to be unauthorized. The Board may place such further conditions upon the grant of a renewed short term variance as it deems proper. Any connection which is the subject of an expired short term variance, and which connection is not the subject of current permit pursuant to Rule 23, a current variance pursuant to Rule 90, or a current short term variance pursuant to Rule 91, shall be removed by the responsible party of the water distribution system no later than 15 days after receipt of an order from the General Manager.

Each applicant for a short term variance shall (1) acknowledge that the grant of such variance does not confer a right to obtain or use water upon expiration and/or revocation of the variance, (2) each applicant shall consent to the physical removal of

the connection upon expiration of the short term variance, and (3) each applicant shall agree to pay any applicable fee pursuant to Rule 60 in the event said short term variance is granted by the Board.

RULE 92. Rationing Variance - The General Manager, or his designee, upon application, may grant variances from the prescribed standards set forth in Regulation X, Rules 100-104 and in Rule 83. The General Manager, or his designee, may further grant variances from the rules set forth above without formal application by any extractor, user, or owner/operator when such variance shall be consistent with the District rationing and water conservation goals. Variances shall be granted where a strict application of these rules would cause health or safety problems, and may be granted in cases concerning hardship, or extreme circumstances. Variances shall further be granted from the penalty assessments of Rule 83 insofar as such violations can be shown to have been caused by a leak not previously identified.

Applicants seeking a variance pursuant to this Rule shall submit the form prescribed by the General Manager and pay the fee set forth in Rule 63. All determinations made by the General Manager, or his designee pursuant to this Rule, shall be reviewed pursuant to Rule 70, "Appeals", and shall not be reviewed pursuant to any other variance provided in these Rules and Regulations.

REGULATION X. RATIONING AND WATER SHORTAGE EMERGENCIES

RULE 100. Determination of Water Emergency

A. Water Availability Report

The General Manager shall annually by May 1 compile a report which analyzes rainfall in the preceding twelve (12) months and which estimates the amount of water in reservoirs and aquifers available for use by each water distribution system. The report shall also include a summary of operation equipment status submitted by each water distribution facility including, but not limited to: all wells and pumps, transmission mains, treatment plants, pumping stations, auxiliary reservoirs and tanks. The report shall further evaluate the projected demands of water distribution systems

and determine the number of months that the water available for use will support the projected demands.

If equipment failures or other emergencies reduce the long term delivery capability of any water distribution below current demand rates, the General Manager shall also compile a water availability report for such system.

B. Findings

The Board shall hold a public hearing to review the water availability report. Based on this report and other evidence, the Board shall determine if the water in storage for any water distribution system is less than that needed to meet the projected demands of that system. Where such a finding is made, the Board shall direct the General Manager to institute an active conservation program and institute active voluntary rationing for all users within that system and may declare a water supply emergency. Where the Board determines that any water distribution system has inadequate supply capacity to meet current (daily) or near-term (monthly) demand, the Board shall declare a water emergency and by emergency ordinance activate the rationing (Rule 101), connection moratorium (Rule 102), and mobile water source, (Rule 102) rules set forth in these Rules and Regulations.

C. Notification

Every ordinance adopted pursuant to this rule shall comply with sections 118-332 of the Monterey Peninsula Water Management District Law. The General Manager shall also publish notice of any hearing to adopt such water emergency ordinance and shall notify all member units, water distribution systems, and where applicable to a public utility, the California Public Utilities Commission.

RULE 101. Rationing

A. Initial Phase Determination

Upon declaration of a water emergency, the Board shall further evaluate the delivery capability of each water distribution system subject to such emergency and assign an initial rationing phase to that water distribution system.

B. Criteria for Phase Change

The determination of each rationing phase is to be at the discretion of the Board. Restrictions and limitations shall be intended to bring water use into parity with the production capability of each water distribution system.

C. Phase I: Odd Day/Even Day Rationing

During Phase I, (off-day, even-day rationing), extractors and users with even street numbers shall not water outside on odd number days, and extractors and users with odd numbers shall not water outside on even number days. For users in the City of Carmel, users to the north of Ocean Avenue shall not water on odd number days, and users to the south of Ocean Avenue shall not water on even number days. All other un-numbered street addresses shall not water on odd number days.

D. Phase II: Maximum Usage Rationing

At the time the Board declares a water emergency, it shall specify maximum usage rations for residential and non-residential users for each water distribution system. The Board shall also specify maximum usage rations for each owner/operator or extractor of a well or water gathering facility. The Board may adjust these standards from time to time during any declared emergency to correlate rations, actual water use, and produc-

tion capability for any water distribution system, or for the ground water basin as a whole.

E. Calibration of User Rations

The ration for individual users shall be determined as follows:

- (1) Residential Connections - Upon declaration of a water emergency, the General Manager shall conduct a survey of all residential connections to determine the number of persons permanently residing at each residential connection. The results of this survey will be submitted to the water distribution system or systems and each system will record this data as a part of its billing records. In cases where the user fails to respond to the survey, the General Manager will submit an assumed household size of one person for that connection to the water distribution system. Notification shall be sent to any such user of this action. The user's ration shall be determined by multiplying the number of permanent residents by the per capita ration established by the Board.
- (2) Non-residential Connections - Upon declaration of a water emergency, the water distribution system or systems shall provide to the District a report stating the average consumption in the prior calendar year for each non-residential user. Each water distribution system will further record this data as part of its billing records. The user's ration shall be determined by multiplying the average usage by the percentage ration established by the Board.
- (3) Ration Adjustments - The District shall notify each water distri-

bution system of the name, address and adjustment for each variance granted, or for each correction to the listing of user information. The water distribution system shall record this data as part of its billing record.

- (4) Phase Change Adjustment - The District shall notify each water distribution system of changes in the phase and the adjustment to the ration. The water distribution system shall record this data as part of its billing record.
- (5) Private Wells - Upon declaration of a water emergency, the General Manager shall determine water rations for each extractor. Such ration shall be determined by multiplying the historic reported usage from the extractor's well by the percentage established by the Board.

F. Review of Compliance

- (1) Usage Monitoring - Upon receipt of the user data set forth in paragraph E above, each water distribution system shall clearly indicate upon each connection bill both the ration and actual water use during the previous billing period. The water distribution system will, at the end of each billing cycle, review all accounts for compliance and shall report to the District the name, address, water usage, and coverage of each user exceeding its ration. The General Manager shall review the semi-annual extraction report and list those well owners who have violated this rationing provision.
- (2) Determination of Compliance - The General Manager shall review

the list of users, extractors, and owner/operators not in compliance with the rationing order and shall determine those persons to be penalized for non-compliance. All users, extractors, and owner/operators who use more than the prescribed allotment for the previous billing shall be penalized unless a variance has been granted or a finding is made that assessment of a penalty is warranted.

RULE 102. Moratorium on New Connections - During a water emergency the authority of the General Manager ~~and delegated agents~~ to issue permits to expand or extend a water distribution system pursuant to Rule 23 shall be suspended. New connections may only be authorized by the Board under the variance procedure described in Regulation IX, Rule 90 and 91.

RULE 103. Regulation of Mobile Water Distribution Systems During a Water Emergency - During a water emergency, no person, extractor, owner or operator shall operate a mobile water distribution system without first securing a written permit from the District. Applications for establishment of a mobile water distribution system shall be made pursuant to Rule 22 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 creation' establishment permit.

RULE 104. Regulation of Well Owners/Operators and Extractors - During a water emergency, each owner/operator or extractor of a private water well or other water-gathering facility shall comply with the provisions of this Regulation, Rules 100-104 as they relate to such well. The Board shall specify maximum water extractions for all such wells.

REGULATION XI. ENFORCEMENT

RULE 110. General Enforcement - The General Manager is charged with the enforcement of these Rules and Regulations, and all other policies adopted by the District. To

meet this charge, insofar as inspection of property may be necessary, and in any circumstance where consent to inspect has been sought but is refused or is otherwise unobtainable, the General Manager, or his designee, may obtain an inspection warrant in accord with the Code of Civil Procedure, Section 1822.50 et seq., and may conduct such inspections as are necessary to enforce these Rules and Regulations.

RULE 111. Charges and Penalty Assessments - The General Manager may bill and collect all charges and penalties assessed pursuant to these Rules and Regulations.

RULE 112. Administration of Rationing Penalties - In addition to the authority set forth in Rule 111 above, upon approval of the Board, any water distribution system may contract to bill and collect penalties due the District. Further, upon order of the District, each water distribution system shall install and/or remove water restrictors as required by these Rules and Regulations.

RULE 113. Liens - The General Manager, upon approval of the Board, may, as an alternative to any other enforcement action, collect charges and penalties due the District by making the same a lien upon the real property and collectible at the same time and in the same manner as taxes and assessments are so collected upon such property.

L/pm

Decision No. 92793 MAR 17 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
practices, service, equipment,
facilities, rules, regulations,
contracts, and water supply of the
MONTEREY PENINSULA DISTRICT OF
CALIFORNIA-AMERICAN WATER COMPANY,
a corporation, and of RANCHO DEL
MONTE DIVISION OF WATER WEST
CORPORATION.

FREDERICK J. BENN
& LELIA M. BENN,

Complainants,

vs.

CALIFORNIA-AMERICAN WATER COMPANY,

Defendant.

ENTERPRISE CANNERY, a partnership
consisting of WILLIAM V. SHAW and
MARY MORSE SHAW and ANSEL ADAMS
and VIRGINIA ADAMS as trustee under
that Declaration of Trust dated
January 9, 1974, as amended, and
SEBASTIAN SOLLECITO,

Complainants,

vs.

CALIFORNIA-AMERICAN WATER COMPANY,
a corporation,

Defendant.

Case No. 9530
(Filed April 3, 1973)
Petition for Modification of
Water Rationing Plan
(Filed November 9, 1972)

Case No. 10006
(Filed November 17, 1975)

RECEIVED

MAR 19 1981

M. P. W. M. D.

Case No. 10083
(Filed April 19, 1976)

Bryant H. Prentice, Jr.,
Complainants,
vs.
Monterey Peninsula District of
California-American Water Company,
a corporation,
Defendant.

Case No. 10088
(Filed April 21, 1976)

SAMUEL URCIS and DORY URCIS,
Complainants,
vs.
CALIFORNIA-AMERICAN WATER COMPANY,
a California corporation,
Defendant.

Case No. 10173
(Filed September 15, 1976;
amended January 17, 1977)
(Rehearing granted June 7, 1977)

Application of SANTO COPPUCCIO for
a variance from the restrictions of
Ordering Paragraph 4 of Decision
No. 84527 to permit move of existing
meter to new location.

Application No. 57185
(Filed March 28, 1977)

ORDER MODIFYING DECISION NO. 89195

We have been informed that the Board of Directors of the Monterey Peninsula Water Management District (District) has adopted a policy under which that agency would exercise first review authority on requests by California-American Water Company (Cal-Am) or its potential customer for authority to extend service beyond its service area boundaries.

It is our opinion that this policy is in keeping with our finding in Decision No. 89195 that:

"17. The rate and nature of growth in the Monterey Peninsula, like the management of water resources, is an area-wide concern. Because

Cal-Am's water supply is sufficient to accommodate growth within its Monterey Peninsula District service area, the extent and nature of the growth can most appropriately and effectively be determined by the responsible local government agencies and not by either Cal-Am or by this Commission through restrictions on water service connections and main extensions."

Section 118-363 of the Water Code-Appendix provides as follows:

"No person, owner, or operator shall establish, extend, expand, or create a water distribution system unless and until the approval of the board is first obtained in writing. For the purposes of such approval, the board may adopt such rules and regulations and establish such forms for such applications as are necessary and proper. The board may provide by ordinance for exceptions to the requirement for approval for systems furnishing domestic water to three or fewer parcels or lots in the district."

Clarifying which agency has first review authority should be helpful to Cal-Am and other interested parties as well as avoid duplication of effort by our staff and that of the District.

We will indicate our concurrence with the District's policy by modifying ordering paragraph 6 of Decision No. 89195. We do not believe a public hearing is necessary, however, we are making this order effective in 30 days to provide any party an opportunity to request a hearing. Therefore,

IT IS ORDERED that:

Ordering paragraph No. 6 of Decision No. 89195 is modified to read in full as follows:

"Cal-Am shall not extend water service beyond the boundaries of its present service area in the Monterey Peninsula District without prior Commission

L/pm Case No. 9530 et al.

approval. A request for such approval shall be made by advice letter and shall include a copy of the approval of the Monterey Peninsula Water Management District pursuant to Water Code-Appendix, Section 118-363."

The effective date of this order shall be 30 days from the date hereof.

Dated MAR 17 1981, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
Commissioners

Certified as a True Copy
of the Original

Margaret L. McKeel
ASST. EXECUTIVE DIRECTOR, PUBLIC UTILITIES COMMISSION
STATE OF CALIFORNIA

EMERGENCY WATERSHED PROTECTION

Estimating Unit Prices *
For Use In
Damage Survey Reports
1980

RECEIVED

DEC 22 1980

M. P. W. M.

REPAIR ITEM	UNIT PRICES ^{1/}		
	EASY	NORMAL	DIFFICULT
Sediment Removal	\$ 2.75/cy	\$ 6.00/cy	\$ 10.50/cy
Bank or Levee Restoration (Compacted Fill)	2.00/cv	3.00/cy	5.00/cy
Vegetation	560.00/ac	1250.00/ac	1900.00/ac
Pipe and Wire Revetment			
*Single Row	34.00/ft	48.00/ft	59.00/ft
*Double Row	47.00/ft	63.00/ft	78.00/ft
Rock Rip Rap (includes shaping and bedding)			
*Loose	30.00/cy	35.00/cy	45.00/cy
*Grouted	75.00/cy	90.00/cy	115.00/cy
*Gabions	80.00/cy	100.00/cy	120.00/cy
Concrete (includes steel, earthwork and drainage)			
*Channel Paving	225.00/cy	280.00/cy	350.00/cy
*Double Reinforced	350.00/cy	475.00/cy	600.00/cy

* See important qualifying notes on sheet 2.

^{1/} These columns refer to site conditions and
availability of construction materials

3/80

EMERGENCY WATERSHED PROTECTION

Estimating Unit Prices

Note carefully the following conditions when using this cost data:

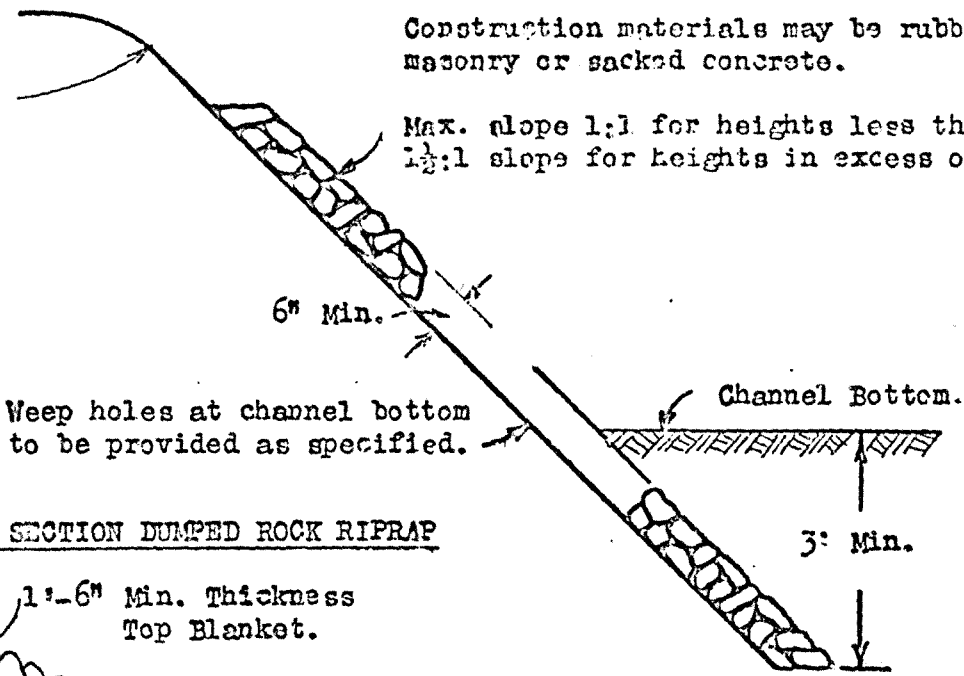
1. These prices are based on bid abstracts from 1978 and 1979 prices for emergency repair work.
2. These estimate prices are intended only for developing cost estimates on 1980 Damage Survey Reports.
3. These prices include:
 - a. Mobilization
 - b. Site Preparation
 - c. Miscellaneous Earthwork
 - d. Bedding and Drainfill (when required)
 - e. Site Cleanup
4. Easy sediment removal would be considered on-site disposal with off road equipment.
5. The unit price for single pipe and wire includes tie-backs at regular intervals. Only the length along the channel need be measured.
6. Tie-backs for double pipe and wire have not been included and this should be added if the situation creates water behind the pipe and wire.
7. In addition to site conditions and material availability, the job quantity should be taken into consideration (i.e. small quantity-higher unit price, large quantity-lower unit price).
8. These estimating prices should not be used to make engineer's estimates for contracting purposes. If necessary revised unit price guidelines can be issued.

TYPICAL CROSS SECTION RUBBLE MASONRY RIPRAP

If banks are subject to overflow, lay rubble masonry over top of bank.

Construction materials may be rubble masonry or sacked concrete.

Max. slope 1:1 for heights less than 10 feet. 1 1/2:1 slope for heights in excess of 10 feet.



TYPICAL CROSS SECTION DUMPED ROCK RIPRAP

If banks are subject to overflow, lay rubble masonry over top of bank.

1'-6" Min. Thickness Top Blanket.

High Water Level.

Approx. slope 1 1/2:1.

2 1/2' thick.

4" to 6" of gravel on filled areas.

If water prevents excavation, dump rock for toe.

3'-0" Min. at toe.

4'-0"

TYPICAL CROSS SECTION HAND PLACED ROCK RIPRAP

12" Min.

High Water Level.

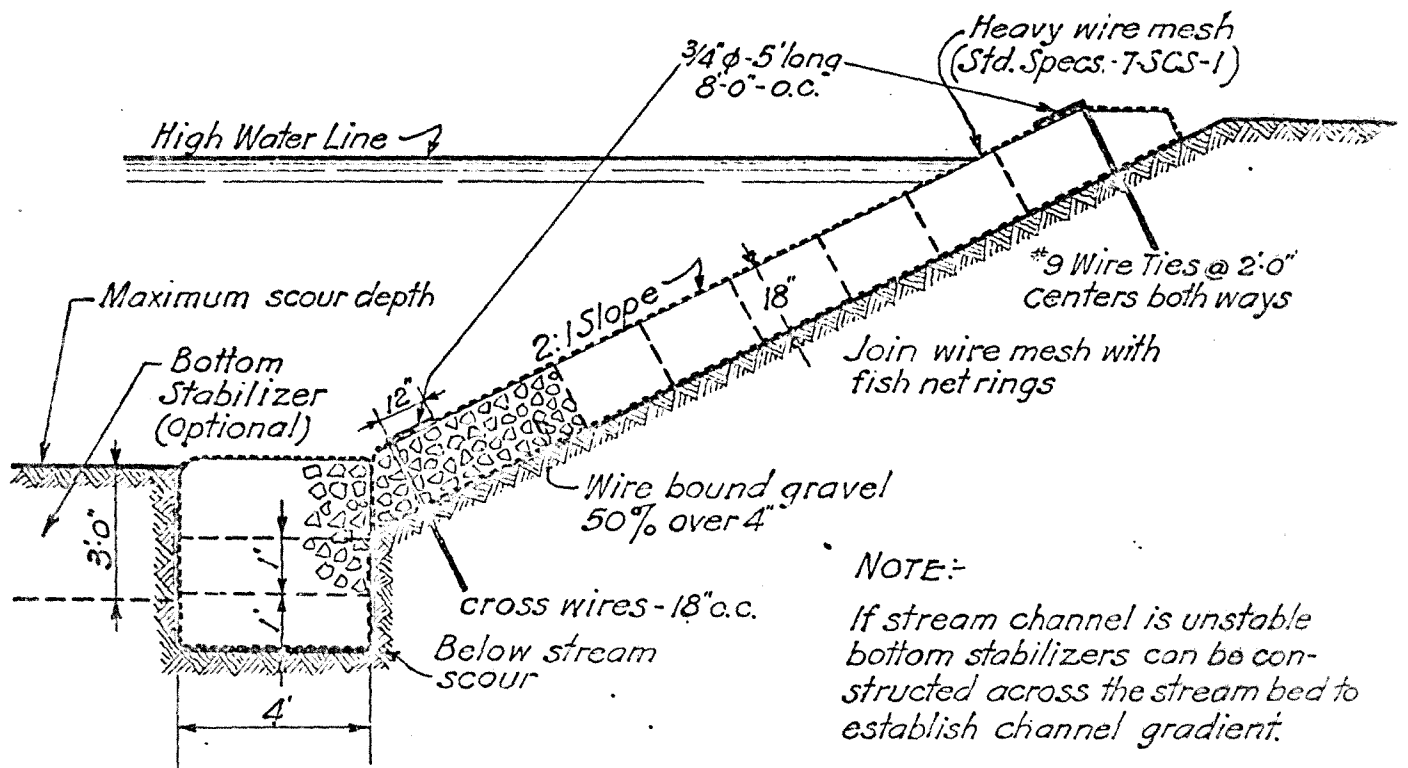
Slope 2:1

4" to 6" Gravel if required

Channel Bottom.

18"

GRAVEL ENVELOPE RIPRAP



NOTE:-
If stream channel is unstable
bottom stabilizers can be con-
structed across the stream bed to
establish channel gradient.

Attorney:

DMF

Date:

5/11/82

Advice Letter:

Person Requesting Advice

Leo Weiss, atty3F

Telephone:

(415) 788-0900

ret'd call 2:40 PM

Question:

represent Cal-Am Water Company -he wants to know if we will sit down
with he and Zan to determine points
of agreementDistrict - 4/13/82 letterThey have some specific issues -present facts from all perspectivesDistrict may want to participate as well

Advice:

5/14/82Call back -if they can agree on issues
can request our reconsideration
both can present facts in written
form

81-501

5/17/82 - Talked to Weiss. Explained our position.
He said he would talk to Zan & get back to me

Memorandum

To : Barbara A. Milman

Date : April 21, 1982

From : **FAIR POLITICAL PRACTICES COMMISSION**

Diane Maura Fishburn *[Signature]*

Subject: Alexander T. Henson - Cal-Am Conflict

The lawyer for Cal-Am Water Company mailed to us a copy of their protest to Alexander Henson regarding his activities on the Board and in their pending litigation (copy attached). In his letter, Mr. Weiss points out that Mr. Henson did not tell us that a principal element of the litigation is Mr. Henson's attempt to establish that Cal-Am's management has acted improperly or unreasonably. He states that this is also an issue before the Board as it determines, among other things, whether certain District activities should have been undertaken and paid for by Cal-Am.

The "nexus" test was the basis for our analysis in the Henson advice letter. We advised Mr. Henson that he would have to disqualify himself on all decisions affecting his clients. Since he does not have a financial interest in Cal-Am, he would only have to disqualify himself from decisions which affected Cal-Am if they also affected his clients in a manner differently than the public generally.

On the issue of Cal-Am's management practices, it is a difficult question whether the "nexus" theory would require disqualification. If it were a clearly identifiable issue before the Board and in the litigation, disqualification would probably be required. Of course, this depends on the extent to which the Board's decisions could have an influence on the court decision. This may be too speculative to require disqualification under these circumstances.

On the other hand, the issue of Cal-Am's management practices may not be a clearly identifiable issue either before the Board or in the lawsuit. Mr. Weiss states at the top of page 3 of his letter that the Board was considering a matter which "translates into an investigation into the competence and reasonableness of Cal-Am's decision-making processes." If it is a matter of opinion as to whether the issues being litigated are also before the Board, it may be difficult to find the requisite "nexus."

I recommend that we don't do anything now based on this letter. I imagine we will have to face the issue either by way of a complaint or further advice requests from Mr. Henson.

LAW OFFICES OF

F P P STEEFEL, LEVITT & WEISS

A PROFESSIONAL CORPORATION

APR 16 8 50 AM '82 ONE EMBARCADERO CENTER, 28TH FLOOR

LENARD G. WEISS

SAN FRANCISCO 94111

(415) 788-0900

TELECOPIER
(415) 397-7802

IN REPLY REFER TO:

April 12, 1982

HAND DELIVER

Alexander T. Henson, Esq.
26485 Carmel Rancho Blvd.
Carmel, California 93923

- Re: (1) Reimers v. California-American Water Company
Monterey County Superior Court No. M 10822
(2) Board of Directors, Monterey Peninsula
Water Management District

Dear Mr. Henson:

This letter is written to you on behalf of our client, California-American Water Company ("Cal-Am"). We write to you in your dual positions (1) as counsel to the plaintiffs in the above-captioned Reimers litigation against our client and (2) as a member of the Board of Directors of the Monterey Peninsula Water Management District ("District") which has certain regulatory powers which directly impact upon our client.

In our opinion these two positions cannot be separated and they result in an irreconcilable conflict of interest which must be resolved immediately. The conflicts result in serious violations of your duties as an attorney and a patent violation of Government Code Section 87100.

By way of summary, among the more obvious bases for these serious charges are the following:

1. You have a direct, personal and material economic interest in the outcome of the Reimers litigation.
2. As a District Director you are in a position to obtain information uniquely available only to the District.

Alexander T. Henson, Esq.
April 12, 1982
Page 2

More significantly, you have every motive to cause the District to take actions which would benefit you and your clients in the Reimers litigation even if they are not in the best interests of the District. As counsel in the Reimers case you cannot possibly be objective about matters before the District Board which affect Cal-Am and you prejudicially taint all past and future District actions vis-a-vis Cal-Am in which you participate. The public cannot possibly be well served where the regulator and regulated are directly involved in litigation; your dual role causes that result to the great detriment of the District's taxpayers.

3. You have seriously misused your office as a District Director in presentations you have made to the Court in the Reimers case.

We understand that your attorneys' fees as counsel in the Reimers litigation are, at least partially, contingent upon your successful prosecution of that case. Accordingly, like your clients, you stand to gain material economic rewards if you should prevail in that litigation. As a corollary, it is in your direct economic interest to exploit all District powers and sources of information from which you might draw any implications potentially adverse to Cal-Am in Reimers.

In the Reimers case you take the position, inter alia, that Cal-Am's management has been negligent in the conduct of the affairs of its business. It is, therefore, your professional responsibility as an advocate in Reimers and consistent with your personal economic advantage and that of your clients to demonstrate in any possible way the existence of such purported negligence or any other claimed malfeasance by Cal-Am.

As a member of the District Board of Directors you have been and will continue to be in a position to inquire into Cal-Am's past and present management practices and policies. In fact, you are presently engaged in just such an endeavor

Alexander T. Henson, Esq.
April 12, 1982
Page 3

as a member of the District's so-called "Demand Management Committee." One recent inquiry by that Committee, we understand, is whether some or all of the activities undertaken by the District should have previously been undertaken (and presumably paid for) by Cal-Am. That translates into an investigation into the competence and reasonableness of Cal-Am's decision-making processes. It is obvious that you could use your position in this inquiry to benefit your clients in the Reimers litigation.

In fact, any past or future investigations, findings or conclusions by the District relative to Cal-Am, no matter what their factual support or lack thereof, hold the potential of providing to you information and arguments for use in the Reimers case adverse to Cal-Am. Literally every facet of the District's work which relates to Cal-Am provides you with the opportunity to shape the District's findings and decisions in a fashion which could materially enhance your position in the Reimers litigation. At the same time your obvious bias taints every District decision in which you participate. Further, should you lose the Reimers case you will then have every motive to seek various forms of retribution against Cal-Am in your continuing role as a District Director.

There could be no more ripe nor obvious example of your misuse of your District office than will be found in the Motion to Sever which you have just filed in the Reimers litigation. In your personal Declaration filed in support of that Motion you have the audacity to tell the Court in the opening sentence that "I am a Director of the Monterey Peninsula Water Management District" and to go on to state that "[i]n that capacity" you are "aware that the District is considering" creation of a zone of improvement in which the "central issue . . . is the question of who will pay for what proportion of the costs of improvement." This Declaration demonstrates beyond peradventure two classic reasons why conflicts of interest give rise to sanctions in this state: First, you openly attempt to influence the Court by virtue of your public office and you compound that grievous error by advising the Court of what might be charitably described as "inside" information. Secondly, the interrelationships

Alexander T. Henson, Esq.
April 12, 1982
Page 4

between (a) your membership on the District's Board of Directors, (b) your role as counsel in your litigation against Cal-Am, and (c) your personal pocketbook, are made apparent for all the world to see. This is not just the "appearance" of a conflict; it is the real thing.

California Government Code Section 87100 states:

"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

There is, in addition to this statutory imperative, an obvious moral and ethical conflict in your dual roles and in the abuses which have already occurred. See the American Bar Association Model Code of Professional Responsibility which contains various provisions proscribing your conduct in this matter: e.g., Canon 8 and Disciplinary Rule 8-101(A)(1) and (2) and Canon 9 and Disciplinary Rule 9-101.

The Reimers litigation creates in you precisely the type of "financial interest" referred to in Government Code Section 87100. See Govt. C. § 87103. In addition, your actions on the District's Board may materially benefit your clients "in a manner differently than the public generally." As an example, you will undoubtedly attempt to use in the Reimers litigation any information or finding made by the District which is in any manner negative in its implications about Cal-Am's management. You thus have every motive to see that such findings occur and, by virtue of your position on the Board, have the ability to do so.

We have recently been made aware of your correspondence with the California Fair Political Practices Commission. We note that the FPPC was not advised that a principal element of your approach to both the Reimers litigation and your work on the District's Board is to attempt to establish that

Alexander T. Henson, Esq.
April 12, 1982
Page 5

Cal-Am's management has acted improperly. Had that subject been presented to the FPPC then the Commission's advice would necessarily have been different. Obviously, no immunities can result since you have failed to present to the Commission all of the relevant facts. See 2 California Administrative Code, Section 18320(b).

In our view the only possible solution to this self-induced dilemma is for you to resign from both positions. No other action will assure the District of its right to an objective and untainted Director and the Court and parties in the Reimers case of a plaintiff's counsel who is pursuing his role with appropriate motives.

As must be apparent, we consider this a matter of grave importance. Unless you immediately resolve these conflicts by resigning from both positions we will have no choice but to present this matter to the Court and to such public agencies as may be appropriate.

Very truly yours,

LGW:par

Lenard G. Weiss

cc: David Laredo, Esq.
Bruce Buel, Manager
Monterey Peninsula Water Management District
Members, Board of Directors,
Monterey Peninsula Water Management District
State of California
Fair Political Practices Commission
Attn: Diane Maura Fishburn, Esq.