

Submitted by staff
at 2/4/11 committee
meeting.

First Reading Revised Draft

ORDINANCE NO. 146

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
TOLLING THE EXPIRATION DATE OF
AFFECTED WATER USE CREDITS
UPON IMPLEMENTATION OF A
CALIFORNIA PUBLIC UTILITIES COMMISSION ORDERED MORATORIUM**

FINDINGS

1. The Monterey Peninsula Water Management District (MPWMD) is charged under the Monterey Peninsula Water Management District Law with the integrated management of the ground and surface water resources in the Monterey Peninsula area.
2. MPWMD has general and specific power to cause and implement water conservation activities as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.
3. On May 24, 2010, California American Water (CAW) filed an Application for an Order Authorizing and Imposing a Moratorium on Certain New or Expanded Water Service Connections in its Monterey District (A1005020) with the California Public Utilities Commission (CPUC).
4. In August 2010, MPWMD staff met with representatives of the parties involved in CAW's request for a moratorium to comply with the State Water Resources Control Board (SWRCB) Cease and Desist Order 2009-0060 (CDO). The CPUC is presently considering CAW's moratorium request and a decision is anticipated early in 2011. Information obtained during two meetings in August indicates there is considerable uncertainty about what projects would be impacted by a moratorium.
5. Water Use Credits (Rule 25.25) are documented when (1) there is a Permanent Abandonment of Use, or (2) following the installation of Ultra-Low Water Use Technology not required by the District. The credit process allows the reuse of the reduced increment of water on the

same Site for up to ten years. Credits may be transferred to other Sites pursuant to Rule 28.

6. This ordinance addresses the potential effects of a CPUC-approved moratorium on Sites that have a Water Use Credit by temporarily tolling the credit's expiration date if it is subject to a moratorium.
7. The District's Expanded Water Conservation and Standby Rationing Plan allows tolling of the expiration date for Water Use Credits in Stages 6 and 7, but the plan does not consider a moratorium enacted by the CPUC that impacts credits in earlier stages.
8. This ordinance amends the Rule 11 definitions for Mixed Use and Water-Gathering Facility.
9. This ordinance amends Rule 20-C-4 to facilitate installation of Cisterns.
10. This ordinance amends Rule 25.5-C to clarify that the review of the status of a Water Use Credit prior to an extension may include additional criteria. This is done by replacing the abbreviation for *id est* (i.e. or "that is") with *exempli gratia* (e.g. or "for example") to allow newly adopted requirements to be considered at the time that an extension is requested.
11. ~~This ordinance amends Rule 25.5-B to expire Water Use Credits upon the date mandated by the District or by State Law.~~
12. This ordinance adds Rule 25.5-K to toll the expiration of a Water Use Credit during a CPUC-ordered moratorium that precludes the use of that credit. The credit is then reinstated after the moratorium is lifted and after new water supplies are available for new and intensified uses that are sufficient to offset all documented Water Use Credits. Reinstated Water Use Credits shall have the same value and remaining term as available on the date of tolling.
13. This ordinance amends Rule 143-A by including more restrictive requirements of MPWMD as possible exceptions to the Rule 143 conservation requirement. An example is the Rule 142 Water Efficiency Standards for Residential and Non-Residential Change of Ownership, Change of Use, and Expansion of Use.
14. This ordinance was reviewed in concept form and supported by the Water Demand Committee on February 4, 2011.
15. This ordinance is subject to the California Environmental Quality Act (CEQA) and is adopted with a Mitigated Negative Declaration.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the **2011 Water Use Credit Tolling Ordinance** of the Monterey Peninsula Water Management District.

Section Two: Statement of Purpose

This ordinance is enacted to toll the expiration of Water Use Credits during a CPUC-ordered moratorium that limits the use of a valid Water Use Credit. The period of time during which a Water Use Credit is usable shall be tolled until the termination of the moratorium and there are new water supplies available to offset the potential demand of all documented Water Use Credits. At such time, tolled Water Use Credits shall be reinstated with the same value and remaining time to expiration as existed on the day a CPUC-ordered moratorium begins. This ordinance shall also make minor administrative process changes to Rules 11, 20 and 143 to facilitate implementation of current Rules in support of the conservation program.

Section Three: Definitions

Unless the context specifically indicates otherwise, the following words or phrases shall be given the definitions set forth below and shall be permanently added to or deleted from Rule 11, Definitions, of the Rules and Regulations of the District. New and revised text is shown in bold italics (*bold italics*) and deleted text is shown in ~~strikeout~~.

MIXED USE – “Mixed Use” shall mean water used for domestic or other uses from any Water Distribution System or private Well where one *or more* water meters or Connections supplies both Residential and Non-Residential uses, often within the same building.

WATER-GATHERING FACILITY - “Water-Gathering Facility” means any device or method, mechanical or otherwise, for the production of water from dams, Groundwater, surface water, water courses, Reclaimed Water sources, or any other Source of Supply 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. This definition shall not apply to ~~On-Site Cisterns that serve existing single-connection,~~

Residential situations where rainwater is captured for On-Site Landscape irrigation use.

Section Four: Amendment of Rule 25.5-B to Expire Water Use Credits When Mandated by District or State Law

- B. Water savings resulting from mandatory District programs, including water savings resulting from the installation of Low Water Use Plumbing Fixtures Mandated by the District, shall not result in a Water Use Credit. ***Water Use Credits shall expire upon the date mandated by any District, State or Federal Law. These provisions shall apply to all Water Use Credits, including Water Use Credits tolled by a California Public Utilities Commission moratorium or by Stages 5 through 7 Water Rationing.*** Such savings shall be set aside as permanent water conservation savings essential to ***maintaining*** the District's 15 percent conservation goal approved by the Board in March 1984.

Section Five: Amendment of Rule 25.5-C to Expand the Level of Review Prior to Extending a Water Use Permit

Rule 25.5-C shall be amended as shown in bold italics (***bold italics***) and strikeout (strikethrough). No changes are proposed for Rule 25.5-A and B or to Rule 25.5-D through J.

- C. A Water Use Credit may be applied to and shall allow future water use on that Site at any time within a period of 60 months. After the 60th month, the General Manager shall allow renewal of this Water Use Credit only upon verification that some or all water savings represented by that credit are current (~~i.e.~~ ***i.e.*** no Water Permit or other use or transfer of the Water Use Credit has occurred). If all savings are not current, a pro-rata reduction shall occur. A single renewal period of 60 months shall be allowed; thereafter any remaining unused Water Use Credit shall expire.

Section Six: Addition of Rule 25.5-K Adding a Provision to Toll Water Use Credits During a California Public Utilities Ordered Moratorium

Rule 25.5-K shall be added to Rule 25.5 as shown in bold italics (***bold italics***).

- K. ***Upon implementation of a moratorium ordered by the California Public Utilities Commission that precludes the use of a valid Water Use Credit, a Water Use Credit so affected shall be tolled. At the conclusion of the moratorium and after additional water supply has been developed and released that is sufficient to offset***

all documented Water Use Credits, tolled Water Use Credits shall be reinstated with the same value and remaining term as available upon the date of tolling.

Section Seven: Amendment of Rule 20-C-6, Exemptions For Water Distribution System Permit

Rule 20-C-6 shall be amended as shown in bold italics (*bold italics*) and strikeout (~~strikethrough~~).

6. For ~~On-Site~~ Cisterns that serve existing single parcel connections, (i.e. Residential situations where *used to store* rainwater is captured for ~~On-Site Landscape irrigation use~~).

Section Eight: Amendment of Rule 143-A, Water Efficiency Standards for Existing Non-Residential Uses

Rule 143-A shall be amended as shown in bold italics (*bold italics*) and strikeout (~~strikethrough~~).

- A. All Non-Residential Water Users within the District shall maintain Showerheads with a maximum flow capacity of 2.5 gallons per minute, and Washbasin faucets with aerators which limit the flow rate to a maximum of 2.5 gallons per minute, unless subject to more restrictive requirements by *the District*, another agency or Jurisdiction.

Section Nine: Publication and Application

The provisions of this ordinance shall cause the amendment and republication of Rules 11, 20, 25.5, and 143 to the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

Section Ten: Effective Date

This ordinance shall be given effect at 12:01 a.m. on thirty days following adoption after second reading.

Section Eleven: Sunset

This ordinance shall not have a sunset date.

Section Twelve: Severability

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

On motion of Director _____, and second by Director _____, the foregoing ordinance is adopted upon this _____ day of _____, 2011, by the following vote:

AYES:

NAYS:

ABSENT:

I, Darby W. Fuerst, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true, and correct copy of an ordinance duly adopted on the _____ day of _____, 2011.

Witness my hand and seal of the Board of Directors this _____ day of _____, 2011.

Darby W. Fuerst, Secretary to the Board