

DRAFT

ORDINANCE NO. 117

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING RULE 28-B
CLARIFYING THE MINISTERIAL REVIEW OF
WATER USE CREDIT TRANSFER APPLICATIONS, SETTING STANDARD
CONDITIONS OF APPROVAL, AND SETTING FEES FOR TRANSFERS AND
REVIEW OF NEW TECHNOLOGY**

FINDINGS

1. The Water Management District 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. The Water Management District 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. Rule 28-B of the Water Management District enables transfer of water credits documented pursuant to District Rule 25.5 from an existing non-residential use to another expanding non-residential use or to a jurisdiction for use at its discretion.
4. This ordinance amends Rule 28-B to clarify the ministerial authority to approve a water credit transfer.
5. Ordinance No. 108 changed a ministerial process to a discretionary process. Due to the time and cost associated with making an application for transfer under that ordinance, it was never utilized. This ordinance reinstates the water credit transfer approval process at the ministerial level.
6. The Board of Directors determines that this ordinance is an action taken by a regulatory agency to amend internal rules, and therefore finds that enactment of this ordinance has no measurable impact on the environment and that a Negative Declaration under the requirements of the California Environmental Quality Act is appropriate.
7. This ordinance shall revise, amend and republish Rule 28-B of the Rules and Regulations of the Water Management District.
NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the Water Use Credit Transfer Ministerial Amendment Ordinance.

Section Two: Purpose

This ordinance revises, amends and republishes water use credit provisions set forth in District Rule 28- B by reverting from a discretionary approval process to a ministerial approval process and by clarifying standards for approval of requests made under Rule 28-B, including conditions of approval. This ordinance shall also address fees for Rule 28-B Water Use Credit transfers and fees for processing requests for review of water permit applications that proposed to install new water saving technology.

Section Three: Amendment of Rule 28-B (Property-To-Property And Property-To-Jurisdiction Transfers Of Water Use Credits For Commercial And Industrial Uses)

A. The following Rule 28-B shall be revised as shown in bold italics (*bold italics*) and strikethrough (strikethrough):

B. PROPERTY-TO-PROPERTY AND PROPERTY-TO-JURISDICTION TRANSFERS OF WATER USE CREDITS FOR COMMERCIAL AND INDUSTRIAL USES

~~Water use credits for existing water use which has been allowed by the District on or after January 1, 1985, may be transferred from one property to another for commercial and industrial connections pursuant to this Rule and upon the approval of the Board of Directors. Commercial and industrial water credits may also be transferred directly into a jurisdiction's allocation upon the approval of the Board of Directors. Open space and residential water use shall not be transferred. The following conditions shall apply:~~

- ~~1. Due to the District's ongoing concern about the viability of the available water supply and the possibility that water transfers may result in additional water usage, water transfers shall be approved by the Board of Directors, subject to the other provisions of this Rule, if the transfer will not have an adverse impact on the water supply. In exercising its discretion, the Board of Directors shall consider the impacts of the application under consideration, as well as the cumulative impacts of other transfers, on the water supply.~~
- ~~2. Water use credit transfers shall only occur within a single jurisdiction. No inter-jurisdictional transfer shall be allowed. Property to property transferred water credits shall not have any impact on a jurisdiction's allocation. Property to jurisdiction transfers shall increase a jurisdiction's available allocation.~~

- ~~3. Water use credit transfers shall only occur within a single water distribution system. No inter-system transfers shall be allowed.~~
- ~~4. Water use credit transfers shall only occur with the prior approval of the city, county or airport district.~~
- ~~5. Water use credit transfers shall only be allowed from an existing commercial or industrial use, and must be applied to the intensification of another existing commercial or industrial use or added to a jurisdiction's allocation. Other than transfers which add to a jurisdiction's allocation, transfer credits shall not originate from, or be transferred to, any residential use. Transfer credits shall not derive from any prior open-space water use.~~
- ~~6. Property to property water use credit transfers shall only be used for intensification purposes. New water connections shall not be issued based upon a property to property transferred water use credit.~~
- ~~7. Property to property commercial water use credit transfers shall only enable intensification of an existing commercial or industrial water use capacity, as proposed by a current application for a water permit. Transfers shall not provide water use capacity for new commercial or industrial water meter connections. Transferred water credits shall not be "banked" for future use at any new or different site.~~
- ~~8. The use of credits resulting from a property to jurisdiction transfer shall be at the discretion of the jurisdiction.~~
- ~~9. All water use credit transfers shall originate only from prior documented commercial water use capacity and shall be subject to each and every limitation on the calculation of water use credits set forth in Rule 25.5.~~
- ~~10. All transfers of water use credits shall occur only by the written (and recorded) agreement of the owner of record for each parcel from which the transfer originates. This agreement shall confirm that the transfer of water credit is irrevocable, shall quantify remaining water use capacity required by the originating parcel(s), and acknowledge that any intensification of water use capacity on the originating site thereafter shall result in additional connection charge fees. If all prior water use capacity is transferred from a site (due to demolition of all structures on that site), the recorded agreement and notice shall consent to permanent removal of the meter connection from the originating site, and acknowledge that the placement of a new meter shall be limited due to unavailability of water.~~
- ~~11. Transfer of water use credits shall only occur upon approval by the Board of Directors. The Board of Directors shall have sole and exclusive authority to determine the water use capacity, which cannot be transferred by reason of capacity requirements for the originating site. The Board of Directors shall have sole and exclusive authority to determine the water use capacity requirements for the receiving site. The Board of Directors shall not approve any water credit transfer where money or other valuable consideration has been given in exchange for the~~

~~water credit transfer. The Board of Directors shall not approve any capacity for expanded water use deriving from a transferred water credit in any circumstance where money or other valuable consideration has been given in exchange for use of the water credit. These limitations shall nonetheless allow the recipient of a water credit transfer to reimburse the donor of that credit for connection fees previously paid to the District for that increment of water.~~

- ~~12. Violation of the prohibition on the transfer of water credit for money or other valuable consideration shall result in immediate revocation of the transfer credit.~~
- ~~13. Violation of the prohibition on the transfer of water credit for money or other valuable consideration is a misdemeanor as provided in Section 256 of the Monterey Peninsula Water Management District Law.~~
- ~~14. Transfer of water use credits shall not be approved by the Board of Directors if the effect of the transfer shall cause the originating site to have insufficient water credit to meet the water use capacity requirements of all existing structures on the transferring property site. If all prior water use is transferred from a site (due to demolition of all structures), the transfer shall be approved only upon the removal of the meter connection from the originating site, and the recordation of the notice specified above.~~
- ~~15. The effect of any approved water credit transfer shall be the irrevocable extinction of any right or entitlement to the actual water use, water use capacity, or water credit which has been transferred from the originating (transferring) site.~~
- ~~16. Before any water use credit transfer shall occur, the transfer fee required by Rule 60 for each originating site shall be paid by the applicant.~~

Water use credits for existing water use which has been allowed by the District on or after January 1, 1985, may be transferred from one property to another for commercial and industrial connections pursuant to this Rule. Commercial and industrial water credits may also be transferred directly into a jurisdiction's allocation. Open space and residential water use shall not be transferred. The following conditions shall apply:

- 1. Water use credit transfers shall only occur within a single jurisdiction. No inter-jurisdictional transfer shall be allowed. Property-to-property transferred water credits shall not have any impact on a jurisdiction's allocation. Property-to-jurisdiction transfers shall increase a jurisdiction's available allocation.***
- 2. Water use credit transfers shall only occur within a single water distribution system. No inter-system transfers shall be allowed.***
- 3. Water use credit transfers shall only occur with the prior approval of the city, county or airport district.***

4. *The effect of any approved water credit transfer shall be the irrevocable extinction of any right or entitlement to the actual water use, water use capacity, or water credit which has been transferred from the originating (transferring) Site.*
5. *Water use credit transfers shall only be allowed from an existing commercial or industrial use, and must be applied to the intensification of another existing commercial or industrial use or added to a jurisdiction's allocation. Other than transfers that add to a jurisdiction's allocation, transfer credits shall not originate from, or be transferred to, any residential use. Transfer credits shall not derive from any prior open space water use.*
6. *Property-to-property commercial water use credit transfers shall only enable intensification of an existing commercial or industrial water use capacity, as proposed by a current application for a water permit. Transfers shall not provide water use capacity for new commercial or industrial water meter connections. Transferred water credits shall not be "banked" for future use at any new or different Site.*
7. *The use of credits resulting from a property-to-jurisdiction transfer shall be at the discretion of the jurisdiction. Every jurisdiction utilizing water from a property-to-jurisdiction transfer shall account for all water that was received through a water credit transfer, and shall clearly identify applicants that are authorized to use water from a commercial-to-public transfer on the Water Release Form and Water Permit Application.*
8. *All water use credit transfers shall originate only from prior documented commercial water use capacity and shall be subject to each and every limitation on the calculation of water use credits set forth in Rule 25.5.*
9. **Calculation of Transferable Water Use Credit.**
 - a. *The General Manager shall (1) categorize water use on the originating (donor) Site (i.e. Group I, Group II or Group III as listed in Rule 24, Table 2: Commercial Water Use Factors), (2) quantify the water use capacity existing on that Site, and (3) quantify the average actual annual water use for that Site.*
 - b. *The General Manager shall calculate average actual annual water use using the preceding ten (10) year record. When a ten year record is not available, the maximum number of annual water use records available, but no less than the preceding five (5) consecutive years of water use records, shall be the used to compute the average actual water use for that Site. No transferable water credit shall be available if the minimum water use record is unavailable.*

- c. *The General Manager shall calculate transferable credit from demolition of a use by using the lesser of (a) factored use; or (b) average actual water use.*
- ~~d.~~ *Transfer of water use credits shall not be approved by the General Manager if the effect of the transfer shall cause the originating Site to have insufficient water credit to meet the water use capacity requirements of all existing structures on the transferring property Site. If all prior water use is transferred from a Site (due to demolition of all structures), the transfer shall be approved only upon the removal of the meter connection from the originating Site, and the recordation of the notice specified above.*
- e. *Transfer of water use credits shall only occur upon approval by the General Manager. The General Manager shall have sole and exclusive authority to determine the water use capacity that cannot be transferred by reason of capacity requirements for the originating Site.*

10. Originating Site Deed Restriction.

- a. *All transfers of water use credits shall occur only by the written (and recorded) agreement of the owner of record for the originating Site.*
- b. *This agreement shall confirm that the transfer of water credit is irrevocable, shall quantify remaining water use capacity required by the originating parcel(s), and acknowledge that any intensification of water use capacity on the originating Site thereafter shall require a water permit and may result in additional connection charge fees and a water debit from the jurisdiction authorized by a signed Water Release Form and Water Permit Application.*
- c. *If all prior water use capacity is transferred from a Site (due to demolition of all structures on that Site), the recorded agreement and notice shall consent to permanent removal of the meter connection from the originating Site, and acknowledge that the placement of a new meter shall be limited due to unavailability of water.*
- d. *The property owner(s) shall consent to continuous monitoring of actual water use on the donor Site and to public disclosure of that water use data for ten years after transfer. This agreement shall run with the land and shall apply to any and all water meter accounts serving the originating Site. This requirement shall*

include water meter accounts held by the property owners, property managers, renters or any other persons, firms or other entities that occupy the property or use water during the reporting time specified by the General Manager.

11. Receiving Site Deed Restrictions.

- a. Each property owner receiving water originating from a property-to-property Water Use Credit Transfer shall consent to continuous monitoring of actual water use on the recipient Site and to public disclosure of that water use data for five years prior to issuance of a water permit utilizing any portion of water that originated from a Water Use Credit transfer and for five years after project occupancy. This agreement shall run with the land and shall apply to any and all water meter accounts on the receiving Site. This requirement shall include water meter accounts held by the property owners, property managers, renters or any other persons, firms or other entities that occupy the property during the reporting time specified by the General Manager.*
- b. For properties where a new or expanded water use is allowed by a property-to-jurisdiction transfer, the owner(s) of the receiving property shall agree to the same conditions as required for a property-to-property transfer, including deed restrictions authorizing consent to monitoring and public disclosure of water use data.*
- c. The General Manager shall have sole and exclusive authority to determine the water use capacity requirements for the receiving Site.*

12. *The General Manager shall not approve any water credit transfer where money or other valuable consideration has been given in exchange for the water credit transfer. The General Manager shall not approve any capacity for expanded water use deriving from a transferred water credit in any circumstance where money or other valuable consideration has been given in exchange for use of the water credit. These limitations shall nonetheless allow the recipient of a water credit transfer to reimburse the donor of that credit for connection fees previously paid to the District for that increment of water.*

- a. Violation of the prohibition on the transfer of water credit for money or other valuable consideration shall result in immediate revocation of the transfer credit.*
- b. Violation of the prohibition on the transfer of water credit for money or other valuable consideration is a misdemeanor as*

provided in Section 256 of the Monterey Peninsula Water Management District Law.

13. *Before any water use credit transfer shall occur, the applicant shall pay the transfer fee required by Rule 60 for each originating Site. Every applicant applying for a permit using water that originated from a Water Use Credit Transfer under this rule shall be subject to administrative fees as shown in Rule 60.*
14. *All properties receiving water from a property-to-jurisdiction transfer shall receive a water permit from the District prior to issuance of a building permit by the jurisdiction.*
15. *Upon approval of a Water Use Credit Transfer, the jurisdiction in which the transfer occurs shall receive written notification of the action. The jurisdiction shall be notified of the precise amount of water that has either been applied to a water permit (commercial-to-commercial transfer) or has been transferred into the jurisdiction's water allocation (commercial-to-jurisdiction).*

Section Four: Standard Conditions of Approval

The following text in *bold italics* shall be added as District Rule 28-C, Standard Conditions of Approval for Water Use Credit Transfers. These conditions shall be applied to all Water Use Credit Transfers processed pursuant to Rule 28-B.

1. *The property owner(s) of the originating Site of a Water Use Credit transfer shall consent to continuous monitoring of actual water use on the donor Site, and to public disclosure of that water use data, for a minimum of ten years after transfer. This agreement shall run with the land and shall apply to any and all water meter accounts on the originating Site. This requirement shall include water meter accounts held by the property owners, property managers, renters or any other persons, firms or other entities that occupy the property or use water during the reporting time specified by the General Manager.*
2. *The property owner of the originating Site and the applicant to transfer from the originating Site shall each complete a Declaration Regarding Consideration Given for Transferred Water Use Credits for each application to transfer a Water Use Credit pursuant to Rule 28-B.*
3. *The property owner of a site receiving water from a Water Use Credit transfer shall consent to continuous monitoring of actual water use on the recipient Site, and to public disclosure of that water use data, for five years prior to issuance of a water permit utilizing any portion of water that originated from a Water Use Credit transfer and for five years after project occupancy. This agreement shall run with the land and shall apply to any and all water meter accounts on the receiving Site. This*

requirement shall include water meter accounts held by the property owners, property managers, renters or any other persons, firms or other entities that occupy the property during the reporting time specified by the General Manager.

4. *The property owner of a site receiving water from a Water Use Credit transfer and his agent as specified on the Water Release Form shall each complete a Declaration Regarding Consideration Given for Transferred Water Use Credits for each application for a water permit that utilizes a transferred Water Use Credit.*
5. *Prior to issuance of a water permit, the water permit applicant utilizing any portion of a transferred Water Use Credit shall submit fees as required by District Rule 60.*
6. *Prior to occupancy of any project that received a water permit by using any portion of a transferred Water Use Credit, a final inspection by the District shall be required prior to occupancy.*

Section Five: Amendment to Rule 63, Miscellaneous Fees

The following bold and italicized text shall be added to District Rule 63 shall be amended to add the following fees:

F. Fee for Water Use Credit Transfer:

1. Administrative fee to receive, process, monitor, review and enforce transfer applications pursuant to Rule 28: \$2,240 (for first thirty-five (35) hours of staff time; \$70 per hour for each matter that requires additional time in excess of thirty-five (35) hours. A separate fee shall be assessed for each transfer site.

2. Administrative fee to monitor and review water permit applications receiving water from a Rule 28 transfer: \$700 (for first ten (10) hours of staff time; \$70 per hour for each matter that requires additional time in excess of ten (10) hours. A separate fee shall be assessed for each transfer site.

G. Fee for Review of New or Unproven Water Saving Technology:

1. Administrative fee to review projects that utilize new water saving technology prior to submittal of a complete water permit application: \$2,800 for the first forty (40) hours of staff time; \$70 per hour for each matter that requires additional time in excess of forty (40) hours.

- a. *Prior to approval of water savings associated with new water saving technology, the applicant shall pay any additional fees incurred by the District for independent verification of water savings associated with the new technology. Applicant shall be given an estimate of the cost of any additional review and shall*

have the opportunity to withdraw the application prior to the District engaging in such a review.

H. Administrative fee to monitor, review and enforce applications and/or permits for Special Circumstance under Rule 24-G: \$1,400 (for first twenty (20) hours of staff time; \$70 per hour for each matter that requires additional time in excess of twenty (20) hours.

Section Six: Publication and Application

The provisions of this ordinance shall cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

Section Seven: Effective Date and Sunset

This ordinance shall take effect at 12:01 a.m. on August 1, 2004.

This Ordinance shall not have a sunset date.

Section Eight: Severability

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

On motion by Director _____, and second by Director _____, the foregoing ordinance is adopted upon this _____ day of _____, 2004, by the following vote:

AYES:

NAYS:

ABSENT:

I, _____, 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 _____ 2004.

Witness my hand and seal of the Board of Directors this _____ day of _____ 2004.

Secretary to the Board

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