

## ORDINANCE NO. 107

### AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT RESCINDING ORDINANCE NO. 102 AND REINSTATING RULE 28, WATER USE CREDIT TRANSFERS

#### 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. This ordinance reinstates District Rule 28 that allows transfer of water credits from one commercial site to another and that allows water to be transferred from a commercial site directly into a jurisdiction's water allocation.
4. This ordinance shall amend and republish Rule No. 28 ("Transfer") of the Rules and Regulations of the Water Management District.
5. This ordinance resolves the cities litigation with the Monterey Peninsula Water Management District regarding environmental review of the water credit transfer ban. Reinstatement of the transfer credit rules is a short-term interim measure until an EIR on the transfer program can be certified. Two detailed studies exist that concluded that water credit transfers resulted in system-wide increased water usage following the transfers than prior to the transfers. Further, this Board is very concerned that the transfer credit program harms the environment, has been subject to abuses, and violates State Water Resources Control Board Order 95-10. It is the Board's intention that the EIR be completed as quickly and accurately as possible, and that the water credit transfer program will be amended promptly thereafter to address concerns about negative environmental impacts and public fairness.

NOW THEREFORE be it ordained as follows:

#### ORDINANCE

**Section One:**                    **Short Title**

This ordinance shall be known as the Water Credit Transfer Reinstatement Ordinance of the Monterey Peninsula Water Management District.

**Section Two:**            **Purpose**

This ordinance republishes water use credit transfer provisions formerly set forth in District Rule 28.

**Section Three:**            **Rescind Ordinance No. 102**

This ordinance rescinds Ordinance No. 102, adopted on February 28, 2002.

**Section Four:**            **Rule 28 Reinstated**

District Rule 28 shall read as follows:

A. **TRANSFER LIMITATION**

Any permit issued pursuant to these regulations may be transferred from one person to another, upon written notification to the District, except as follows:

1. Permits may not be transferred from one location to another, except as provided by Part B of this Rule;
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.
3. 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.

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. 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 transfer shall be allowed.
3. Water use credit transfers shall only occur with the prior approval of the city, county or airport district.

4. 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.
5. 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.
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 transfers shall be at the discretion of the jurisdiction.
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. All transfers of water use credits shall occur only by written (and recorded) agreement of (1) the owner of record for each parcel from which the transfer originates and (2) the owner of record for each parcel receiving a transferred water credit. The originating site 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. The agreements recorded on both the originating site and the receiving site shall contain a declaration made by the owner of record under penalty of perjury that, other than reimbursement for the Rule 24 connection fee that would apply to the water use capacity, no money or other valuable consideration has been given or received in exchange for the water credit transfer. 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.
10. Transfer of water use credits shall only occur upon approval by the District. The District 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 District shall have sole and exclusive authority to determine the water use capacity requirements for the receiving site. The District shall not approve any water credit transfer where money or other valuable consideration has been given in exchange for the water credit transfer. The District 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 Rule 24 connection fees that would apply to the water use capacity.

1. 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.
11. Transfer of water use credits shall not be approved by District staff 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.
  12. 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.
  13. 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.

(Added by Ordinance No. 1 (2/11/80); formerly Rule 223; renumbered by Ordinance No. 6 (5/11/81); formerly Rule 27, amended by Ordinance No. 8 (1/14/81); amended by Ordinance No. 71 (12/20/93); amended by Ordinance No. 79, (9/18/95); amended by Ordinance No. 97 (3/19/2001)

**Section Five:**                    **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 Six:**                    **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading.

This Ordinance shall not have a sunset date.

**Section Seven:**                    **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 Pendergrass, and second by Director Edwards, the foregoing ordinance is adopted upon this 19th day of May, 2003, by the following vote:

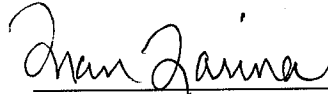
AYES: Director Edwards, Henson, Lehman, Lindstrom and Pendergrass

NAYS: Director Erickson

ABSENT: Director Potter

I, Fran Farina, 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 19th day of May 2003.

Witness my hand and seal of the Board of Directors this 20th day of May 2003.



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Fran Farina, Secretary to the Board