

ORDINANCE NO. 108

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING RULE 28-B
TO CLARIFY THE DISCRETIONARY REVIEW OF
WATER CREDIT TRANSFER APPLICATIONS BY BOARD OF DIRECTORS**

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 from an existing non-residential use to another expanding non-residential use or to a jurisdiction for use at its discretion. Although the stated purpose of the water credit transfer program is to promote and accelerate the permanent abandonment of water use, recent analysis shows that the existing water transfer rules have not resulted in the anticipated savings of water, and may have resulted in an increase in water usage by reason of the transfer.
4. The proposed ordinance amends Rule 28-B to clarify the Board of Directors discretionary authority to approve a water credit transfer, after consideration of the impacts of the application under consideration and the cumulative impacts of other transfers, if the transfer will not have an adverse impact on the water supply. The proposed ordinance thus provides for broad environmental review of water transfer applications, and clarifies the Board of Directors broad discretionary authority to consider those applications in light of the District's mandate to maintain, restore, and enhance ground and surface water on the Monterey Peninsula for the benefit of the environment.
5. The Board of Directors determines that this ordinance is an action taken by a regulatory agency as authorized by state or local ordinance to assure the maintenance, restoration, and enhancement of a natural resource and to assure the maintenance, restoration, enhancement, and protection of the environment where the regulatory process involves procedures for protection of the environment, and therefore finds that enactment of this ordinance is categorically exempt from the requirements of the California Environmental Quality Act under sections 15307 and 15308 of the CEQA Guidelines.

6. 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 Rule 28-B Authority Amendment Ordinance.

Section Two: **Purpose**

This ordinance revises, amends and republishes water use credit provisions set forth in District Rule 28-B.

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

District Rule 28-B, Property-To-Property And Property-To-Jurisdiction Transfers Of Water Use Credits For Commercial And Industrial Uses, shall be amended as follows, where the portion set forth in ~~strikeout~~ is deleted and the portion set forth in ***bold face*** is added:

“28-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.***

- 1.2. 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.
- 2.3. Water use credit transfers shall only occur within a single water distribution system. No inter-system transfers shall be allowed.
- 3.4. Water use credit transfers shall only occur with the prior approval of the city, county or airport district.
- 4.5. 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.
- 5.6. 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.
- 6.7. 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.
- 7.8. The use of credits resulting from a property-to-jurisdiction transfer shall be at the discretion of the jurisdiction.
- 8.9. 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.
- 9.10. 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.

~~10-11.~~ Transfer of water use credits shall only occur upon approval by the ~~District~~ **Board of Directors**. The ~~District~~ **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 ~~District~~ **Board of Directors** shall have sole and exclusive authority to determine the water use capacity requirements for the receiving site. The ~~District~~ **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 ~~District~~ **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.

- 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.

~~11-12.~~ Transfer of water use credits shall not be approved by ~~the Board of Directors~~ 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.

~~12-13.~~ 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.

~~13-14.~~ 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.”

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 Lehman, and second by Director Erickson, the foregoing ordinance is adopted upon this 19th day of May 2003, by the following vote:


AYES: Directors Erickson, Henson, Lehman and Lindstrom

NAYS: Directors Edwards and Pendergrass

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 20 day of May 2003.



Fran Farina, Secretary to the Board