

Adopted on September 17, 2012 – Effective on October 17, 2012

ORDINANCE NO. 154

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
TOLLING WATER USE CREDITS AFFECTED BY
STATE WATER RESOURCES CONTROL BOARD ORDER WR 2009-0060**

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. 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).
3. California State Water Resources Control Board (SWRCB) Order No. WR 95-10, issued on July 6, 1995, ruled that California American Water did not have a legal right to take approximately 69 percent of the water supplied to California American Water users at that time.
4. SWRCB Order No. 95-10 directed California American Water to reduce its average historical diversions by 15 percent in Water Year 1996 and 20 percent in each subsequent year until its unlawful diversions were terminated.
5. A Cease and Desist Order (CDO) (SWRCB Order WR 2009-0060) was issued on October 20, 2009, by the SWRCB against California American Water (Cal-Am). The CDO prescribes a series of significant cutbacks to Cal-Am's pumping from the Carmel River from 2010 through December 2016. Cal-Am customers may be subject to water rationing, a moratorium on Water Permits for new construction and remodels, and fines if pumping limits are exceeded. The CDO is expected to remain in place until unlawful diversion of Carmel River water ceases.

6. The first ordering paragraph of the 2009 CDO requires that Cal-Am "shall terminate all unlawful diversions from the [Carmel River] no later than December 31, 2016."
7. The second ordering paragraph, Condition 2, states: "Cal-Am shall not divert water from the Carmel River for new service connections or for any increased use of water at existing service addresses resulting from a change in zoning or use. Cal-Am may supply water from the river for new service connections or for any increased use at existing service addresses resulting from a change in zoning or use after October 20, 2009, provided that any such service had obtained all necessary written approvals required for project construction and connection to Cal-Am's water system prior to that date."
8. California Public Utilities Commission (Decision 1103048 rendered March 24, 2011) authorized a water moratorium on certain customers of California American Water.
9. After the 2009 CDO was issued, legal actions were brought separately by Cal-Am and MPWMD, and later by three Carmel River resorts, seeking to invalidate that CDO. These actions were later transferred and consolidated under Case No. 1-10-CV163328 in the Santa Clara County Superior Court. The City of Seaside, City Of Monterey, City Of Carmel-by-the-Sea, City of Sand City (collectively "Cities"), Sierra Club, and Carmel River Steelhead Association each intervened in these legal actions.
10. All Parties completed multiple days of settlement negotiations, including mediation by the Hon. Richard M. Silver (Ret.), during which the Parties made substantial progress on key issues. All Parties agreed to terminate the consolidated cases without prejudice and toll applicable statute(s) of limitations to collectively focus their attention on development of alternative water supplies for the Monterey region to the benefit of Cal-Am's customers and the South Central California Coast Steelhead and to comply with the CDO.
11. The Parties agreement to dismiss the Cases without prejudice was based on the express representation and agreement by all Parties (including Real Party-in-Interest and Interveners) that any and all statutes of limitations related to any future civil action(s) for judicial review of the CDO, as to any claims alleged in the MPWMD and Cal-Am Cases, have been and will be tolled during the tolling period for the benefit of Petitioners and the Intervener Cities.
12. This ordinance is in accord with the Stipulation Staying Case and Tolling Statute of Limitations served on June 4, 2012, between Quail Lodge, Inc., CVR HSGE, LLC, and Bay Laurel, LLC, and the SWRCB and Does 1-30, inclusive, staying Case No. 110CV183439.
13. Upon completion of a water supply project or projects that legalize the water supply for the California American Water Company, this ordinance will reinstate each Water Use Credit affected by State Water Resources Control Board Order WR 2009-0060 (Cease and Desist Order or CDO). A Water Use Credit documented prior to the CDO will be reinstated with the same value and term as existed on the date of the CDO. A Water Use Credit documented after the CDO will be reinstated with the initial term allowed by Rule 25.5. In the event that any portion of a Water Use Credit is used prior to the reinstatement

date, the amount of the reinstated Water Use Credit will be reduced to reflect the remaining amount.

14. This ordinance is subject to the California Environmental Quality Act (CEQA) and was processed under a Negative Declaration (ND). This measure shall incorporate the Board's adoption and approval of the ND. The Board considered the ND, together with all comments received during the public review process. Adoption of the ND is based upon the determination, on the basis of the whole record before it (including the Initial Study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment. The ND reflects the Board's independent judgment and analysis.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the **2012 Water Use Credit Tolling Ordinance** of the Monterey Peninsula Water Management District.

Section Two: Statement of Purpose

This ordinance shall reinstate Water Use Credits affected by the State Water Resource Control Board's (SWRCB) Order WR 2009-0060 when the CDO no longer has any force or effect.

Section Three: Reinstatement of Water Use Credits Following Cease and Desist Order

Following completion of a water supply project or projects that legalize California American Water's water supply, a Water Use Credit affected by State Water Resources Control Board Order WR 2009-0060 (Cease and Desist Order or CDO) shall be reinstated. A reinstated Water Use Credit shall have the same value and term as existed on the date of the CDO. A Water Use Credit documented after the CDO will be reinstated with an initial term of 60 months or as allowed by Rule 25.5. In the event that any portion of a Water Use Credit has been used prior to the reinstatement date, the amount of the Water Use Credit will be reduced to reflect the remaining amount.

Section Four: Publication and Application

The provisions of this ordinance shall be distributed together with the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

Section Five: Effective Date

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

Section Six: Sunset

This ordinance shall not have a sunset date.

Section Seven: 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 Markey, and second by Director Lehman, the foregoing ordinance is adopted upon this 17th day of September 2012, by the following vote:

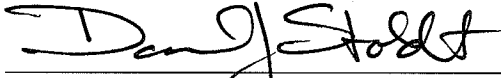
AYES: Directors Markey, Lehman, Brower, Byrne, Lewis, Pendergrass and Potter

NAYS: None

ABSENT: None

I, David J. Stoldt, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing ordinance was duly adopted on the 17th day of September, 2012.

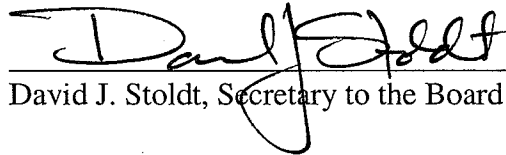
Witness my hand and seal of the Board of Directors this 27th day of September, 2012.



David J. Stoldt, Secretary to the Board

COPY CERTIFICATION

I, David J. Stoldt, 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 Ordinance No. 154 duly adopted on the 17th of September, 2012.



David J. Stoldt, Secretary to the Board

9.25.12
Date