

# FINAL

## ORDINANCE NO. 95

### AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT TEMPORARILY SUSPENDING RECEIPT OF APPLICATIONS FOR WATER 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 enacted, by ordinance, a set of Rules and Regulations to implement its statutory authority. District Rule 28, first enacted on February 11, 1980, and most recently amended on September 18, 1995, sets forth in Part B a mechanism by which the District can approve the transfer and re-use of water use credits from one property to another, or from a property to a jurisdiction.
3. District Rule 25.5 sets forth the process by which a water use credit can be obtained. This rule requires that eighty-five percent (85%) of prior water use capacity will be credited upon the abandonment of any water use, causing an anticipated net conservation of fifteen percent (15%). This conservation requirement is incorporated into the water credit transfer rule at Rule 28 B 8.
4. State Water Resources Control Board (SWRCB) Order No. WR 95-10 ruled that California-American Water Company (Cal-Am) did not have a legal right to take approximately sixty-nine percent (69%) of the water currently supplied to Cal-Am users. The SWRCB has set specific goals to reduce water diversions from the Carmel River Basin.
5. SWRCB Order No. WR 95-10 required Cal-Am to reduce its historical diversion from the Carmel River Basin to no more than 11,285 acre feet in any single year.
6. Several issues of concern have arisen respecting the water credit transfer process enabled by Water Management District Rule 28 B. The fifteen percent (15%) conservation reduction is a goal that pre-dates water use limitations imposed by the SWRCB in Order No. WR 95-10. The continued propriety of the transfer process, and the adequacy of the fifteen percent (15%) conservation reduction, has been questioned by officials of the SWRCB and members of the public. The Chief of the Division of Water Rights has stated the transfer program violates Order No. WR 95-10 and asserts the SWRCB shall further reduce the amount of water that Cal-Am is allowed to take from the Carmel River if further water credit transfers are allowed.

7. Preliminary analysis of water credit transfers approved to date have not verified the fifteen percent (15%) conservation reduction contemplated by Rules 25.5 and 28 B. Water Management District staff has been directed to further examine the impact of those credit transfers on actual water use, and report those findings to the Water Management District board of directors.
8. The Water Management District has not undertaken a comprehensive review of its Rules and Regulations to assess appropriateness and effectiveness in light of SWRCB Order No. WR 95-10. The effectiveness of Rule 28 B in saving water has not been researched since its enactment in 1995.
9. Members of the public have requested that the water credit transfer provisions of Rule 28 B be modified. Requested modifications range from expanding the transfer program, to abolishing it.
10. The public and board have raised important issues regarding the adequacy of the fifteen percent (15%) conservation reduction, cumulative impacts that may result from a multitude of transfers, environmental impacts that may result from a single large transfer, and the propriety of the transfer of water use in light of SWRCB Order No. WR 95-10.
11. The Water Management District board of directors has sought input from both the Technical Advisory Committee and the Policy Advisory Committee prior to making a determination as to permanent modification of Rule 28 B. Further, any modification of that rule will need to comply with the requirements of the California Environmental Quality Act.
12. A focused review of District Rule 28 B must be completed in a timely fashion. The orderly examination of the complex issues surrounding water credits and their transfer would be hampered if staff is simultaneously required to process new transfer applications. Without proof of Rule 28 B's effectiveness in saving water, continued acceptance of new applications may jeopardize the Water Management District's ability to meet its legislative mandate.
13. The board of directors determines that this ordinance will not cause a direct or indirect physical change in the environment, and therefore finds that enactment of this ordinance does not meet the definition of a "project" under section 21065 of the CEQA Guidelines.
14. This ordinance shall amend part B of Rule 28 ("Transfer") 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 Transfer Application Suspension Ordinance of the Monterey Peninsula Water Management District.

### Section Two:            Purpose

This ordinance temporarily suspends the authority of the Water Management District to receive any water credit transfer application under District Rule 28 B.

### Section Three:        Temporary Amendment of Rule 28 B

District Rule 28 B shall be amended by adding the following portion set forth in italicized and bold face type (*bold face*).

14. *Prior to the sunset date for Ordinance 95 (the Transfer Application Suspension Ordinance), the District shall accept only those water credit transfer applications that meet each of the following criteria:*

- *The proposed transfer shall be limited to “like to like” commercial to commercial or industrial to industrial water use; that is, the water use factor for the receiving site, as shown on Table II in Rule 24, shall be the same factor that applied to the originating site at the time the credit was established; and,*
- *The payment of money or other value in compensation for the transfer shall not exceed the connection fee that would apply to the increment of water use capacity pursuant to Rule 24; and,*
- *Each other provision of Rule 28 B shall be satisfied.*

*Except as provided above, and notwithstanding any other provision of this Rule 28 B, the Water Management District shall not accept any other water credit transfer application pursuant to Rule 28 prior to the sunset date for Ordinance 95. This limitation shall include any transfer application that proposes to enable a commercial to jurisdiction or an industrial to jurisdiction water transfer.*

**Section Four:**            **Publication and Application**

The provisions of this ordinance shall not cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District. During the period it has force and effect, however, the full text of this ordinance shall be bound together with those permanent Rules and Regulations, and a reference to Rule 28 B 14 shall be annotated in each copy of the official set of those Rules and Regulations.

Section titles and captions are provided for convenience and shall not be construed to limit the application of the text.

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

This ordinance shall be given effect at 12:01 a.m. on the day following its adoption on second reading.

This ordinance shall become null and void, and cease to have any continuing effect on the day following the sunset date as defined herein. The sunset date shall be the ninety-first (91<sup>st</sup>) day following adoption on second reading, provided however, that the board of directors may extend this sunset date in the event additional time is required to review and research water credit transfer issues.

Each extension of the sunset date shall be limited to a period of ninety (90) days, and shall be authorized by motion (4 votes in favor) at a regular meeting of the board of directors. No more than two extensions shall be permitted under this ordinance. Accordingly, the maximum length of time this ordinance may have effect shall be 271 days.

**Section Six:**            **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 of Director Henson, and second by Director Lindstrom, the foregoing ordinance is adopted upon this 19<sup>th</sup> day of June, 2000, by the following vote:

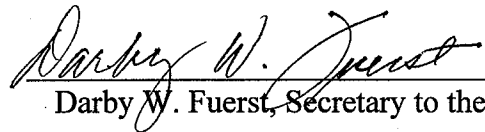
**AYES:**     Directors Erickson, Henson, Lindstrom, and Potter

**NAYS:**     Directors Chesshire, Edwards, and Pendergrass

ABSENT: None

I, Darby 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 19th day of June, 2000.

Witness my hand and seal of the Board of Directors this 22<sup>nd</sup> day of June, 2000.

  
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Darby W. Fuerst, Secretary to the Board

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