

ORDINANCE NO. 97

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AMENDING WATER USE CREDIT TRANSFER RULES

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. Existing rules of the Water Management District enable transfer of water credits from one existing non-residential site to another existing non-residential site to allow intensification of water use on the receiving site.
4. Existing Water Management District rules also allow transfer of water credits directly into a jurisdiction's water allocation.
5. Existing rules of the Water Management District are silent as to the amount of money or other consideration that may be charged or exacted in relation to the transfer of a water credit. This ordinance states that District permits shall not be issued to enable the use of transferred water credits in the event the transfer is connected with, or conditioned upon, exchange of consideration, including money, compensation or other exchange of value.
6. This ordinance shall amend and republish Rule No. 28 ("Transfer") of the Rules and Regulations of the Water Management District.
7. Several jurisdictions have facilitated property-to-jurisdiction transfers, and other similar transfers are pending review and possible approval. Public awareness and concern has increased regarding the rules and limits that apply to such transfers. Prompt action is required to avoid undue delay for all such contemplated water credit transfers. Accordingly, this ordinance shall be deemed an urgency measure, and take effect at 12:01 a.m. on the day

after it has been enacted on its first reading, provided it is approved as an urgency measure with an affirmative vote of at least five (5) members of the board of directors.

8. In the event this ordinance is approved as a non-urgency measure, or in the event it is approved only on the affirmative vote of four (4) members of the board of directors, then this ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading.
9. It is the intent of the Board of Directors to periodically review the provisions of this ordinance.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: **Short Title**

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

Section Two: **Purpose**

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

Section Three: **Amendment of Rule 28 (Transfer)**

District Rule 28 B shall be amended by adding the portion set forth in italicised and bold face type (***bold face italic***). In all other respects, the text of District Rule 28 shall be republished by this ordinance.

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. 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 transfer 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 *the* 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.*
- 10A. *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.*
- 10B. *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.

Section Four: **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 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 deemed an urgency measure, and take effect at 12:01 a.m. on the day after it has been enacted on its first reading, provided it is approved as an urgency measure with an affirmative vote of at least five (5) members of the board of directors.

In the event this measure is approved on the affirmative vote of at least four (4) members of the board of directors, without urgency effect, then 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 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 Erickson, the foregoing ordinance is adopted upon this 19th day of March, 2001, by the following vote:

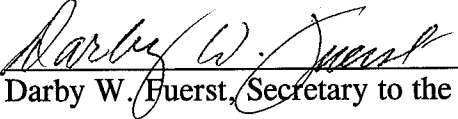
AYES: Directors Erickson, Henson, Lindstrom, Pendergrass and Potter

NAYS: Directors Chesshire and Edwards

ABSENT: None

I, Darby W. 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 March, 2001.

Witness my hand and seal of the Board of Directors this 4th day of April, 2001.



Darby W. Fuerst, Secretary to the Board

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Modified on February 14, 2001 (3:45 PM)