

*Revoked By Motion of the Board on December 17, 2001*  
**ORDINANCE NO. 101**

**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 use to allow intensification of water use on another site. Although the stated purpose of the water credit transfer rules is to promote and accelerate the permanent abandonment of water use, recent analysis shows that the existing water transfer rules do not guarantee that water is in fact saved, and may induce increased use by reason of the transfer.
4. This ordinance shall modify the methodology used to calculate transferable Water Use Credits to ensure that the transferred amount of water correlates closely to the water capacity in use on the originating site prior to transfer.
5. This ordinance shall modify the percentage of savings retained by the District as a permanent reduction in use and shall credit an increment of savings to the governing jurisdiction for use at its discretion.
6. The ordinance shall implement a process to review water use at the originating and receiving sites and shall provide a mechanism to adjust the allocation of the jurisdiction in the event that water use on either site is higher than anticipated by the District during the review period.
7. This ordinance shall establish processing fees for annual review by the District of the water use at the originating and receiving sites.
8. This ordinance shall amend and republish Rule No. 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 Water Credit Transfer Program Amendment 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 deleting the portion set forth in ~~strikeout type (strikeout)~~ and adding the portion set forth in **italicized and underlined bold face type (bold face)**. 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

U:\staff\wp\ordinances\final\ord101.wpd

Ordinance No. 101 Revised January 30, 2002

An Ordinance of the Board of Directors of MPWMD Amending Water Credit Transfer Rules

Page 2

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. ~~5.~~ 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. ~~6.~~ The use of credits resulting from a property-to-jurisdiction transfer shall be at the discretion of the jurisdiction. Every jurisdiction utilizing water from a property-to-jurisdiction transfer shall account for all water that was received through a water credit transfer, and shall clearly identify applicants that are authorized to use water from a commercial-to-public transfer on the Water Release Form and Water Permit Application.
7. Calculation of Transferable Water Use Credit: Prior to approving any Water Use Credit transfer, the General Manager shall (a) categorize water use on the originating (donor) site (i.e. Group I, Group II or Group III), (b) quantify the water use capacity existing on that site, and (c) quantify the average actual annual water use for that site. The preceding five (5) year water use record shall be the minimum required to compute this average, but the preceding ten (10) year record shall be used if it is available. Water credit calculations for each site shall be based only on the increment of water use based on the smaller quantity shown under (b) - water use capacity or (c) average actual annual water use, whichever amount is less. Each commercial-to-commercial transfer under this Rule shall enable re-use of only fifty percent (50%) of the full increment of water available for transfer; thirty-five percent (35%) of the water available for transfer shall be retained by the District and therefore "retired from use" and fifteen percent (15%) shall be credited to the governing jurisdiction's public water allocation. Each commercial-to-jurisdiction transfer under this Rule shall enable re-use of sixty-five percent (65%) of the full increment of water available for transfer; thirty-five percent (35%) of the water available for transfer shall be retained by the District and therefore "retired from use." The remainder shall be used 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, and shall be subject to such further conditions as may be imposed on the transfer by the General Manager.

9. Water use records for the receiving and originating sites shall be reviewed annually for a period of at least five (5) years to determine whether actual water use exceeds the increment of water allowed by the credit transfer. If records indicate that water use exceeded the annual increment allowed by the credit transfer, a copy of the report shall be sent to the property owners and to the municipal jurisdiction. At the end of the five (5) year period, a debit shall be made to the jurisdictional allocation in the event average annual water use exceeds water use permitted by the transfer. The property owner of the property exceeding the transferred amount shall be charged the connection charge associated with the increment of water in excess of the amount allowed by the transfer.

10. For properties where a new or expanded water use is allowed by a property-to-jurisdiction transfer, the owner(s) of the receiving property must agree to the same conditions as required for a property-to-property transfer, including deed restrictions authorizing consent to monitoring and public disclosure of water use data, and potential fees associated with connection charges for use of water in excess of the amount of water transferred. All properties receiving water from a property-to-jurisdiction transfer must receive a water permit from the District prior to issuance of a building permit by the jurisdiction.

~~9-11.~~ All transfers of Water Use Credits shall occur only by the written (and recorded) agreement of the owner of record for the originating site and the receiving site, including properties that receive water from a jurisdiction that originated from a commercial-to-jurisdiction transfer each parcel from which the transfer originates, and (2) the owner of record for each parcel receiving a transferred water credit. Each property owner shall consent to continuous monitoring of actual water use on both the donor and recipient site and public disclosure of that water use data for a minimum of five years after project completion. 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.

~~10-12.~~ Transfer of water use credits shall only occur upon final approval by the General Manager. The General Manager 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 General Manager shall have sole and exclusive authority to determine the water use capacity requirements for the receiving site. The General Manager shall not approve

any water credit transfer where money or other valuable consideration has been given in exchange for the water credit transfer. The General Manager 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.

- 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- ~~13.~~ Transfer of Water Use Credits shall not be approved by *the* General Manager 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- ~~14.~~ 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- ~~15.~~ 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. *Every applicant applying for a permit using water that originated from a Water Use Credit transfer under this rule shall be subject to administrative fees as shown in Rule 60, L.*

**Section Four:           Amendment of Rule 60, Permit Fees**

District Rule 60 shall be amended to add the following fees:

- L. Administrative fee to monitor, review and enforce transfer applications and/or permits pursuant to Rule 28: \$1,400 (for first twenty (20) hours of staff time; \$70 per hour for each matter that requires additional time in excess of twenty (20) hours. A separate fee shall be assessed for each transfer site.*
- M. Administrative fee to monitor, review and enforce applications and/or permits for Special Circumstance under Rule 24-G: \$1,400 (for first twenty (20) hours of staff time; \$70 per hour for each matter that requires additional time in excess of twenty (20) hours.*

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

**Section Six:            Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 30<sup>th</sup> 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 of Director Edwards, and second by Director Chesshire, the foregoing ordinance is adopted upon this 19th day of November, 2001, by the following votes:

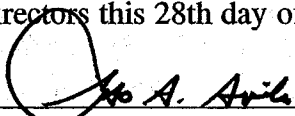
**AYES:**            Directors Edwards, Chesshire, Pendergrass, Henson and Potter

**NAYS:**            Directors Erickson and Lindstrom

**ABSENT:**        None

I, Ernesto A. Avila, 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 November, 2001.

Witness my hand and seal of the Board of Directors this 28th day of March, 2002.

  
\_\_\_\_\_  
Ernesto A. Avila, Secretary to the Board

**THIS ORDINANCE WAS REVOKED ON DECEMBER 17, 2001**

On motion of Director Henson, and second by Director Erickson, the foregoing ordinance was revoked on the 17<sup>th</sup> day of December, 2001, by the following votes:

AYES: Directors Erickson, Henson, Lehman and Lindstrom

NAYS: Directors Potter and Edwards

ABSENT: Director Pendergrass

I, Ernesto A. Avila, 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 revoked on the 17<sup>th</sup> day of December, 2001.

Witness my hand and seal of the Board of Directors this 28th day of March, 2002.



Ernesto A. Avila, Secretary to the Board