

EXHIBIT 11-C

De LAY & LAREDO

Attorneys at Law
606 Forest Avenue
Pacific Grove, California 93950

Paul R. De Lay
David C. Laredo

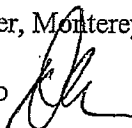
Telephone (831) 646-1502
Facsimile (831) 646-0377

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February 11, 2005

FEB 14 2005

TO: General Manager, Monterey Peninsula Water Management District **MPWMD**

FROM: David C. Laredo 

RE: Transfer of Water Credits Between Governmental Entities pursuant to Rule 25.5

This memo relates to the inquiry of Monterey City Manager, Fred Meurer as to potential transfer of water credits between and among governmental entities located within the City of Monterey. The question at hand is whether such a transfer is permissible pursuant to existing District ordinances, or whether a change to transfer rules would be required. This matter was raised during the January 11, 2005 regular meeting of the District's Technical Advisory Committee (TAC).

CONCLUSION

Water use credit transfers under District Rule 28 are not limited to commercial or industrial use, and apply equally to the transfer of water credits between and among governmental entities, subject to the remaining limits of that Rule. Further, Rule 24 B enables a government agency (namely a city, the county or any other state or federal agency) to transfer or relocate water use credits from one location owned and operated by that agency to another location owned and operated by that agency provided the transferred water is entirely dedicated to open space use.

ANALYSIS

Two key provisions of District law pertain to the use and transfer of water by a governmental entity, each having been enacted amended by District Ordinance. The first provision is a limited provision in Rule 24 that applies to open space use transfers. The second is the more general water use transfer provision set forth in Rule 28.

Rule 24 B, at paragraph 2 enables a government agency (namely a city, the county or any other state or federal agency) to transfer or relocate water use credits from one location owned and operated by that agency to another location owned and operated by that agency. This transfer rule has a limited application, however, and requires that transferred water be entirely dedicated to open space use. Under Rule 24 transfers between different government agencies is not allowed.

Rule 28 allows for water use credit transfers in a wider set of circumstances. This Rule allows water credits to be transferred from one property to another, or directly into a jurisdiction's allocation, subject to certain limitations.

One key limit in Rule 28 is that open space and residential water use cannot be transferred. Another key limit is that water use credit transfers can only occur within a single jurisdiction; inter-jurisdictional transfers are expressly prohibited.

Water use credit transfers under Rule 28 are only 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 allocation¹. Transfer credits are not allowed to originate from any residential use, or from any prior open space water use.

Rule 28 refers to commercial or industrial use, and to residential use, but does not make specific reference to governmental uses. This limited reference does not, however, compel a conclusion that governmental uses are not available for transfer. An examination of Rule 24 shows that the District has created a dual system to regulate water use, and water use permits. One system applies exclusively to residential water use. Capacity for residential water use is determined by fixture unit count as described in Rule 24 C, and as based on the residential uses set forth in Table No. 1 referenced in that Rule.

A second system applies to all non-residential water use. Rule 24 D characterizes water use rules that apply to all "commercial, governmental, or industrial use" and sets forth a set of non-residential use factors in Table No. 2. The footnote to Table No. 2 does not distinguish governmental water use, and provides, "Any commercial, governmental, or industrial water use which cannot be characterized by one of the use categories set forth in Table No. 2 shall be designated as "other" and assigned a factor which has a positive correlation to the anticipated water use capacity for that site." Rule 11, in turn, defines "capacity" to mean the potential water use as shown on either one of the two tables referenced in Rule 24 (i.e., Tables Nos. 1 or 2).

District Rules do not recognize "governmental use" to be a separate form of use. Rule 11 provides "Each new connection, based upon projected quantity of water use, shall be categorized as either "Residential", "Commercial/Governmental", or "Industrial" as follows..." The term "Commercial/Governmental Connection" is collectively defined in Rule 11 as "any public use, business or manufacturing company that requires a separate water service where the water is not used principally in the manufacturing or processing function including, but not limited to, offices, retail stores, hospitals, churches, gas stations and service businesses."

Based on this analysis, it is our conclusion that Water use credit transfers under Rule 28 are not limited to commercial or industrial use, and apply equally to the transfer of water credits between and among governmental entities, subject to the remaining limits of that Rule.

Based on this conclusion, it is suggested that the District forward the attached letter to Mr. Meurer, under your signature.

MPWMD/Con Memo/Governmental Agency Transfer

¹ Water credits resulting from a property-to-jurisdiction transfers have fewer limitations under Rule 28 and for the most part the new use is left to the discretion of the jurisdiction.