

EXHIBIT 12-A

**DRAFT
ORDINANCE NO. 158**

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
TO ESTABLISH THE JURISDICTION AS LEAD AGENCY FOR EVALUATION OF A
WATER USE CREDIT TRANSFER AND TO ALLOW APPROVAL OF AN
APPLICATION BY THE GENERAL MANAGER**

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. CEQA Guidelines (2013), Article 4, §15050 states: “Where a project is to be carried out or approved by more than one public agency, one public agency shall be responsible for preparing an EIR or negative declaration for the project. This agency shall be called the lead agency.”
3. This ordinance amends Rule 28-B to designate California Environmental Quality Act (CEQA) lead agency status to the land use Jurisdiction.
4. The Jurisdiction must approve a Water Credit transfer prior to consideration by the District (Rule 28-B-4). As the Jurisdiction must act before the District, it is appropriate that the Jurisdiction assumes lead agency status.
5. “The decision-making body of each responsible agency shall consider the lead agency’s EIR or negative declaration prior to acting upon or approving the project. Each responsible agency shall certify that its decision-making body reviewed and considered the information contained in the EIR or negative declaration on the project” (Section 15050 (b) of the CEQA Guidelines). The “decision-making body” is defined in the CEQA Guidelines as a person or group of people within a public agency permitted by law to approve or disapprove the project at issue.
6. The District, as a responsible agency, will review and comment on the Jurisdiction’s environmental review.
7. A Water Use Credit transfer must be approved and authorized by the Jurisdiction prior to consideration by the District (Rule 28-B-4).
8. District approval of a transfer application occurs after determination that the

Jurisdiction's CEQA evaluation has sufficiently reviewed the potential impacts of a Project and all conditions of Rule 28 have been met.

9. MPWMD decisions made under Rule 28 are appealable to the Board of Directors pursuant to Regulation VII.
10. The proposed ordinance is not a project under CEQA and is therefore not subject to CEQA evaluation. CEQA Guideline §15378 (a) defines a "project" as an action that has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The proposed amendments to Rule 28 do not contemplate approval of any transfer. CEQA Guideline §15378 (b) (5) states: "Organizational or administrative activities of governments that will not result in direct or indirect physical changes to the environment." This ordinance does not change the environment; It changes an administrative process.
11. This ordinance shall amend and republish 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 **2014 Water Credit Transfer Process Ordinance** of the Monterey Peninsula Water Management District.

Section Two: Purpose

This ordinance amends Rule 28 to designate lead agency status under the California Environmental Quality Act (CEQA) to the land use Jurisdiction and to change the approval process from a Board decision to a staff decision that is appealable to the Board.

Section Three: Amendment of Rule 28-B, Property-to-Property and Property-to-Jurisdiction Transfers of Water Use Credits for Commercial and Industrial Uses

Rule 28-B shall be amended as follows, with added language shown in *bold italic* type face and deleted language shown in ~~strikeout~~ type face.

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 ~~and upon the approval of the Board of Directors.~~ Commercial and industrial water credits may also be transferred directly into a Jurisdiction's Allocation ~~upon the approval of the Board of Directors.~~ Open Space and Residential water use shall not be transferred. The following conditions shall apply:

1. Due to the District's ongoing concern about the viability of the available water supply and the possibility that ~~w~~*Water Use Credit* transfers may result in additional water usage, ~~w~~*Water Use Credit* transfers shall be approved by ~~the Board of Directors,~~ *the General Manager* ~~the Board of Directors,~~ subject to the other provisions of this Rule, *only* if the transfer will not have an adverse impact on the water supply. ~~In exercising its discretion,~~ ~~the Board of Directors~~ *Each Jurisdiction shall act as the lead agency under the California Environmental Quality Act and* shall consider the impacts of the *Water Use Credit transfer* application under consideration, as well as the cumulative impacts of other transfers, on the water supply *The District shall deem complete only those Water Use Credit transfer applications forwarded by the Jurisdiction which incorporates therein a finding that the project and the cumulative impacts of other transfers do not adversely affect the environment. The Water Credit Transfer application may be denied by the General Manager if the California Environmental Quality*

Act review by the Jurisdiction does not adequately analyze the project's impacts relating to the proposed Water Use Credit transfer.

2. 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.
3. Water Use Credit transfers shall only occur within a single Water Distribution System. No inter-system transfers shall be allowed.
4. Water Use Credit transfers shall only occur with the prior approval of the city, county or airport district.
5. 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.
6. 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.
7. Property-to-property commercial Water Use Credit transfers shall only enable intensification of 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.
8. The use of credits resulting from a property-to-Jurisdiction transfer shall be at the discretion of the Jurisdiction.
9. 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.
10. All transfers of Water Use Credits shall occur only by the written (and recorded) agreement of the owner of record for each Parcel from which the transfer originates. This 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. 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.

11. Transfer of Water Use Credits shall only occur upon approval by the *District*. The ~~*District Board of Directors*~~ 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 Board of Directors*~~ shall have sole and exclusive authority to determine the Water Use Capacity requirements for the receiving site. The ~~*District Board of Directors*~~ 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 Board of Directors*~~ 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 connection fees previously paid to the District for that increment of water.
 - 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.
12. Transfer of Water Use Credits shall not be approved by *the General Manager* ~~the Board of Directors~~ 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.
13. 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.
14. 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 Five: Effective Date and Sunset

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 by Director _____, and second by Director _____, the foregoing ordinance is adopted upon this ____ day of _____, 2014 by the following vote:

AYES:

NAYS:

ABSENT:

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 an ordinance duly adopted on the ____ day of _____ 2014.

Witness my hand and seal of the Board of Directors this ____ day of _____ 2014.

David J. Stoldt, Secretary to the Board