

Water Credits and Condition 2 of Order WR 2009-060

There are two types of water “credits” on the Monterey Peninsula, “Water Use Credits” and “On-Site Water Credit.” The prior water uses that make up the pool of water credits were either active uses prior to SWRCB Order WR 95-10 or were constructed with water from a Jurisdiction’s Allocation since then. The historic use or capacity for use was analyzed in the MPWMD Water Allocation Program Environmental Impact Report (EIR) adopted in 1990 and in the Mitigated Negative Declaration (December 18, 1990) reviewing the California-American Water (Cal-Am) Company’s System Capacity Limit and Operation Strategies Due to Operation of a New Production Well on Paralta Avenue in Seaside. The latter document (State Clearinghouse Number SCH 90030919) tiered off of the Water Allocation Program EIR and formed the basis for adoption of MPWMD Ordinance No. 70, repealing and ending the moratorium on Water Permits in 1993.

Water Use Credits

The Water Use Credit process is codified in MPWMD Rule 25.5. A Water Use Credit allows the reuse of the reduced increment of water for up to ten years. MPWMD Rule 25.5 was adopted to accommodate reconstruction of renovated or demolished buildings, allow for future replacement of removed fixtures, and to allow additional capacity to use water without requiring water from a Jurisdiction’s Allocation. The Water Use Credit process provides an incentive for extraordinary retrofitting and/or installation of proven new technology.

Water Use Credits are documented when there is a Permanent Abandonment of Capacity (MPWMD Rule 25.5-E). Under the rule, the entire increment of reduced water can be reused on the Site without it being considered an increase in use.

Water Use Credits are established as the result of the following actions:

- Demolition of a building or use that is recognized by the MPWMD as being a lawful water use. A lawful use either has been documented to have existing on the date the current Water Permit process was implemented (i.e. March 1985) or one that received a Water Permit thereafter.
- Permanent disconnection from a Water Distribution System. This action occurs when a User disconnects from Cal-Am to fully utilize an on-site well.
- Residential removal of water fixtures.
- Permanent installation of ultra high efficiency non-mandated water fixtures, devices and appliances in Non-Residential uses.
- Permanent installation of High Efficiency Appliance Credits in Residential uses. This type of Water Use Credit is used in Residential remodels to allow the

addition of water fixtures without requiring water from a Jurisdiction's Allocation. This type of Water Use Credit is difficult to document unless it is done as part of the Water Permit process, since MPWMD is often not contacted to document the change/removal of fixtures until a Water Use Credit is needed.

Projects that use a Water Use Credit to offset water needs are first reviewed by the land use Jurisdiction. These projects are subject to CEQA review by the Jurisdiction that includes consideration of the availability of sufficient water resources to supply the project. MPWMD does not issue Water Permits without the authorization of the Jurisdiction.

Further, by District rule, Non-Residential Water Use Credits can be transferred to another Non-Residential Site or transferred into a Jurisdiction's Allocation pursuant to Rule 28, but are subject to CEQA, and seldom happens. The last transfer was in 2004 and was litigated over CEQA and a recission issued in 2006. There have been no transfers since.

On-Site Water Credit

A Water Use Credit is not issued for a non-permanent Change in Use, such as occurs when tenants change from a higher use (e.g. a restaurant) to a lower use (e.g. retail). The reduction in use under this circumstance is called an "On-Site Water Credit" (Water Credit.) The Water Permit process and the establishment of a Water Credit provide flexibility for Non-Residential tenant needs. A Water Credit allows a use to be reinstated when needed. Reuse of a Water Credit is not time limited, but it must have been a lawful use either documented to have existed when the current Water Permit process was implemented (i.e. March 1985) or that received a Water Permit after March 1, 1985.

The Water Credit is a needed device in the Non-Residential community because often tenants leave, buildings are sold and remodeled, fire can result in disuse, conversions from commercial to mixed-use occur under redevelopment, or affordable housing is desired in a mixed-use setting – and the planning and permitting process can take a considerable number of years while tenant water use suffers a temporary decline.

Potential Water Use Credit Impacts

MPWMD reviewed its records of documented Water Use Credits that were established during the past 10 years through December 31, 2016 and subtracted those expected to expire this year. This process identified approximately 128 Acre-Feet (AF) from 5,046 individual documented Water Use Credits. Almost 70.5 AF of these Water Use Credits were documented for Non-Residential reductions in use. The 57.5 AF balance was from Residential uses.

The average Residential Water Use Credit is 0.012 AF per credit. Residential credits stay with the site, hence could not be "bundled" to undertake a large project.

The largest Non-Residential outstanding credit is 6 AF at the Presidio of Monterey

(Army). There are only six other credits in excess of 3 AF each. Of these seven in excess of 3 AF, none has any active plans for projects in front of their respective planning boards. The average Non-Residential credit is 0.734 AF per credit.

The use of Water Use Credits by property owners is slow and many such credits traditionally expire unused. Only a fraction of the presently documented Water Use Credits could conceivably be used in the next 5 years and to do so would require designs, building permits, water permits and construction. Most of the documented credits are small and non-conducive to large project development. This potential use of Water Use Credits is considered a de minimus amount relative to the Effective Diversion Limit (EDL) under the Cease and Desist Order (CDO.) The District relies on its myriad of other conservation programs and the Cal-Am rate structure to create demand reductions that more than offset the creation of Water Use Credits – perhaps by a factor of 30-to-1.

Retrofits that may eventually be documented as Water Use Credits regularly occur. MPWMD Rule 25.5 does not specify timing for an application for Water Use Credit. Until an application for a Water Use Credit is submitted to MPWMD, these savings may not be identified or quantified.

MPWMD also has an extensive Rebate Program that provides substantial refunds for installation of ultra-high efficiency devices and appliances. If a property owner keeps the rebate, a Water Use Credit cannot be established and utilized.

Potential On-Site Water Credit Impacts

With respect to On-Site Water Credits, it is challenging to determine the potential for projects that will seek to “reinstate” a water use capacity in the next 5 years. Most letters documenting historical water use capacity on a site were executed for multi-tenant buildings and shopping centers that are in a constant flux of tenants. The purpose of the documentation was to establish a “cap” on water use for the Site, and available credit on the site will vary depending upon the then-current tenant mix. For normally performing multi-tenant sites, this type of Water Credit does not represent a perceptible increase in the capacity to use water over recent year performance. Whereas, the more important question relative to the CDO and the EDL is “how much On-Site Water Credit is out there that might seek reinstatement in the next 5 years for major renovations or remodels that may not be reflected in consumer demand numbers in most recent years?” However, one must also be mindful that for every new project coming on line, there is often another site going into disuse, so focus only on restoring water use capacity ignores one half of the equation.

The District has surveyed the local land use jurisdiction planning departments to attempt to quantify large projects at existing service connections that do not yet have water permits, yet might be able to complete design, permitting, and construction in the next 5 years. Such projects would constitute “change in use” under District rules, but not necessarily under SWRCB staff interpretation. Such projects are discussed below:

Carmel

- None; Small projects are expected to acquire Malpaso LLC water rights

Del Rey Oaks

- None.

Monterey

- Aquarium Learning Center – Expected to use on-site credit; Documented use is 7.047 AF, but recent actual use was thought to be less than 3.0 AF before removal of tenants. Expected restored use is 2.727 AF and they will have an unused credit of 1.523 AF which is converted to a Water Use Credit upon demolition.
- Van Buren Senior Housing – 19 affordable housing units, using credits that have been off-line since 2009. Expected restored use is 1.519 AF.
- Cooper Molera Museum – Restaurant, using on-site credit over 10 years old. Expected restored use is 4.44 AF.
- Valero Gas Station – Empty former gas station site to become mixed use residential/commercial. Expected to restore 0.653 AF.
- 575 Foam – 4 residential condos on former commercial building site. Expected to restore 0.284 AF.
- 2201 N. Fremont – A mixed use residential/commercial. Expected to restore 1.40 AF.
- Middlebury Institute of Monterey – Master Plan. Subject to fundraising. Unlikely within 5 years.

Pacific Grove

- Holman Building – Mixed use project. Proposed use is 5.827 AF, but recent actual use is thought to be less than 2 AF. Expected restored use is 3.827 AF.
- Project Bella hotel – Expected to use on-site credit; Documented former tenant capacity for use is 18.53 AF, but recent actual tenant use is thought to be less than 10 AF. Expected restored use is approximately 8.53 AF

Sand City

- DBO Development (Orosco) – Redevelopment of multiple small commercial and residential properties into mixed use. No permits issued. Will use on-site credit and could use some of the Sand City entitlement from desalination project. Expected restored use is unknown at this time. No plans have been developed.
- SNG Eco Resort – Will use their own Seaside Groundwater allotment not any on-site credit. In delay with Coastal Commission and may not occur within 5 years.

Seaside

- Starbucks – On vacant site where taco shop burned down in 2011. Expected restored use is 0.22 AF.
- Roberts Avenue – Convert existing residential property to commissary for commercial kitchen. Expected restored use is 1.5 AF.
- 1898 Fremont, 1405 La Salle, 775 Broadway – miscellaneous commercial conversions. Expected total incremental use is 0.7011 AF.
- Fire Department addition – Additional 0.2 AF

Unincorporated County

- None

Airport District

- Has a master plan document, but no projects expected within 5 years.

As a result, 26 AF of Water Credit on these sites exists that was not reflected in last year's customer demand numbers. This amount is considered a de minimus amount relative to the Effective Diversion Limit (EDL) under the CDO. The District relies on its myriad of other conservation programs and the Cal-Am rate structure to create demand reductions that more than offset this reinstatement of existing Water Credit. Further, the District has invested in local water projects that are expected to further reduce Cal-Am consumption by 125 AF within 2 years (88 AF Pacific Grove local water project and 37 AF Del Monte Golf Course non-potable supply wells.)

This list is not comprehensive and new projects may appear and some of the listed projects will falter. More important is to understand that these do not represent “new”

water use capacity, rather water use capacity that was already in the system, but underutilized in the most recent years. The District's rules recognize that had the property not experienced tenants leaving, a building sold and remodeled, fire, or other disuse, the building's capacity for water use would have remained unchanged. It is not District policy to hold individual property owners to tenant vacancy, reductions in use during temporary periods of conversions or renovations, or changes in use to desired outcomes such as affordable housing in a mixed-use setting – rather, the policy is to allow buildings to be repurposed by their owners, so long as the capacity for use of water on the site does not increase or comes from a corresponding reduction in the capacity to use water elsewhere.