

From: Luke Coletti [<mailto:ljc@groknnet.net>]

Sent: Wednesday, April 12, 2017 12:56 PM

To: Dave Stoldt; David Laredo

Cc: Stephanie Locke; Brodeur, Mark@City of Pacific Grove; Wendy Lao; O'Hagan, John@Waterboards;  
[jbridges@fentonkeller.com](mailto:jbridges@fentonkeller.com)

Subject: Re: Do MPWMD Rules permit the transfer of an expired Water Use Credit? These rules also provide clear, well understood regulations for local land use decisions.

Clear, yes, well, errrr, maybe. However, I'll modify my statement to say: banking the water use credit with the City indefinitely extends the expiration and represents a loophole within the District rules. Further, the banking allows the credit to be made available for use during the CDO enforcement period, when it would have otherwise expired. This gaming of the process represents value to both the applicant and the City and thus violates Rule 28-B-11.

Luke Coletti  
Pacific Grove

On 4/12/17 12:36 PM, Dave Stoldt wrote:

> The District rules are clear. An unexpired credit transferred to a jurisdictional allocation is not time limited. Never has been.

> \_\_\_\_\_

>

> David J. Stoldt

> General Manager

> Monterey Peninsula Water Management District

> 5 Harris Court – Bldg G

> Monterey, CA 93940

>

> 831.658.5651

>

>

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> -----Original Message-----

> From: Luke Coletti [<mailto:ljc@groknnet.net>]

> Sent: Wednesday, April 12, 2017 12:10 PM

> To: Dave Stoldt <[dstoldt@mpwmd.net](mailto:dstoldt@mpwmd.net)>; David Laredo <[dave@laredolaw.net](mailto:dave@laredolaw.net)>

> Cc: Stephanie Locke <[Steph@mpwmd.net](mailto:Steph@mpwmd.net)>; Mark Brodeur

> <[mbrodeur@cityofpacificgrove.org](mailto:mbrodeur@cityofpacificgrove.org)>; Wendy Lao

> <[wlao@cityofpacificgrove.org](mailto:wlao@cityofpacificgrove.org)>; John.O'Hagan@waterboards.ca.gov;

> [jbridges@fentonkeller.com](mailto:jbridges@fentonkeller.com)

> Subject: Re: Do MPWMD Rules permit the transfer of an expired Water Use Credit? These rules also provide clear, well understood regulations for local land use decisions.

>

> Mr Stoldt,

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> Thank you for that clear and well understood explanation.

>

> Incidentally, I believe MPWMD Ord. 154 (water credit tolling) is a fair and equitable means of dealing with water use credits that may have expired or gone unused during the CDO enforcement period.

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> However, my problem with the proposed water transfer (Ligna IV, LP Water Credit Transfer Project - link below) is that it seeks to avoid the consequences of having the credit expire (on July 05, 2017) by banking it with a jurisdiction (City of Pacific Grove).

>

> <http://www.cityofpacificgrove.org/living/community-economic-developmen>

> t/planning/ceqa-california-environmental-quality-act

>

> Banking the water use credit with the City indefinitely extends the expiration and represents an end run around District rules. Further, the banking allows the credit to be made available for use during the CDO enforcement period, when it would have otherwise expired. This gaming of the process represents value to both the applicant and the City and thus violates Rule 28-B-11, which states:

>

> "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."

>

> Finally, the applicant is seeking this transfer now even though, as you point out, the water use credit would "spring back to life" once the CDO has been lifted.

>

> Luke Coletti

>

> Pacific Grove

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> On 4/12/17 10:12 AM, Dave Stoldt wrote:

>> Under Ordinance 154, once the SWRCB lifts the CDO, an expired Water Use Credit may be reinstated for the remaining term that it was rendered unusable due to the CDO. Hence, an expired Water Use Credit may be transferred. However, under District Rule 28.B.7. water credits shall not be "banked" for future use under a property-to-property transfer, hence a property-to-property transfer of an expired Water Use Credit would not be allowed because it would constitute banking. An expired credit transferred to a jurisdictional allocation would have to wait until the CDO is lifted to spring back to life.

>>

>> And please temper your language in the future.

>>

>>

>> -----Original Message-----

>> From: Luke Coletti [<mailto:ljc@groknnet.net>]

>> Sent: Wednesday, April 12, 2017 8:26 AM

>> To: David Laredo <[dave@laredolaw.net](mailto:dave@laredolaw.net)>

>> Cc: Dave Stoldt <[dstoldt@mpwmd.net](mailto:dstoldt@mpwmd.net)>; Stephanie Locke

>> <[Steph@mpwmd.net](mailto:Steph@mpwmd.net)>; Mark Brodeur <[mbrodeur@cityofpacificgrove.org](mailto:mbrodeur@cityofpacificgrove.org)>;

>> Wendy Lao <[wlaolao@cityofpacificgrove.org](mailto:wlaolao@cityofpacificgrove.org)>;

>> John.O'Hagan@waterboards.ca.gov; [jbridges@fentonkeller.com](mailto:jbridges@fentonkeller.com)

>> Subject: Re: Do MPWMD Rules permit the transfer of an expired Water Use Credit? These rules also provide clear, well understood regulations for local land use decisions.

>>

>>

>> Mr Laredo and Mr Stoldt,

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>> This is a perfect illustration of how "clear and well understood" the MPWMD Rules are! I sincerely hope Mr O'Hagan, with the SWRCB, is taking notice of how District staff hides behind their attorney because they know he won't respond. Shameful!

>>

>> I'll try one last time; Mr Stoldt: Do District rules permit the transfer of an expired Water Use Credit?

>>

>> Luke Coletti

>> Pacific Grove

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>> On 4/12/17 8:09 AM, David Laredo wrote:

>>> Mr. Coletti –

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>>> You misunderstand my role as General Counsel. I receive and respond  
>>> to questions or concerns of my client. My advice to them is  
>>> provided under the attorney-client privilege.

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>>> My office does not render general advice, answer questions or make  
>>> recommendations to the public at large, any more than your private  
>>> counsel would do.

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>>> Regretfully, I cannot respond to your inquiry.

>>>

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>>> David C. Laredo

>>> General Counsel

>>>

>>> Monterey Peninsula Water Management District

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>>> 606 Forest Avenue

>>> Pacific Grove, CA 93950

>>> (831) 646-1502

>>> (831) 646-0377 (fax)

>>>

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>>> mail at the following address: City Attorney, c/o\*De Lay & \*  
>>> \*Laredo\*, Attorneys at Law, 606 Forest Avenue, Pacific Grove, CA  
>>> 93950. Thank you for your cooperation.

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>>> As an additional note, please be aware that any tax reference in the  
>>> body of this e-mail intended for discussion purposes but does not  
>>> constitute legal or tax advice, and cannot be used by any recipient  
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>>> \*From:\* Luke Coletti [<mailto:lcoletti@gmail.com>] \*On Behalf Of \*Luke  
>>> Coletti

>>> \*Sent:\* Wednesday, April 12, 2017 5:11 AM

>>> \*To:\* David Laredo <[dave@laredolaw.net](mailto:dave@laredolaw.net)>

>>> \*Cc:\* Dave Stoldt <[dstoldt@mpwmd.net](mailto:dstoldt@mpwmd.net)>; Stephanie Locke

>>> <[Steph@mpwmd.net](mailto:Steph@mpwmd.net)>; Mark Brodeur <[mbrodeur@cityofpacificgrove.org](mailto:mbrodeur@cityofpacificgrove.org)>;

>>> Wendy Lao <[wlao@cityofpacificgrove.org](mailto:wlao@cityofpacificgrove.org)>;

>>> John.O'Hagan@waterboards.ca.gov; [jbridges@fentonkeller.com](mailto:jbridges@fentonkeller.com)

>>> \*Subject:\* Re: Do MPWMD Rules permit the transfer of an expired  
>>> Water Use Credit? These rules also provide clear, well understood  
>>> regulations for local land use decisions.

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>>> Mr Laredo,

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>>> Throughout the entire discussion regarding CDO Condition 2 the  
>>> District has boasted: "District rules provide clear, well understood  
>>> regulations for local land use decisions". However, based on Mr  
>>> Stoldt's response to a fundamental inquiry (see below), District rules are not clear at all.  
>>> Instead, they are so murky and fraught with inconsistencies that  
>>> only you can unravel the apparent Gordian knot they represent.

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>>>

>>>

>>> Therefore, I now directly ask you: do District rules permit the  
>>> transfer of an expired Water Use Credit?

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>>> Luke Coletti

>>>

>>> Pacific Grove

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>>> On Apr 10, 2017, at 11:06 AM, Dave Stoldt <dstoldt@mpwmd.net

>>> <<mailto:dstoldt@mpwmd.net>>> wrote:

>>>

>>> I'll let our General Counsel respond.

>>>

>>> Dave Stoldt

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>>> ~~~~~

>>>

>>> Sent from my iPhone

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>>> On Apr 10, 2017, at 8:53 AM, Luke Coletti <ljc@groknet.net

>>> <<mailto:ljc@groknet.net>>> wrote:

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>>> Mr Stoldt and Mr Laredo,

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>>> The City of Pacific Grove is in the midst of preparing an EIR

>>> for the transfer of a Water Use Credit (3.2 acre-feet) that is  
>>> set to expire on July 5, 2017 (Linga IV, LP Water Credit  
>>> Transfer Project - link below).

>>> <http://www.cityofpacificgrove.org/living/community-economic-developm>  
>>> [ent/planning/ceqa-california-environmental-quality-act](http://www.cityofpacificgrove.org/planning/ceqa-california-environmental-quality-act)

>>> MPWMD Rule 28-B-9 mentions:

>>> 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.

>>> <http://www.mpwmd.net/rules/Rule28.pdf>

>>> MPWMD Rule 25.5-C mentions:

>>> A Water Use Credit may be applied to and shall allow future  
>>> water use on that Site at any time within a period of 60 months.  
>>> After the 60th month, the General Manager shall allow renewal of  
>>> this Water Use Credit only upon verification that some or all  
>>> water savings represented by that credit are current (i.e. no  
>>> Water Permit or other use or transfer of the Water Use Credit  
>>> has occurred). If all savings are not current, a pro-rata  
>>> reduction shall occur. A single renewal period of 60 months  
>>> shall be allowed; thereafter any remaining unused Water Use  
>>> Credit shall expire.

>>> <http://www.mpwmd.net/rules/Rule25.5.pdf>

>>> Do District rules permit the transfer of an expired Water Use  
>>> Credit?

>>>

>>> Please advise,

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>>>

>>>

>>> Luke Coletti

>>>

>>> Pacific Grove