

**Before the Board of Supervisors in and for the
County of Monterey, State of California**

Resolution No. ____

Adopting a Negative Declaration,)
Approving a Memorandum of)
Understanding with Cal Am, and)
Authorizing the Chair of the Board)
to Execute the MOU)
(REF130072/Oaks MOU))

This resolution is made with reference to the following facts:

1. On May 6, 2014, the Board of Supervisors conducted a duly noticed public hearing to consider adoption of a Negative Declaration and approval of a Memorandum of Understanding (“MOU”) between the County of Monterey and California-American Water Company (“Cal Am”) to formalize and implement Cal Am’s agreement to offset Cal Am’s water service to the approved nine-lot Oaks subdivision with an equal amount of water from the Oaks’ subdivision well, so as to result in no net transfer of water. The MOU is attached to the May 6, 2014 staff report as Attachment C and incorporated herein by reference.
2. This MOU serves the public health, safety and welfare by ensuring that an already approved residential subdivision, known as the Oaks subdivision, has a potable water supply that meets federal and state drinking water standards while being consistent with the Oaks’ subdivision approval requiring that the water source not intensify water use in the County’s B-8 zoning district.
3. The Board finds that the MOU is necessitated by the unique circumstances of this case and protection of public health, that the MOU is limited to its facts, and that the MOU is not intended to establish policy or serve as precedent for any other project.
4. The Oaks subdivision divided a 325.7- acre parcel into nine residential lots ranging in size from 1.7 to 13.6 acres and a remainder parcel of 285.7 acres (hereafter the “Oaks Subdivision”), located on the east side of San Benancio Road in the Toro Area Plan area of the County. The Board of Supervisors approved the vesting tentative map for the subdivision on May 8, 2001 and accepted the final map on June 20, 2006. The final map was recorded on June 30, 2006 at Volume 23, Cities and Towns, page 32, in the Office of the Recorder of the County of Monterey.
5. Condition 34 of the Oaks’ vesting tentative map required the subdivider; “to provide a signed written agreement between the subdivider and Ambler Park Water Utility (APWU) requiring: a) the subdivider to convey a newly constructed well complete with water distribution infrastructure and fire flow water supply; and b) APWU to operate the system as a satellite or stand alone system providing domestic and fire flow water supply to the subdivision in accordance with title 22 and the California Public Utility Commission standards. The total costs for item “a” is to be

born [sic] by the developer and not APWU or its customers. If at any point in the future, the Toro B-8 zoning overlay is removed, and this stand alone system is to be consolidated with any other system, pumping of water (produced by this well) outside of Monterey County Water Resources Agency zones 2 & 2A is prohibited except in the case of emergency.”

6. Condition 35 of the Oaks’ vesting tentative map required the “Design the water system improvements to meet the standards as found in Title 22 of the California Code of Regulations and as found in the Residential Subdivision Water Supply Standards. Submit engineered plans for the water system improvements and any associated fees to APWU for review and approval prior to installing (or bonding) the improvements. Provide evidence that APWU has reviewed and approved the plans. Applicant shall pay all Land Use review fees prior to filing the final map.”
7. Prior to the Board accepting the final map, staff advised the Board of Supervisors that the applicant had met all conditions of approval. Staff found that the subdivider had complied with condition 34 because the subdivider provided a copy to staff of the signed written agreement between the subdivider and Cal Am, as required by the condition. (Cal Am has purchased Ambler Park; therefore, the agreement is between the subdivider and Cal Am.) Staff found that subdivider had complied with Condition 35 based on the subdivider provided a letter from Cal Am stating that it had reviewed and approved the plans for the Oaks subdivision water system. Staff “cleared” the conditions after receiving copies of the documentation required by the conditions. The Board’s final map acceptance presumes that the conditions of compliance were met. (See Government Code section 66473.)
8. A change in the federal arsenic water standard requires treatment of the Oaks’ well water. The Oaks’ well tested at 35 parts per billion (ppb) when the tentative map was approved. Between the tentative and final map approvals, the federal drinking water standard for arsenic was reduced from 50 ppb to 10 ppb, and the state was required to adopt a revised standard no less stringent than the federal standard. The new federal standard for arsenic of 10 ppb was adopted on February 22, 2002 and became enforceable on January 23, 2006. Although the Oaks’ well was compliant with the earlier standard when the tentative map was approved, the well water exceeds the federal standard that went into effect in 2006.
9. Due to the need to treat the water to meet drinking water standards, staff previously arranged for Cal Am through its Monterey District Ambler Park system to serve the Oaks lots on the basis that Cal Am would draw water from the Oaks’ well, treat the water for high arsenic at the Ambler Park water treatment plant, and then supply the treated water to the Oaks’ lot. Consistent with the intent for water supply to be based on the Oaks well, not Ambler Park’s water supply, the understanding was that the Cal Am would pump from the Oaks well into the Ambler system the same amount of treated water that the Ambler system would provide to the nine Oaks lots, resulting in no net transfer of water. In 2006, Cal Am committed to the Monterey County Water Resources Agency to monitor the Oaks’ well production and the Oaks lots’ consumption for this purpose. This MOU formalizes that commitment and fleshes out the details of implementation, monitoring, reporting, and enforcement.

10. The final Oaks' map was recorded in 2006, and since then, at least some lots have been sold into individual ownership. Homes have been built on three lots in the Oaks subdivision. Following recordation of the final map, the County may modify the final map only if the County finds that "there are changes in circumstances that make any or all of the conditions of the map no longer appropriate or necessary and that the modifications do not impose any additional burden on the fee owners of the real property, and if the modifications do not alter any right, title, or interest in real property reflected on the recorded map." (Gov't Code sec. 66472.1.) The MOU does not impose any additional burden on the current owners of the nine lots nor alter any of their rights, title, or interest in their property.
11. The Board finds that, under the unique circumstances of this case, the MOU carries out the intent of the Oaks subdivision's conditions of approval, is necessitated by the new federal standard for arsenic, and is consistent with the 2010 General Plan and County's B-8 zoning.
12. The Board finds that the 2010 General Plan Policies PS-3.1, PS 3.2 and PS-1.3 do not apply to the MOU because it does not authorize any new development and does not require a discretionary permit. The MOU does not reopen the approval of the Oaks subdivision for which the tentative map was approved and final map was accepted years ago, before the adoption of the 2010 General Plan. The MOU does not result in intensification of water use. The MOU formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks' well will be implemented, monitored, reported, and enforced.
13. The MOU is consistent with County zoning. The Ambler Park system's wells are within County's B-8 zoning overlay district, while the Oaks' well is not. The purpose of the B-8 zone is to "restrict development and/or intensification of land use in areas where, due to water supply ... or similar measurable public-facility type constraints, additional development and/or intensification of land use if [sic] found to be detrimental to the health, safety, and welfare of the residents of the area, or the County as a whole." Under the MOU, Cal Am must offset the water it supplies to the Oaks subdivision by an equal transfer of water from the Oaks' well into the Ambler system, resulting in no intensification of water use in the B-8 zone. The MOU is consistent with County's B-8 zoning because Ambler's service to the Oaks subdivision under the terms set forth in the MOU will not result in an intensification of water use in the B-8 zone and is not detrimental to the public health, safety, and welfare.
14. The Oaks' well lies within Monterey County Water Resources Agency's benefit assessment "Zone 2C," while the Ambler treatment plant lies outside Zone 2C. Zone 2C is a benefit assessment zone adopted by MCWRA pursuant to the Monterey County Water Resources Agency Act. The Act prohibits the exportation of water from the Salinas River groundwater basin. (California Water Code Appendix, Chapter 52 ("Agency Act")). Under the MOU, Cal Am would ensure that the volume of water it pumps from the Oaks' well into the Ambler Park water system does not exceed the amount of water supplied from Ambler to the Oaks. Therefore, pumping water from the Oaks well into the Ambler system would not result in export of water out of Monterey County Water Resources Agency's benefit assessment Zone 2C. This manner of implementation protects the public health while meeting the intent of condition 34 not to intensify water use in the County's B-8 zone and not to export water out of MCWRA's benefit

assessment Zone 2c. The General Manager of the Monterey County Water Resources Agency has acknowledged this Memorandum of Understanding.

15. In 2010, County staff learned that Cal Am had begun to serve the Oaks' homes without yet bringing the Oaks' well on line. Staff notified Cal Am of its obligations, and staff also notified the subdivider that it would not issue additional building permits until the issue of water service without intensification of water use in the B-8 zone was resolved. This MOU resolves the issue by formalizing the mechanisms by which an equal exchange of water between the Ambler system and the Oaks' well will be implemented, monitored, reported, and enforced. Cal Am has applied to the California Department of Health to operate the Oaks well, and Cal Am agrees in the MOU to diligently pursue the necessary permits to bring the Oaks well into its state-permitted water system.
16. On December 4, 2012, the Board of Supervisors conducted a duly noticed public hearing to consider alternatives for the provision of safe, potable water to the "Oaks subdivision" and directed staff to negotiate an MOU with Cal Am, conduct environmental review, and return to the Board. The public hearing was noticed for October 9, 2012 and continued to December 4, 2012 at the request of Save Our Peninsula Committee with concurrence of staff.
17. At the public hearing on December 4, 2012, the Board had the opportunity review the circumstances and history that lead to the current status of the water supply to the Oaks subdivision, hear public testimony, and provide direction to staff as to which mechanism to pursue to ensure a safe, potable water supply to the Oaks that is consistent with County zoning and respects the right, title and interest of the existing lot owners. Save Our Peninsula Committee has since stipulated that the County has satisfactorily completed review of the Oaks subdivision condition compliance. (Stipulation for Modification of Judgment and Disposition of Pending Motion, executed in July 2013, in *Save Our Peninsula Committee v. County of Monterey*, (Monterey Superior Court case no. M110694).) The Board of Supervisors conducted a duly noticed public hearing on this MOU on May 6, 2014.
18. The Board finds that the proposed MOU is the method of providing safe, potable drinking water to the Oaks subdivision that is the most feasible, most capable of success, and therefore most protective of public health under the unique circumstances of this case. Cal Am through its Ambler Park water treatment plant has the technical, managerial and financial capability to treat water. Cal Am also has the ability to serve the Oaks subdivision because Cal Am already owns the Oaks' well and its infrastructure and has extended its Monterey District Ambler Park service area to include the Oaks subdivision. Because the MOU enforces no net transfer of water from Ambler to the Oaks and vice versa, it would not intensify water use in the County's B-8 zone. It is also the option that may be least costly to ratepayers because it relies on a well and water infrastructure whose cost was already borne by the Oaks' subdivider and would require no new construction. It is also the least disruptive to the existing owners of the nine lots because the obligations to balance the water supply would fall entirely on Cal Am and would cause no disruption of service to the homeowners. The MOU creates a binding contractual obligation on the part of Cal Am to offset Cal Am Monterey District Ambler Park's water service to the Oaks subdivision with an equal amount of water to be pumped from the Oaks well into the Ambler

Park water system, so as to result in no net transfer of water. The MOU includes a provision whereby the Oaks well would replenish all water already provided by Ambler to the Oaks lots to ensure that the Oaks subdivision does not result in loss of water to the B-8 zone. The MOU includes strict monitoring and reporting requirements and creates an enforceable legal obligation.

19. The Board finds, on the basis of the whole record before it, that there is no substantial evidence that the MOU will have a significant effect on the environment and finds that the Negative Declaration reflects the lead agency's independent judgment and analysis. Monterey County RMA-Planning prepared an Initial Study pursuant to CEQA. The Initial Study is on file in the offices of RMA-Planning and is hereby incorporated by reference (REF130072). The Initial Study/draft Negative Declaration was prepared in accordance with CEQA and circulated for public review from August 19, 2013 through October 10, 2013 (SCH#: 2013081054). Issues that were analyzed in the Negative Declaration include: hydrology/water quality and land use/planning. Hydrology/Water Quality addressed potential impacts to the depletion of groundwater supplies and/or interference with groundwater replenishment; the project will not have a substantial adverse impact on hydrology since the MOU requires the equal exchange of water from one area to another and does not intensify water use or authorize any additional pumping or water service than already exists. Land Use/Planning addressed potential conflicts with the applicable land use plan, policy, or regulation of an agency with jurisdiction over the project. Due to the requirement of an equal exchange of water, the project will not conflict with the B-8 zoning. The MOU does not authorize any new development and does not require a discretionary permit. The MOU does not reopen the approval of the Oaks subdivision for which the tentative map was approved and final map already accepted. The MOU merely formalizes the mechanisms by which an equal exchange of water between the Ambler system and the Oaks' well will be implemented, monitored, reported, and enforced. The MOU is not growth-inducing because it applies only to the Oaks subdivision due to the unique and particular facts and circumstances and public health considerations requiring treatment of water for an already approved subdivision. By its terms, the MOU is not to be used to serve any other property. The Clerk of the Board of Supervisors and the Monterey County Planning-RMA, located at 168 West Alisal Street, Salinas, California are the custodians respectively of the documents and other materials that constitute the record of proceedings upon which the decision to adopt the negative declaration is based.
20. The County has considered the comments received on the Initial Study/Negative Declaration, and the comments do not present evidence altering the conclusion that the MOU will not have a significant effect on the environment. In response to the comments, staff has made a few clarifications to the Initial Study, but these clarifications do not alter the significance conclusions of the Initial Study and do not require recirculation of the initial study. Responses to specific comment letters were provided in the staff report to the Board of Supervisors for the May 6, 2014 hearing and are incorporated herein by reference.

NOW, THEREFORE, the Board of Supervisors does hereby:

- a. Find that the above recitals and findings are true and correct;
- b. Adopt the Negative Declaration;

- c. Approve the Memorandum of Understanding between the California American Water Company and the County of Monterey; and
- d. Authorize the Chair of the Board of Supervisors to execute the Memorandum of Understanding.

PASSED AND ADOPTED on this 6th day of May, 2014 by the following vote:

AYES:

NOES:

ABSENT:

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book _____ for the meeting on _____.

Dated:

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By _____
Deputy