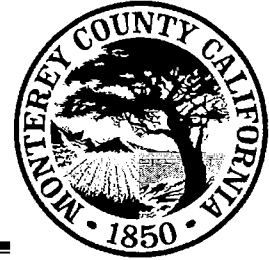


# MONTEREY COUNTY RESOURCE MANAGEMENT AGENCY

Benny J. Young, Director  
Carl P. Holm, AICP, Deputy Director



Michael A. Rodriguez, C.B.O., Chief Building Official  
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168 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA 93901  
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## MEMORANDUM

**Date:** May 2, 2014

**To:** Clerk of the Board's Office

**From:** David J. R. Mack, Associate Planner *DJM*

**Subject:** REF130072 – Oaks /Cal-Am MOU  
Agenda Item No. 19 –May 6, 2014.

**cc:** Planning File No. REF130072

Please add the following document, as Attachment J, to the Agenda Item No. 19 – REF130072 – Oaks/Cal-Am MOU.

This document is a copy of the Memorandum of Understanding, signed by California American Water, demonstrating that Cal-Am is in agreement with the proposed MOU.

The document should also be added into Legistar and included on the forthcoming Supplemental Board Agenda

Attachment J  
Signed California American Water  
MOU

REF130072

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
CALIFORNIA-AMERICAN WATER COMPANY AND COUNTY OF MONTEREY**

This Memorandum of Understanding (MOU) is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between California-American Water Company ("Cal Am") and the County of Monterey ("County"), with reference to the following facts:

**RECITALS**

- A. The parties desire to enter into this MOU to memorialize the parties' agreement to certain terms and conditions governing Cal Am's provision of water to the Oaks subdivision for the purpose of ensuring that Cal Am's water service to the Oaks subdivision will be offset by an equal amount of water drawn from the Oaks well.
- B. On May 8, 2001, the County of Monterey approved a tentative map to subdivide a 325.7-acre parcel into 9 residential lots ranging in size from 1.7 to 13.6 acres and a remainder parcel of 285.7 acres (hereafter the "Oaks Subdivision"). On June 20, 2006, the County accepted the final map for the Oaks Subdivision, which 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. A copy of the final recorded map is attached hereto as Attachment 1 and incorporated herein by reference.
- C. Pursuant to conditions of approval of the tentative map, the subdivider entered into an agreement with Cal-Am in 2004 whereby the subdivider agreed to construct a well ("Oaks' well) and water distribution system for domestic and fire flow water supply ("water system") for the Oaks subdivision and to transfer the water system to Cal Am in exchange for Cal Am's agreement to operate and maintain the water system either as a stand-alone or satellite system providing domestic and fire flow water supply to the Oaks Subdivision. The agreement by its terms was to take effect upon the recordation of the final map for the Oaks subdivision. The Oaks' well and water infrastructure has since been conveyed to Cal Am.
- D. As a water utility regulated by the California Public Utilities Commission and other federal and state agencies, Cal Am must provide finished water that meets all applicable federal and state water quality standards when it provides water service.
- E. The raw water from the Oaks' well does not meet federal and state water quality standards, specifically the Maximum Contaminant Level (MCL) for arsenic. A sample taken in August 2000 from the Oaks' well indicated the presence of arsenic at 35 parts per billion (ppb). At the time of the sample, the federal arsenic standard was 50 ppb, so the Oaks' well complied with drinking water standards at that time. A new federal standard for arsenic, reducing the MCL for arsenic to 10 ppb, was adopted on February 22, 2002 and became enforceable on January 23, 2006. Therefore, the Oaks well no longer meets drinking water standards, and it is necessary to treat the water or find an

alternate water supply for the Oaks' subdivision in order for the nine approved lots to have a potable water supply that meets drinking water standards.

- F. The County has determined that the solution to providing potable water to the Oaks subdivision that is the most feasible, most capable of success, and therefore most protective of public health while not intensifying water use in Cal Am's Monterey District Ambler Park service area is for Cal Am to serve the Oaks subdivision with water that has been treated by Cal Am to meet drinking water standards, provided that Cal Am augment the Ambler water supply by transferring raw water from the Oaks' well to the Ambler Park water system in an amount equal to the amount Cal Am is supplying to the Oaks' subdivision. This solution is the most feasible because Cal Am through its Ambler Park water treatment plant has the technical, managerial and financial capability to treat water, and as of the execution of this MOU, no other treatment facility with the technical, managerial, and financial capability to treat the Oaks' well water exists. Cal Am also has the ability to serve the Oaks subdivision because Cal Am already owns the Oaks' well and its infrastructure, and via Advice Letter 617 filed with the California Public Utilities Commission (PUC), has extended its Monterey District Ambler Park service area to include the Oaks subdivision.
- G. The Ambler water treatment plant is within the County's B-8 zoning district. The purpose of the B-8 zoning district 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." When the Oaks' tentative map was approved, water was to be supplied directly by the Oaks' well which is not within the County's B-8 zone. Ambler's water supply is located in the County's B-8 zone. The well water did not exceed the federal drinking water standards in effect at the time of the tentative map approval, and therefore, treatment of the water was not an issue at that time. To enable treatment of the water while ensuring that water treatment and service by Ambler to the Oaks do not result in intensification of water use in the B-8 zone, it is necessary for Cal Am to offset the water it supplies to the Oaks subdivision by an equal transfer of water from the Oaks' well into the Ambler system.
- H. Conversely, the Oaks' well lies within Monterey County Water Resources Agency (MCWRA)'s benefit assessment "Zone 2C," while the Ambler Treatment Plant is not within Zone 2C. Zone 2C is a benefit assessment zone adopted by MCWRA pursuant to the Monterey County Water Resources Agency Act, and the Act prohibits the exportation of water from the Salinas River groundwater basin. (California Water Code Appendix, Chapter 52 ("Agency Act").) This MOU will not result in exportation of water from the Salinas River groundwater basin, as the purpose of the MOU is ensure treatment of water to drinking water standards, not to permit net transfer of water, and the MOU requires an equal amount of water be returned to the Oaks' subdivision as is pumped from the Oaks' well into the Ambler Park water system for treatment.

- I. In 2006, Cal Am committed to quarterly monitoring of both the production records from the Oaks' well and the water consumption of the nine lots in the Oaks' subdivision. The understanding by staff was that water from the Oaks' well would be piped to the Ambler Water treatment plant to be treated and returned to the Oaks subdivision, with no net transfer of water. More recent discussions have clarified that it is not physically feasible to ensure that the exact same molecules of water sent for treatment are the same as those returned to the Oaks, but it is feasible to ensure that the exact same volume of water be sent for treatment as is returned to the Oaks' subdivision.
- J. Homes have been built on three of the nine lots in the Oaks subdivision. The County has not issued building permits on any of the remaining lots, pending Board of Supervisors' approval of a mechanism ensuring service of water to the Oaks subdivision that meets drinking water standards while not intensifying water use in the B-8 zone.
- K. The parties now desire to enter into this MOU to memorialize Cal Am's prior commitment to monitor the Oaks' well production and the Oaks' lots' consumption and to prescribe the terms and conditions under which Cal Am will balance the volume of treated water provided to the Oaks subdivision with the volume of water pumped from the Oaks well into the Ambler Park water system, so as to result in no net transfer of water.
- L. The County finds that this MOU is consistent with County's B-8 zoning because Ambler's service to the Oaks subdivision under the terms set forth in this 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.
- M. An initial study/proposed Negative Declaration was prepared for this MOU and was circulated for public review from August 19, 2013 to October 4, 2013. On the same date as the Board held a public hearing on this MOU and prior to approving this MOU, the Board of Supervisors adopted the Negative Declaration, finding on the basis of the whole record, including the initial study, comments received on the initial study, and the analysis contained in staff reports presented to the Board of Supervisors on this matter, that there is no substantial evidence that the MOU will have a significant effect on the environment and further finding that the negative declaration reflects the lead agency's independent judgment and analysis.
- N. This MOU serves to protect the public health, safety and welfare by ensuring a water supply to the Oaks' subdivision that meets federal and state drinking water standards without intensifying water use in the County's B-8 zone or resulting in net export of water out of the Salinas River groundwater basin.
- O. This MOU is intended to be binding on Cal Am, its agents, successors and assigns.
- P. Cal Am has voluntarily entered into this agreement with the County due to the unique and particular facts and circumstances related to the Oaks subdivision and the conditions of approval by County of the Oaks' subdivision.

NOW, THEREFORE, in view of the foregoing recitals, the parties agree as follows:

1. Cal Am will diligently pursue any permits and permit amendments necessary to incorporate the Oaks' well into its water system and, upon obtaining such permits, will incorporate the Oaks' well into the Cal Am Monterey District Ambler Park system ("Ambler Park Water System").
2. Cal Am shall on a quarterly basis balance the volume of treated water sent from the Ambler Park Water System to the Oaks subdivision and the water sent from the Oaks well to the Ambler Park Water System so as to result in no net transfer of water. Cal Am shall accomplish said balance by transferring a volume of raw water from the Oaks well to the Ambler Park Water System equal to the volume of water served by Ambler to the Oaks' lots. Equal volume shall include the calculated transportation water loss incurred in connection with Ambler's supply to the Oaks subdivision. The quantity of water pumped from the Oaks subdivision well to the Ambler Park Water System shall match the quarterly total plus the calculated transportation water loss.
3. Cal Am shall maintain water meters in good working order for its service to the Oaks lots, including residences and irrigation, so as to determine the amount of water served to the Oaks lots by the Ambler Park Water System. Cal Am shall also maintain a water meter(s) in good working order at the Oaks well, which shall be used to determine the volume of water pumped from the well. Within the first sixty days of each calendar year, Cal Am shall test all meters described in this Paragraph in accordance with corresponding manufacturer(s) specifications, and using competent personnel who are qualified to perform such testing. Cal Am shall submit a report including the results of this testing to the Monterey County Health Department Environmental Health Bureau (EHB) with a copy to the MCWRA no later than thirty days following the completion of the first quarter of each calendar year. The report described in this Paragraph may be combined and submitted with a quarterly report as described in Paragraph 6.
4. Cal Am shall on a quarterly basis total the monthly meter readings of the nine lots in the Oaks subdivision and the meter for irrigation of the common entrance. The water system's calculated transportation water loss for the quarter shall be added to the quarterly total meter readings. The quantity of water resulting from the addition of the quarterly total of the monthly meter readings and the calculated transportation water loss shall be pumped from the Oaks' well into the Ambler Park Water System on a quarterly basis during the calendar year (the four quarters being January through March, April through June, July through September, and October through December). Quarterly pumping of the Oaks' well based on the quarterly calculation within the month following the end of the quarter shall be considered to satisfy the no net transfer requirement.
5. Cal Am shall on a quarterly basis submit to EHB with a copy to the MCWRA a quarterly water audit report for review by EHB. Cal Am shall submit the water audit report no later than thirty days following each quarter. The water audit report shall be prepared by a qualified engineer experienced in water system operations. The water audit report shall

indicate the quantity of water that was delivered to the Oaks subdivision (determined by the quarterly total of monthly meter readings of the nine Oaks subdivision lots and irrigation system plus the calculated transportation water loss) from the Ambler Park Water System and the quantity of water that was pumped from the Oaks' well to the Ambler Park Water System during the quarter. The report shall confirm that the quantity of water pumped from the Oaks' well to the Ambler Park Water System equals the quarterly total plus the calculated transportation water loss. The report shall demonstrate how the calculated transportation water loss was determined. If the report or other information indicates that the volume of water pumped from the Oaks' well into the Ambler Park Water System does not equal the volume calculated from the quarterly meter reading and the calculated transportation water system loss of the Oaks subdivision, then Cal Am shall explain the reasons for the discrepancy and the corrective action Cal Am proposes to take to achieve no net transfer. Cal Am shall take such steps as EHB may require to bring the transfer back into balance.

6. Cal Am shall begin quarterly pumping of the Oaks' well into the Ambler system in the first quarter after Cal Am obtains all necessary permits to include the Oaks' well within its system. Additionally, to account for the water service provided by Ambler to the Oaks lots predating this quarterly pumping, Cal Am shall as part of its first draw from the Oaks' well transfer into the Ambler system an amount of water equivalent to the total amount of water previously served by Ambler to the Oaks lots.
7. This agreement pertains only to the nine lots of the Oaks subdivision due to the unique and particular facts and circumstances and public health considerations requiring treatment of water to an already approved subdivision. This agreement shall not be used to serve any other property.
8. This MOU is binding on the parties and their agents, successors and assigns. Cal Am accepts these obligations for itself, its agents, and its successors and assigns and shall inform its agents, successors and assigns of these obligations. This MOU shall not be terminated unless an alternative mechanism is put in place to provide water that meets drinking water standards to the Oaks subdivision's nine lots and that does not intensify use of water from the County's B-8 zoning district in effect at that time. Any such termination would require approval of Cal Am and the Board of Supervisors of the County of Monterey upon findings that these conditions precedent to termination have been met.
9. This MOU may not be amended except by a written instrument approved and signed by Cal Am and the Board of Supervisors of the County of Monterey.
10. Any individual executing this MOU or any amendment thereto on behalf of the County or Cal Am warrants that he or she has the requisite authority to enter into this MOU on behalf of such party and bind the party to the terms and conditions of this MOU.
11. This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

12. This MOU shall take effect immediately when signed by both the County and Cal Am.

IN WITNESS WHEREOF, the County of Monterey and California-American Water Company through their duly authorized agents have executed this agreement as of the date and year written below.

COUNTY OF MONTEREY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Chair,  
Monterey County Board of Supervisors

CALIFORNIA-AMERICAN WATER COMPANY

Dated: 4/29/14

By: [Signature]  
Title: Director Operations

**APPROVED AS TO FORM:**

COUNTY OF MONTEREY

By: \_\_\_\_\_  
Wendy Strimling  
Sr. Deputy County Counsel

CALIFORNIA-AMERICAN WATER COMPANY

By: [Signature]  
Attorney for Cal Am



ACKNOWLEDGEMENT  
BY MONTEREY COUNTY WATER RESOURCES AGENCY

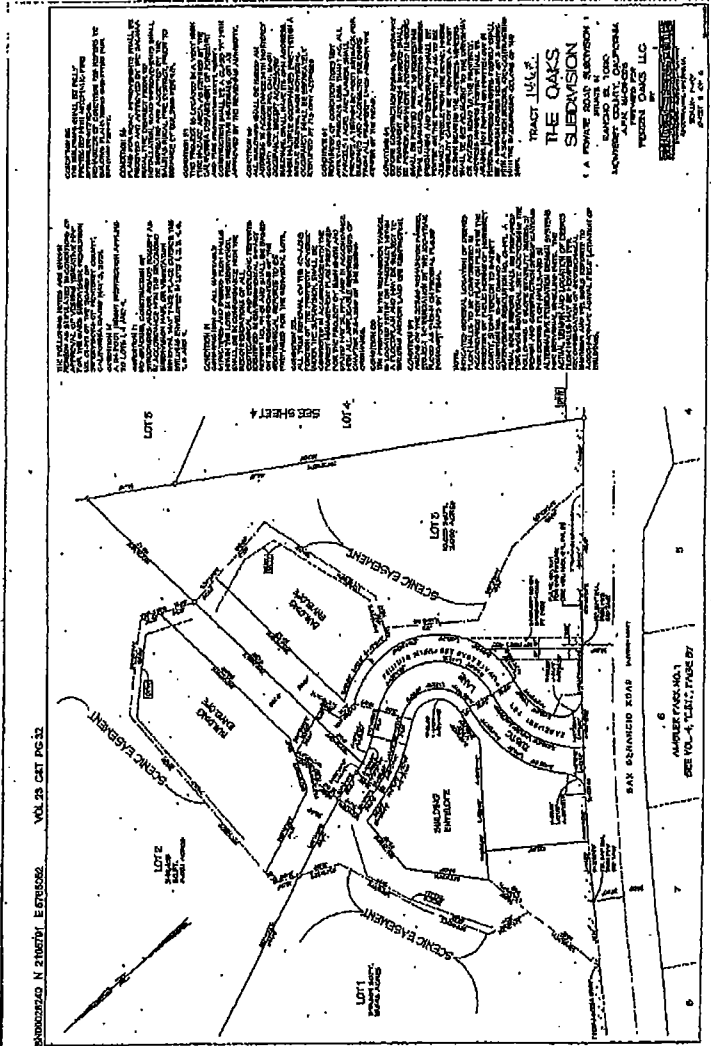
The Monterey County Water Resources Agency hereby acknowledges this Memorandum of Understanding (MOU) between California-American Water Company ("Cal Am") and the County of Monterey ("County").

MONTEREY COUNTY WATER RESOURCES AGENCY

By: \_\_\_\_\_  
General Manager







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THE OAKS SUBDIVISION IS A PART OF THE SAY BURNED ROAD SUBDIVISION, MONTGOMERY COUNTY, GEORGIA, AS SHOWN ON THE PLAT THEREOF, RECORDED IN THE PUBLIC RECORDS OF SAID COUNTY, GEORGIA, IN VOLUME 25, PAGE 32.

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**TRACT 1516.2**  
**THE OAKS**  
**SUBDIVISION**  
 A PART OF THE SAY BURNED ROAD SUBDIVISION  
 MONTGOMERY COUNTY, GEORGIA  
 PREPARED BY  
**PERKINS & WATSON, LLC**  
 1000 W. BROADWAY, SUITE 1000  
 ATLANTA, GEORGIA 30333  
 DATE: 10/15/2018

THE OAKS SUBDIVISION IS A PART OF THE SAY BURNED ROAD SUBDIVISION, MONTGOMERY COUNTY, GEORGIA, AS SHOWN ON THE PLAT THEREOF, RECORDED IN THE PUBLIC RECORDS OF SAID COUNTY, GEORGIA, IN VOLUME 25, PAGE 32.

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