

When recorded return to:

Monterey County Water Resources Agency
1441 Schilling Place, Salinas CA 93901
Attention: Brent Buche

Space above for Recorder's Use

Property Owner: Michel J. Orradre and Mary F. Orradre
Property Address: 2888 Lands End Road, Bradley, CA 93426
Assessor's Parcel No.: 012-254-022-000

This **ENCROACHMENT AGREEMENT** ("Agreement") is made this ____ day of _____ 2019, by and between Michel J. Orradre and Mary F. Orradre ("Property Owner"), and the MONTEREY COUNTY WATER RESOURCES AGENCY, a political subdivision of the State of California ("MCWRA").

RECITALS

I. WHEREAS, the real property in question is located at 4888 Lands End Road, Bradley, California 93426 ("Property"), and is more particularly described in **Exhibit A**.

II. WHEREAS, as a result of the natural erosion and instability evident due to the high-water line, the certain structure located on the Property owned by the Property Owner in and around the Nacimiento Reservoir requires emergency repairs for necessary life and safety improvements. Specifically, Property Owner seeks to make emergency repairs to the current retaining wall structure ("Impacted Structure"), which is 45 feet in length and 14 feet in height.

III. WHEREAS, the Impacted Structure was constructed within MCWRA's floodage easement recorded on August 6, 1957, as Instrument No. 12326 of Official Records of San Luis Obispo County, at or below elevation 825 (NGVD 29) ("Floodage Easement"), and are subject to said Floodage Easement.

IV. WHEREAS, Property Owner seeks to make emergency repairs to the Impacted Structure, which is located within the Floodage Easement and ranges in vertical elevation of approximately 790 feet (bottom of wall) to 804 feet (top of wall) (per GPS observations not exact based on datum). Property Owner seeks to provide an extension to the Impacted Structure by providing an additional 33 feet in length ("Emergency Repairs"). The Emergency Repairs to the Impacted Structure will result in an intensification of use within the Floodage Easement.

V. WHEREAS, the Property Owner and officials of San Luis Obispo County ("SLO County") have requested the cooperation of the MCWRA to provide for a process that allows reconstruction, replacement, and/or improvement of structures within the Floodage Easement.

VI. WHEREAS, Property Owner and MCWRA wish to enter into this Agreement so that Property Owner can obtain MCWRA's agreement that will allow for the Emergency Repairs within the Floodage Easement. Such Emergency Repairs are also subject to the later approval by SLO County through a building permit or similar entitlement.

NOW, THEREFORE, MCWRA grants to Property Owner permission to construct Emergency Repairs within the Floodage Easement, on the terms and conditions set forth in this Agreement, and Property Owner hereby irrevocably covenants with MCWRA that there be and hereby are created restrictions on the use and enjoyment of the Property, to be attached to and become a part of the deed to the Property as set forth below. The undersigned, for himself/herself/itself and for his/her/its/their heirs, assigns, and successors in interest hereby declares, covenants and agrees to the following:

A. Encroachment Allowed.

MCWRA hereby grants to Property Owner permission to construct life and safety improvements to the Impacted Structure within the Floodage Easement for reasons of Emergency Repairs, subject to the terms of this Agreement and subject to later approval by SLO County through a building permit or similar entitlement. MCWRA acknowledges and agrees that no further permissions or approvals shall be required from MCWRA for this purpose.

B. Acknowledgements.

1. Property Owner acknowledges MCWRA's Floodage Easement.
2. Property Owner acknowledges that the California Department of Water Resources Division of Safety of Dams ("DSOD") and the Federal Energy Regulatory Commission ("FERC") regulate MCWRA's operation of the Lake Nacimiento Dam and Reservoir.

C. Use of Impacted Structure.

Property Owner agrees to all of the following:

1. The intensification of use to the Impacted Structure shall be constructed solely for life and safety reasons.
2. The extension to the Impacted Structure shall be constructed no lower than the elevation where the Impacted Structure was initially constructed.
3. All persons with any interest in or right to use the Impacted Structure or Emergency Repairs will discontinue use upon the Property Owner's receipt of written notice from MCWRA that the Impacted Structure and/or Emergency Repairs substantially interfere with MCWRA's rights under the Floodage Easement.
4. The Impacted Structure and Emergency Repairs shall be maintained and kept in good repair. The Impacted Structure shall be subsequently rebuilt or replaced again (i.e., fire, flood, etc.) without the express and written permission of the MCWRA.

D. Applicable Law.

The Property shall be subject to any and all applicable federal, state or local laws, regulations, and ordinances, as may be amended from time to time.

E. Waiver and Release.

Property Owner agrees to waive and release MCWRA and the County of Monterey for all activities consistent with the Floodage Easement. Property Owner agrees that MCWRA's employees, officers, agents, or assigns, and the County of Monterey's employees, officers, agents, or assigns (collectively "Released Parties") will not be held liable or responsible in any way for any injury, death, or other damages to Property Owner, or Property Owner's family, heirs, or assigns that may occur as a result of MCWRA's reasonable exercise of any of its rights under the Floodage Easement. Property Owner expressly and unconditionally assume all risks and dangers known or unknown, foreseen or unforeseen, and relating to or incidental to constructing the Emergency Repairs to the Impacted Structure within the Floodage Easement and any activity associated therewith.

F. Recordation.

Property Owner will be responsible for recording the Agreement once it is fully executed with the San Luis Obispo Clerk-Recorder's Office, and returning a copy of the file stamped recorded Agreement to MCWRA with ten business days of the Agreement's recording.

G. Disclosure.

Property Owner agrees to disclose the contents of this Agreement to any person or entity to which the Property shall be conveyed.

H. Attorney Fees.

In the event of any controversy, claim, or dispute relating to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the other party reasonable expenses, attorney fees and costs.

I. Hold Harmless and Indemnification.

Property Owner agrees to hold harmless, defend and indemnify MCWRA and the County of Monterey from any and all claims arising out of Property Owner's Impacted Structure or Emergency Repairs, which hold harmless and indemnification shall include property damage and personal injury resulting from, arising out of, and relating to inundation or MCWRA's operation or maintenance activities within the Floodage Easement, including property damage and personal injury or death resulting from operation of boats, vehicles and equipment within the Floodage Easement. Property Owner shall not be liable or otherwise indemnify for the negligent acts of MCWRA or the County of Monterey, or the agents, officers or employees of MCWRA or the County of Monterey.

J. Incorporation of Recitals.

The recitals to this Agreement are hereby incorporated into this instrument.

K. Civil Code Section 1654.

Owner and MCWRA understand and agree that none of the parties are to be deemed the party that prepared this instrument within the meaning of Civil Code section 1654.

L. Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect, and shall in no way be impaired or invalidated. The parties agree to substitute for the invalid or unenforceable provision a valid and enforceable provision that most closely approximates the intent and economic effect of the invalid or unenforceable provision.

M. Covenant Running with the Land.

Property Owner agrees that the Property shall be held, occupied, sold and conveyed subject to the provisions of this Agreement which shall run with the land and which shall be binding upon all parties, heirs, successors, and assigns, having any right, title or interest in the Property.

N. Lien.

This Agreement shall constitute a lien on the Property for the faithful satisfaction of all the terms and conditions of this Agreement.

O. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set out opposite the respective signatures.

PROPERTY OWNER

Dated: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.
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STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[SEAL]

Notary Public

**MONTEREY COUNTY WATER
RESOURCES AGENCY**

Dated: _____

Interim General Manager
Monterey County Water Resources Agency

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF MONTEREY)

On _____ before me, _____,
Notary Public, personally appeared _____, who proved to
me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to
the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[SEAL]

Signature

NOTARY PUBLIC

APPROVED AS TO FORM & LEGALITY:
OFFICE OF THE COUNTY COUNSEL
CHARLES. J. McKEE, COUNTY COUNSEL

By: _____
Kelly L. Donlon
Deputy County Counsel

Dated: _____

EXHIBIT A

Legal Description

FOR APN: 012-254-022-000

PARCEL 1

LOT 203 OF TRACT NO. 379 IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 7, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL OIL, GAS AND MINERAL IN SAID LAND, AS RESERVED AND RETAINED BY MONTEREY COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT IN THE DEED RECORDED JULY 3, 1968 IN BOOK 1431, PAGE 630 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WHICH DEED PROVIDES "THAT SAID RESERVATION AND RETENTION SHALL PERTAIN ONLY TO THE OIL, GAS AND MINERALS LYING BELOW 500 FEET FROM THE SURFACE OF THE LAND, AND SAID DISTRICT, WITH RELATION TO SAID OIL, GAS AND MINERALS SHALL HAVE NO RIGHT OF SURFACE ENTRY OR ANY RIGHT OF ENTRY INTO ANY PART OF THE LAND LYING WITHIN 500 FEET OF THE SURFACE OF THE LAND."

PARCEL 2

AN UNDIVIDED ½ INTEREST IN AND TO LOT 214 OF TRACT NO. 379 IN THE COUNTY OF SAN LUIS OBISPO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 7, PAGE 49 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT ALL OIL, GAS AND MINERALS IN SAID LAND, AS RESERVED AND RETAINED BY MONTEREY COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT IN THE DEED RECORDED JULY 3, 1968 IN BOOK 1481, PAGE 630 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WHICH DEED PROVIDES "THAT SAID RESERVATION AND RETENTION SHALL PERTAIN ONLY TO OIL, GAS AND MINERALS LYING BELOW 500 FEET FROM THE SURFACE OF THE LAND, AND SAID DISTRICT, WITH RELATION TO SAID OIL, GAS AND MINERALS, SHALL HAVE NO RIGHT OF SURFACE ENTRY OR ANY RIGHT OF ENTRY INTO ANY PART OF THE LAND LYING WITHIN 500 FEET OF THE SURFACE OF THE LAND."