

WELL USE AGREEMENT

This Well Use Agreement ("Agreement") is made this ____ day of _____, 2016, by and between the County of Yolo, a political subdivision of the State of California, on behalf of and for the benefit of the El Macero County Service Area, ("CSA"), and the El Macero Country Club, a California non-profit, mutual benefit corporation, ("EMCC").

RECITALS

1. CSA owns a groundwater well, referred to as EM3 and more fully described below, which is located on a CSA-owned parcel of land that abuts EMCC's golf course.
2. EM3 was constructed in 1991 at CSA expense and has since then been used continuously for the production of water for CSA.
3. EM3 is connected to the EMCC supply lake on hole Number 12.
4. Available documents indicate that EM3 produces water from the same aquifer as EMCC's Well 4 and that the quality of water from EM3 and Well 4 are similar.
5. CSA now receives water from the City of Davis and does not currently need water from EM3.
6. CSA desires to make available certain well capacity to EMCC and to have EMCC maintain and regularly operate EM3 in order to keep it in good condition for possible future CSA Purposes.
7. EMCC represents that it has the ability and the desire to operate and maintain EM3 for Club Purposes in exchange for water use.

Now, therefore, the parties agree that:

DEFINITIONS

1. "EM3" shall mean CSA's groundwater production well located on Mace Boulevard on a CSA-owned parcel abutting the northwest corner of the EMCC golf course, as shown on Attachment A, including all appurtenant on-site equipment and facilities, which include but are not limited to pipes, valves, turnouts, meter, electrical and/or other power source(s).
2. "Well 4" shall mean the groundwater production well owned and operated by EMCC for Club Purposes.
3. "Club Purposes" shall mean the irrigation of EMCC's fairways, tees, greens, landscaping and other vegetation, the maintenance of lakes or ponds on EMCC properties and other miscellaneous purposes associated with golf course operations.

Club Purposes shall also include the operation of a well on a periodic basis to insure proper maintenance of the pump in question.

4. "CSA Purposes" shall mean the use of water within CSA for purposes other than Club Purposes.
5. "Major Replacements" are defined as any equipment maintenance, repair and replacement expenditures that are not Minor Replacements.
6. "Minor Replacements" are defined as equipment maintenance, repair and replacement expenditures not exceeding \$2,500 per expenditure/incident.

TERMS AND CONDITIONS

1. Water Usage. Non-exclusive of CSA's right to use water from EM3 for CSA Purposes, EMCC may use water from EM3 for Club Purposes. Water from EM3 should not be used to increase total water consumption for Club Purposes and the total amount of water used for Club Purposes from all sources combined shall not significantly exceed the amount that would have been used absent receipt of water from EM3 under this Agreement.
2. Security. At CSA's sole discretion, CSA may establish and maintain such physical or electronic security measures as CSA, in its sole and exclusive discretion, deems appropriate for EM3 and if so, will provide EMCC the reasonable access required by EMCC personnel in order to carry out EMCC's rights and duties under this Agreement.
3. Operations and Maintenance. During the term of this Agreement, EMCC will operate and maintain EM3 in accordance with the Operations and Maintenance Plan attached as Attachment B, as amended from time-to-time upon mutual consent of the parties. EMCC shall be responsible for the cost of electricity used at EM3 provided that CSA shall separately meter EM3 and shall submit a quarterly invoice not less than 30 days following the end of the quarter in question. Upon receipt of a timely invoice from CSA, EMCC shall pay such invoice within not more than 14 days.
4. Minor Replacements. EMCC shall be solely responsible for the cost of Minor Replacements. Subject to the expense limitation, EMCC is responsible for proper care and maintenance of the equipment including both routine and unexpected (even if inevitable), episodic maintenance, repair and replacements, when needed.
5. Major Replacements. In the event of the need for a Major Replacement, EMCC will promptly notify CSA. CSA may, at CSA's sole discretion, choose to (i) have the Major Replacement made in which case CSA must pay the cost or (ii) terminate this Agreement in lieu of making the Major Replacement.

6. Connection to EMCC's Irrigation System. EMCC is solely responsible for the cost of connecting EMCC's irrigation system to EM3, for all future connections and for maintaining existing and future physical connections, which connections shall not be considered either a Major Replacement or Minor Replacement. Additional appurtenant facilities may be necessary to make water available from EM3 to EMCC. Such facilities may include, but are not limited to, valves, discharge piping, one or more meters, and other facilities deemed necessary or appropriate by EMCC. Any such facilities shall be designed, constructed and maintained in accordance with EMCC specifications at EMCC's sole cost and expense at a location and manner to be agreed upon by the parties. EMCC shall be solely responsible for any damage to the EMCC irrigation system resulting from the existing or future physical connections with EM3.
7. Annual Reporting. EMCC will maintain and annually provide to CSA a maintenance log reflecting any and all maintenance and monitoring performed on EM3 while under EMCC operation as detailed in Attachment B. 95
8. Water Rights. All groundwater used for Club Purposes pursuant to this Agreement is deemed by the parties to have been used in furtherance of the exercise of EMCC's groundwater rights. All groundwater used for CSA Purposes pursuant to this Agreement will be deemed by the parties to have been used in furtherance of CSA's groundwater rights.
9. No Warranty. CSA makes no warranty, express or implied, with respect to the quality or quantity of water produced from EM3 and EMCC takes and utilizes such water at EMCC's sole risk and subject to the terms of this Agreement, and EMCC shall indemnify, hold harmless, and defend CSA with respect to any and all claims, demands, or lawsuits regarding water produced by EMCC from EM3, other than water used for CSA Purposes.
10. Mutual Indemnity. With the exceptions listed below in this Section, each party shall indemnify, defend, protect, hold harmless and release the other party, its elected bodies, officers, agents and employees from and against any and all claims, liability, losses, proceedings, damages, causes of action, liability, costs or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any negligent act or omission or willful misconduct of the indemnifying party. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts. Notwithstanding the foregoing, EMCC shall not be liable for any Major Replacement or for a complete well failure not caused by a negligent act or omission or the willful misconduct of EMCC and the provisions of Section 5 of this Agreement shall govern.
11. Assignment or Transfer. EMCC may not assign or transfer this Agreement, including to a successor-in-interest of all or a majority of EMCC's assets, without the prior written consent of CSA, which consent shall not be unreasonably withheld.

12. Term of Agreement. This Agreement shall remain in effect until the earliest to occur of:

- a. Written notice of termination by either party if CSA does not initiate a Major Replacement within 60 days after EMCC notifies CSA of the need for such Major Replacement, effective as of the date of the notice;
- b. Termination by either party for any reason or no reason upon 180 days' advance notice to the other party;
- c. Termination by mutual consent of the parties;
- d. Written notice of termination by either party if EM3 becomes inoperable, effective as of the date of the notice.

13. Compliance with Law. EMCC shall comply with all federal, state and local laws and regulations applicable to EMCC's use, operation and maintenance of EM3. CSA shall comply with all federal, state and local laws and regulations applicable to CSA's ownership and control of EM3.

14. Independent Contractor. EMCC is an independent contractor and not an agent, officer or employee of CSA. The parties mutually understand that this Agreement is by and between two independent contractors and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association.

15. Survival. The Mutual Indemnity provision of this Agreement shall survive the termination of the Agreement.

16. Notice

- a. Any notice provided in connection with this Agreement shall be given in writing by personal delivery, by any commercially accepted overnight delivery service or by prepaid first-class mail addressed as follows:

El Macero County Service Area
County of Yolo, County Administrator's Office
625 Court Street, Room 202
Woodland, CA 95695

El Macero County Country Club
44571 Clubhouse Drive

El Macero, CA 95618

- b. If notice is given by personal delivery, notice is effective as of the date of personal delivery. If notice is given by mail or by overnight delivery service, notice is effective as of the day following the date of mailing or the date of delivery reflected upon a return receipt, whichever occurs first.

17. Choice of Law. The parties have executed and delivered this Agreement in the County of Yolo, State of California. The laws of the State of California shall govern the validity, enforceability or interpretation of this Agreement. Yolo County shall be the venue for any action or proceeding, in law or equity that may be brought in connection with this Agreement.

18. Entire Agreement. This Agreement and the Water Use Agreement of the same date, including any attachments referenced, constitute the entire agreement between the parties and there are no inducements, promises, terms, conditions or obligations made or entered into by CSA or EMCC other than those contained in this Agreement.

EMCC

By: _____

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COUNTY OF YOLO

By: _____

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Jim Provenza, Chair
Board of Supervisors

Attest:
Julie Dachtler, Deputy Clerk
Board of Supervisors

By: _____

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Deputy (Seal)

Approved as to Form:
Philip J. Pogledich, County Counsel

By: _____

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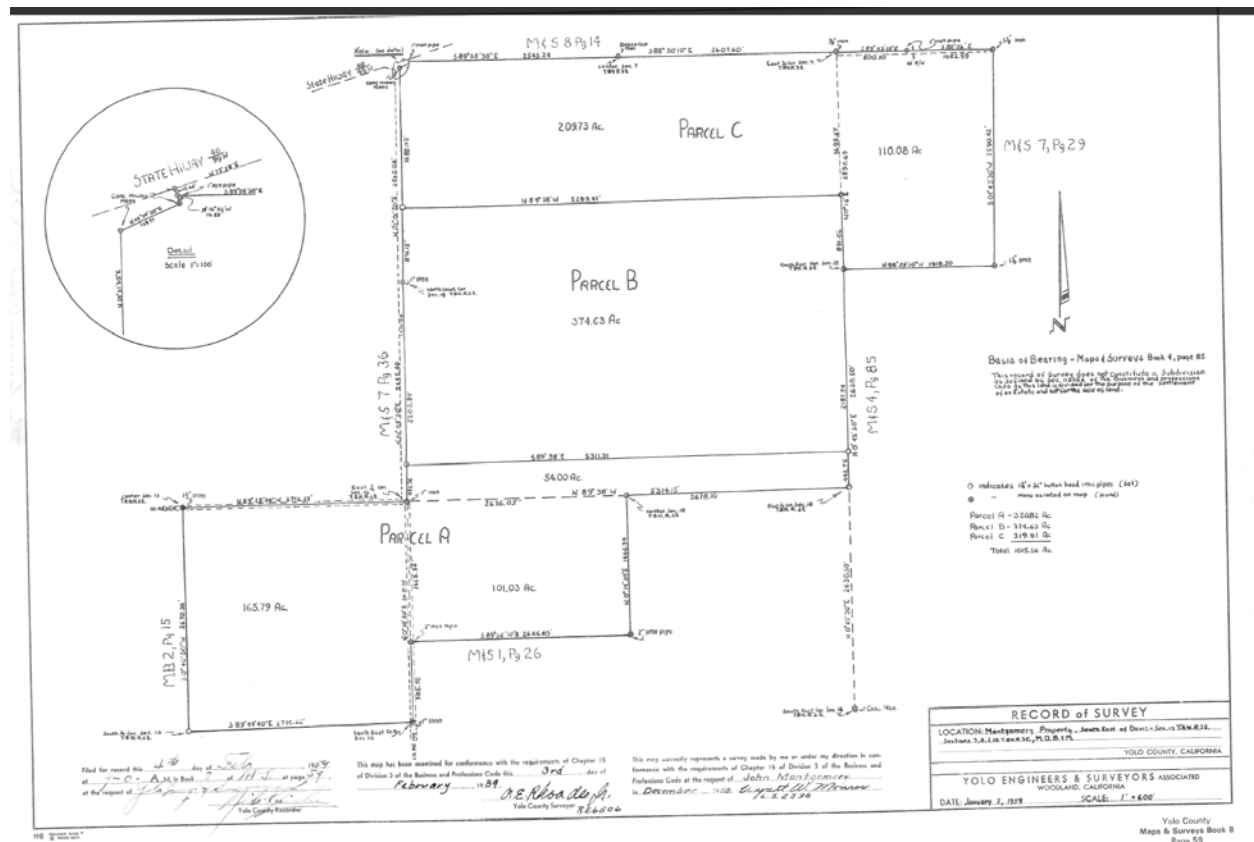
Carrie Scarlata,
Assistant County Counsel

ATTACHMENT A
[Map/legal description]

All that real property situated in the State of California, County of Yolo, described in the County of Yolo Official Book of Records 1514, Page 279, as:

A portion of Parcel "B" as same appears of record in Maps and Surveys Book 8, pg. 59. Yolo County Records, also being a portion of the Southwest quarter of Section 7, T8N, R3E, M.D.B.&M., described as:

Beginning at a point on the West line of said Parcel "B" and said Section 7 that is distant North 1°01' 50" East 38.33 feet from the Southwest corner of said Section 7, said point of beginning also being the Northwest Corner of that certain parcel of land conveyed to the El Macero Country Club by deed recorded in Official Records Book 1320, Page 249, Parcel 2: thence continuing along said West line of said Parcel "b" and said Section 7, North 1° 01' 50" East 40.00 feet; thence at right angles thereto, parallel with the North line of said El Macero Country Club Parcel, South 88° 58' 10" East 70.00 feet: thence at right angles thereto, parallel with said West line South 1° 01' 50" West 40.00 feet to said North line of said El Macero Country Club parcel: thence along said North line North 88° 58' 10" West 70.00 feet to the point of the beginning.



ATTACHMENT B

Operation, Maintenance, Records and Reporting

I. Operation

EMCC may use EM3 as needed to supply water to lakes on EMCC property and, at a minimum, shall exercise the pumping equipment once every two weeks for at least 15 minutes.

EMCC may, at its discretion, partially close the above ground gate valve on the pump discharge line in order to protect golf course piping.

II. Maintenance

EMCC shall maintain EM3 in good working order in accordance with the recommendations of the May 13, 2016, letter from Dan Morris, Eaton Pumps Sales and Service, to Michael Facciuto, EMCC (attached), including any necessary repairs and minor replacements.

Annually, EMCC shall have the efficiency of EM3 tested and shall obtain a chemical analysis of water produced from EM3 in order to monitor its continued suitability for irrigation ("Ag Suitability" water test).

III. Records

EMCC shall maintain a record of pumpage from EM3, including dates, run times, gallons pumped and energy usage.

EMCC shall maintain a record of maintenance and minor repairs and replacements at EM3.

IV. Reporting

EMCC shall submit an annual report to the CSA, covering the prior Water Year (October 1 through September 30) by not later than November 1 transmitting (a) the results of pump efficiency tests and water quality analyses, (b) pumpage, including dates, run times, gallons pumped and energy usage and (c) a summary of the maintenance completed and any repairs or replacements made.

Annual operation and maintenance report for EM3 shall be provided to:

El Macero County Service Area
County of Yolo, County Administrator's Office
625 Court Street, Room 202
Woodland, CA 95695

Annually, EMCC shall obtain, at EMCC's expense, an inspection of EM3 by an appropriate independent third party and promptly submit a copy of the inspection report to CSA.