

EXHIBIT 5-A

Recording requested by: Monterey Peninsula Water Management District

When recorded mail to:

Monterey Peninsula Water Management District
P.O. Box 85
Monterey, CA 93942-0085

Well Use Agreement

Carmel Valley Trail and Saddle Club Irrigation Well

1. Recitals

Whereas, the Carmel Valley Trail and Saddle Club, hereinafter referred to as "Owner," owns and controls the land described by Assessor's Parcel Number 189-111-033, hereinafter referred to as "Property," and desires to protect the Property from erosion by allowing the irrigation of riparian vegetation.

Whereas, the Monterey Peninsula Water Management District, hereinafter referred to as "District", is a public agency authorized to undertake works and projects for the protection of property along the Carmel River from possible erosion. To this end, the District has planted restoration plantings as part of a restoration project, hereinafter referred to as "Project," to reduce potential erosion from river flows on the Property. The District desires to irrigate riparian vegetation planted as a part of this Project from a well located on the Property.

Therefore, the Owner and District do hereby agree to the following:

2. Installation and Location

The Owner, together with his agents, successors and assigns, previously granted to the District, its agents, successors or assigns, the right to drill, install, operate and maintain an irrigation well that is approximately seventy-five (75) feet deep and six (6) inches in diameter. The location of the irrigation well is within a twenty (20) foot by twenty (20) foot site within parcel 189-111-033. The District shall provide to the Owner one (1) three-(3) inch diameter outlet located within the well site that is capable of providing water from the well for use by the Owner.

3. Pro Rata Cost Sharing

The District shall record the water use of the Owner and District and shall provide the Owner with a formula for cost sharing which is based on the actual amount of water used by each Party to this agreement. The District shall use a cumulative total of water use to determine the pro rata share of costs for maintenance and repair of the well.

The Owner and the District shall record meter readings at the beginning of each month and shall calculate the appropriate factor for apportioning the cost of providing electricity to the well. On a monthly basis, the Owner shall provide a copy of the utility bill(s) to the District and shall apportion the bill according to the quantity of water used by each party during the preceding month. The District shall pay the Owner for electrical costs associated with the District's use of the well within thirty (30) days of the presentation of a bill for such use.

4. Well Site Appearance

The well is protected by a fence that was installed by the Owner. The fenced area shall be large enough to accommodate all appurtenances necessary for the proper functioning of the well and irrigation system.

5. Location of Utilities and Waterlines

The District shall have the right to install a timed electrical irrigation system for use in irrigating the riparian corridor. All electric utilities shall be in underground conduits in conformance with utility company standards. All irrigation waterlines shall be installed underground on the property except for irrigation lines installed within twenty-five (25) feet of the river bank. Plans and specifications for improvements shall be reviewed and approved by the Owner prior to installation.

6. Description of Well Use and System Performance

The use of this well by the District and the Owner shall be limited to non-potable uses of water. This well shall not be used as a domestic water supply. Water from this well shall not be sold, traded or bartered.

7. Right-of-Entry

The District, its agents and assigns shall have a right-of-entry onto the property together with personal property necessary to effect this Agreement for the purposes of operating, maintaining and repairing District irrigation equipment and Project improvements subject to the following restrictions:

- a. All maintenance and repair work shall be carried out during normal business hours from 8 a.m. to 5 p.m. on Monday through Friday. At all other times, the District shall obtain permission from the Owner for entry for maintenance and repair work. The only exception to this is for an emergency declared by the District Engineer during which all reasonable attempts shall be made by the District to inform the Owner of the need for entry onto the Property.
- b. Entry shall be over existing roads and access onto the Owner's property. The Owner reserves the right to relocate access.

8. Irrigation Water Schedule and System Operation

The Owner, together with its agents, successors, and assigns, grant to the District, and its agents, successors or assigns, the right to irrigate riparian vegetation along the Carmel River within the Project from a well located on the Property subject to the following conditions:

- a. The District shall cooperate with the Owner to provide adequate volume and water pressure for special events held on the Property. The District shall have the right to use of the well during the period of March 1 through November 31 for a maximum of sixteen (16) hours per week. During this period, the District shall have the right to use up to forty-five (45) gallons per minute (gpm) of water from the well. At all other times of the year, District use of the well shall be subject to Owner's use.
- b. If, by appropriate testing, it is determined that the well's production falls below 35 gpm, then the District and Owner shall promptly agree on improvements to the system which will allow irrigation of both the riparian corridor and the Owner's Property. The District reserves the right to make those improvements and to demand reimbursement of a fair share of the costs of improvements which are required to allow irrigation of both the Property and the Project. If the District elects not to make improvements, then the Owner and the District shall agree on a revised irrigation schedule.

9. Well Maintenance and Repairs

The Owner shall be responsible for maintenance and repair of the well and appurtenances which are common to the operation of the District's irrigation system and the Owner's irrigation system. For those repairs in excess of \$1000, the Owner shall obtain written authorization from the District prior to effecting repairs. For such repairs, the District reserves the right to cause the repairs to be made or to contract for such repairs. If the District and Owner cannot agree on required repairs, a mutually acceptable consultant shall be hired to render an opinion. Such opinion shall be binding upon both parties. The District shall reimburse the Owner for a pro rata share of all reasonable maintenance and repair costs. This includes, but is not limited to: consultant's fees, repair work, parts and labor.

10. Maintenance of Riparian Irrigation System

The District shall be solely responsible for the operation, maintenance and repair of the riparian irrigation system for the Project. For the purposes of this agreement, the riparian irrigation system begins downstream of the water meter installed to measure the District's water use.

11. Length of Agreement

It is the District's intent to use water to establish riparian vegetation within the Project and thereafter, to maintain the vegetation in a healthy state during periods of drought. Therefore, the conditions of this agreement shall be in full force for a period of ten (10) years, beginning with the first irrigation season after the Agreement is recorded.

After the ten-year term, the District and the Owners may mutually agree to extend this Agreement based on terms and conditions mutually acceptable to both at that time.

12. Hold Harmless Agreement

The District shall indemnify, defend, and hold harmless the Owner from any and all liability - which may occur as a result of the operation, maintenance or repair of the riparian irrigation system installed by the District for the Project as described in this Agreement. In all circumstances, the effect of this offer to indemnify, defend and hold harmless under this paragraph is limited, and under no circumstances shall the aggregate costs paid by the District pursuant to this indemnity provision exceed the sum of \$10,000. This provision shall not create a presumption or inference that any future damage or loss has been caused by the District and/or its agents, contractors, inspectors, or employees during the maintenance of the well, Project, or otherwise.

13. Recordation

This agreement shall be recorded in the Office of the Monterey County Recorder. All expenses related thereto shall be the sole responsibility of the District. When recorded, this Agreement supersedes all previous Agreements between the Owners and the District.

14. Covenant to Run with the Land

As the operation, maintenance and repair of the Project improvements and the described riparian irrigation system for the Project shall be used for protection of the property, the parties intend this Agreement to run with the land and to be binding upon all successors in interest to the parties without restriction, except as to term as written in the provisions for Length of Agreement.

WHEREFORE, this Well Use Agreement was executed by the parties on the date written below:

Signed: _____

Larry Bacon
Carmel Valley Trail and Saddle Club

Date _____

Signed: _____

David J. Stoldt, General Manager
Monterey Peninsula Water Management District

Date _____