

**MEMORANDUM OF AGREEMENT REGARDING
USE OF TURN OUT FROM CALIFORNIA AQUEDUCT**

This Memorandum of Agreement (this "MOA") is entered into this ____ day of _____, 2021 (the "Effective Date"), by and among (i) the OAK FLAT WATER DISTRICT ("Oak Flat"), (ii) the WESTERN HILLS WATER DISTRICT ("Western Hills") and (iii) the KERN COUNTY WATER AGENCY ("Agency"). Oak Flat, Western Hills, and Agency shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

1. Oak Flat is a California Water District that receives water from the State Water Project pursuant to the terms and conditions of that certain *Contract Between the State of California Department of Water Resources and Oak Flat Water District for a Water Supply*, dated March 23, 1965 (the "Oak Flat Contract").
2. Oak Flat delivers State Water Project (SWP) water it receives from the Oak Flat Contract (herein, "Table A Water") in a manner consistent with the terms and conditions of the Oak Flat Contract and applicable law.
3. Certain lands within the boundaries of Oak Flat are situated in a location that lacks infrastructure necessary for receiving their allocable share of Table A Water directly from the California Aqueduct (the "Oak Flat Parcels").
4. In connection with that certain *Contract to Transfer Water* between Western Hills and Agency dated June 5, 2000, Western Hills, Agency and the Department of Water Resources (DWR) entered into that certain *Turnout Agreement* (as defined in the Contract) for construction, operation and maintenance of Western Hills Turnout, located at Milepost 42.90 of Reach 2A of the California Aqueduct (the "Turnout").
5. Oak Flat has requested that DWR approve the Turnout as a point of delivery under the Oak Flat Contract.
6. Oak Flat has requested that Western Hills and the Agency permit Oak Flat to use the Turnout for delivering Table A Water to the Oak Flat Parcels. Western Hills took formal action at its duly noticed Board meeting to accommodate Oak Flat's request on June 19, 2019. Agency memorialized its qualified approval of Oak Flat's request in a letter to the DWR dated February 27, 2020.
7. DWR's approval of Oak Flat's request to add the Turnout as an authorized point of delivery under the Oak Flat Contract is subject in part to the Parties entering into this MOA governing the terms and conditions of Oak Flat's use of the Turnout.

AGREEMENT

NOW, THEREFORE, in light of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Oak Flat shall have the right to use the Turnout solely for the delivery of up to 70 acre feet per year to the Oak Flat Parcels.
2. Oak Flat shall be solely responsible for securing such approvals from the Department of Water Resources (DWR) as DWR deems necessary to include the Turnout as a point of delivery under the Oak Flat Contract.
3. Oak Flat's use of the Turnout shall be subject to (i) the Turnout Agreement, (ii) the Oak Flat Contract, (iii) applicable law, including without limitation the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*), and (iv) such other conditions as the Department of Water Resources (DWR) and Western Hills might place on Oak Flat's use of the Turnout.
4. Neither Western Hills nor the Agency shall be required to incur any unreimbursed out-of-pocket expenses in connection with this MOA or Oak Flat's use of the Turnout. Without limiting the foregoing, Oak Flat shall be responsible for the cost of securing all necessary approvals from DWR, and for all costs associated with the construction, operation and maintenance of any facilities beyond the Turnout necessary for delivering Table A Water to the Oak Flat Parcels.
5. This MOA shall be subject to termination only in the event of any of the following:
 - a. DWR withholds or relinquishes approval of Oak Flat's use of the Turnout; or
 - b. Oak Flat's use of the Turnout creates substantial interference with Western Hills' operation or maintenance of the Turnout or is inconsistent with the Turnout Agreement or other agreement(s) with between Oak Flat and Western Hills, and such activity remains uncured after thirty (30) days following Oak Flat's receipt of written notice from Western Hills or Agency, or such additional time as might be necessary if a cure is not capable of being accomplished in 30 days, provided Oak Flat has commenced the cure within said thirty days and diligently prosecutes the cure to completion.
6. The Parties shall endeavor to schedule Oak Flat's use of the Turnout so that Oak Flat can timely deliver Table A Water to the Oak Flat Parcels in a manner that causes the least amount of interference to Western Hills' and the Agency's operations.
7. This MOA shall be deemed to have commenced on the Effective Date and shall be coterminous with the Oak Flat Contract, such period being the "Term" of this MOA.

C. If to Agency

Kern County Water Agency
Attn: Holly Melton, Water Resources Manager
3200 Rio Mirada Drive
Bakersfield, CA 93308

14. This MOA may be signed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, as of the Effective Date the Parties have accepted, made and executed this MOA upon the terms, conditions, and provisions stated above.

OAK FLAT WATER DISTRICT

WESTERN HILLS WATER DISTRICT

By: 
Anthea G. Hansen

By: _____
Ron Demmers

KERN COUNTY WATER AGENCY

By: 
Water Resources Manager
Holly Melton