

New Ord Community Water Services Agreement between City of Del Rey Oaks and Marina Coast Water District

This Agreement is entered into as of the Effective Date of July 1, 2020, by and between **City of Del Rey Oaks** ("City"), and the **Marina Coast Water District** ("MCWD"), with reference to the following facts:

Recitals

A. On September 21, 1993, the U.S. Government, represented by the U.S. Army, and the Monterey County Water Resources Agency (MCWRA) entered into an agreement (1993 Fort Ord Annexation Agreement) whereby Fort Ord would be annexed into MCWRA Zones 2 and 2A and 6,600 AFY of groundwater recognized for use on Fort Ord lands, and the U.S. Government paid MCWRA a \$7,400,000 annexation fee.

B. The Fort Ord Reuse Authority (FORA) is a regional agency established under Government Code Sections 67650, et seq., to plan, facilitate, and manage the transfer of former Fort Ord property from the United States Army to the governing local jurisdictions pursuant to the Fort Ord Reuse Plan adopted under Government Code Section 67675

C. Under the 1998 Water/Wastewater Facilities Agreement between FORA and MCWD, MCWD is the exclusive provider of water and wastewater collection services within the former Fort Ord, now designated as MCWD's Ord Community Service Area, except that MCWD does not currently provide wastewater collection services within those areas within the Cities of Seaside and Del Rey Oaks which are served by the Seaside County Sanitation District. Paragraph 9.3, Term, of the 1998 Water/Wastewater Facilities Agreement as amended states, "This Agreement shall have a term coincident with the legal existence of FORA." FORA's legal existence is scheduled to terminate on June 30, 2020, pursuant to Government Code Section 67700.

D. On October 23, 2001, the U.S. Government through the Secretary of the Army made an economic development conveyance by quitclaim the following assets to FORA and the next day on October 24, 2001, FORA deeded those very same assets to MCWD: (1) all of Fort Ord's water and sewer infrastructure; (2) under the 1993 Fort Ord Annexation Agreement, 4,871 AFY of the Army's 6,600 AFY of MCWRA groundwater allocation with the Army reserving 1,729 AFY; and (3) 2.22 MGD of the Army's prepaid wastewater treatment capacity under the 1993 Army-Monterey Regional Water Pollution Control Agency (MRWPCA) Agreement.

E. On April 8, 2016, MRWPCA and MCWD entered into that certain Pure Water Delivery and Supply Project Agreement, as amended, wherein MRWPCA agreed, among other things, to produce a minimum of 600 AFY of purified recycled water (also known as advanced treated water) with the ability to produce a maximum day demand of 1.37 MGD for MCWD under Phase 1 and to later produce an additional 827 AFY of purified recycled water under Phase 2 on terms specified in the agreement. The FORA Base Reuse Plan has a water augmentation target of 2,400 AFY. This combined 1,427 AFY of purified recycled water would meet all but 973 AFY of the 2,400 AFY water augmentation target.

F. The Fort Ord Water Augmentation Program costs were to be covered by funds collected under FORA's Community Development Fund taxes; however, FORA is scheduled to terminate on June 30, 2020, so starting July 1, 2020, water augmentation costs will be collected by MCWD.

G. On July 2, 2019, the Local Agency Formation Commission of Monterey County-approved MCWD annexation of lands was completed within MCWD's Ord Community Service Area, which then currently received MCWD's both water and sewer collection services or which had received land use approvals from the applicable land use jurisdiction. City's lands within the Ord Community Service Area were not annexed because those lands are provided sewer collection services by the Seaside County Sanitation District (SCSD) and not MCWD.

H. This Agreement shall not authorize either Party to take any specific action with regard to the potable and recycled water that is the subject of this Agreement. Likewise, this Agreement shall not limit the City's discretion with regard to the use of the potable and recycled water discussed in this Agreement in the future.

Definitions

- Allocation or Allocations shall mean potable water or recycled water allocations as the context indicates as set forth in the Section 1 table of this Agreement.

- Del Rey Oaks (DRO) Service Area shall mean the area within which MCWD will provide potable water and recycled water services to the City.

- Groundwater Action shall mean any final legally binding determination by a court or regulatory or administrative agency having jurisdiction over groundwater that would directly or indirectly change the potable water Allocations set forth in Section 1. A regulatory or administrative agency may include, but not be limited to, the State Water Resources Control Board (SWRCB), Regional Water Quality Control Board, Monterey County, Monterey County Water Resources Agency, and any groundwater sustainability agency (GSA) having jurisdiction over the groundwater in question. Groundwater Actions include, but are not limited to, groundwater adjudications conducted in accordance with Code of Civil Procedure Section 830, et seq., protection of groundwater quality pursuant to Water Code Sections 2100 – 2102, GSA actions pursuant to the adopted groundwater sustainability plan for the applicable groundwater subbasin. Groundwater Action shall also mean the approval of new well permits that will pump potable, brackish or other types of groundwater, which will adversely impact the availability of potable water for MCWD and/or the pumping of existing or new wells that adversely impacts the availability of potable water for MCWD.

- Land Use Jurisdiction (or LUJ), shall mean a FORA land use jurisdiction, which consists of the Cities of Marina, Monterey, Seaside, and Del Rey Oaks; the County of Monterey; California State University, Monterey Bay; California State Parks and

Recreation; and University of California Monterey Bay Education, Science, and Technology Center. The Army is not a LUJ.

- Monterey Regional Water Pollution Control Agency (MRWPCA) is now known as Monterey One Water (M1W). Both City and MCWD are joint powers agency members of M1W.

- Ord Community Service Area shall mean the area within which MCWD provides water and recycled water services and, where applicable sewer collection services, to lands within the former Fort Ord.

- Party or Parties to this Agreement shall mean the City and the Marina Coast Water District.

- Potable water shall mean potable groundwater.

- SGMA shall mean the Sustainable Groundwater Management Act, Water Code Sections 10720, et seq.

Purpose

The purpose of this Agreement is to recognize the existing rights and obligations of the City and MCWD regarding the provision of potable water and recycled water by MCWD to the City. Subject to the limitations, restrictions, and funding obligations described in this Agreement, MCWD intends to offer those services to every LUJ receiving potable groundwater Allocations and/or recycled water Allocations from FORA pursuant to the Base Reuse Plan on substantially similar terms and conditions as are contained in this Agreement, recognizing that each LUJ has different Allocations from FORA, have redevelopment plans specifically tailored for that LUJ, and LUJs served by the Seaside County Sanitation District do not contribute sewer flows for the Ord recycled water Allocation.

Key Service Terms

1. The Parties agree with the applicable terms and conditions of the 1993 Fort Ord Annexation Agreement. The Parties agree to the FORA potable and recycled water Allocations under the Base Reuse Plan as set forth in FORA resolution 07-01 for potable water and FORA resolution 07-10 for recycled water as immediately set forth below and as may be amended by FORA prior to its termination, subject to change in accordance with Sections 2, 3, 4, and 5 of this Agreement:

Allocations¹

Land Use Jurisdiction or Use Type	Potable Water AFY	Recycled Water AFY	Total Water AFY
City of Marina (Ord Community)	1,340.0	345.0	1,685.0
City of Monterey	65.0	0.0	65.0
City of Seaside ²	1,012.5	453.0	1,465.5
County of Monterey	720.0	134.0	854.0
CSUMB (CSU Trustees)	1,035.0	87.0	1,122.0
City of Del Rey Oaks	242.5	280.0	522.5
State Parks and Recreation Dept	44.5	0.0	44.5
U.S. Army ³	1,562.0	0.0	1,562.0
UCMBEST (UC Regents)	230.0	60.0	290.0
Assumed Line Loss	348.5	68.0	416.5
TOTAL ALL (ORD)	6,600.0	1,427.0	8,027.0

2. MCWD's Authority to Enforce the Section 1 Allocations. City agrees that MCWD shall have the authority to enforce compliance by LUJs with the Section 1 Allocations. In the event that any LUJ's approved developments or water uses exceed the LUJ's approved Allocation, MCWD shall have the authority to decline to issue any water connection permits for any over-allocation until that LUJ brings its water Allocation into compliance. MCWD shall also update the Section 1 Allocations when there are changes to any Allocation due to Section 4, Section 5, or some other cause.

3. No Guarantee. City agrees that the above Potable Water Allocations and Recycled Water Allocations are not guaranteed to be supplied to the City by MCWD; however, MCWD will endeavor to supply the City's Allocations in accordance with the terms of this Agreement.

4. Reductions in Available Potable Water or Recycled Water. In the event of a Groundwater Action or other cause resulting in less than the amount of Potable Water or Recycled Water being available to MCWD to meet the above stated non-Army jurisdictions' Allocations, then MCWD would reduce the available Potable and/or Recycled Water Allocations in direct proportion to the Allocations set forth in the then

¹ The water supply sources for the 973 AFY of additional potable and/or recycled water are not included in the above table and they have not yet been identified and developed under Phase 3 described below.

² Under Article 2.a of Amendment No. 1 dated October 23, 2001, the Army agreed to reserve only 1,691 AFY, or 38 AFY less than the amount actually reserved by the Army in the October 23, 2001 deed. The 38 AFY was to be transferred to FORA and then to MCWD. FORA was to allocate the 38 AFY to the City of Seaside for the benefit of now Bay View Mobile Home Park subject to use limitations prescribed in Amendment No. 1 to be administered by the City of Seaside pursuant to its land use jurisdiction. MCWD has requested FORA to correct this oversight with the Army. Until the deeds are corrected, the City of Seaside's groundwater Allocation should be reduced by 38 AFY and the Army's reserved amount should be increased by 38 AFY.

³ This is the amount of the 1993 MCWRA groundwater Allocation that the Army reserved for Federal Government uses and is not a FORA Allocation.

current Section 1 table unless all of the LUJs agree to a different Allocation reduction formula or method. MCWD has no authority to reduce the Army's reserved Potable Water Allocation.

For example, if as a result of a Groundwater Action, MCWD needs to reduce the total Potable Water Allocations by 10%, then the City of Del Rey Oaks' Allocation would be reduced from 242.5 AFY to 218.25 AFY unless all of the LUJs agree to a different Allocation reduction formula or method, such as the result of a transfer under Section 5.

5. Transfers or Leases of Allocations between Willing LUJs. Any two or more LUJs may agree to transfer or lease Potable Water or Recycled Water Allocations on terms agreeable to the involved LUJs, subject to MCWD's approval (a) as to whether any infrastructure improvements or changes would be required to implement any such transfer or lease and (b) of a written agreement with the involved LUJs, including but not limited to, as to how all such infrastructure costs are to be paid, as to any resulting operational changes or service limitations, and as to what changes should be made to the Section 1 Allocations.

6. Description of post-FORA RUWAP Phases 1 through 4.

Phase 1	600 AFY of PWM advanced treated water
Phase 2	827 AFY of PWM advanced treated water
Phase 3	927 AFY of yet to be determined potable and/or recycled water
Phase 4	Additional potable and/or recycled water needed by LUJs

a. Phases 1, 2, and 3 are intended to develop the water supply needed to meet FORA's 2007 Potable and Recycled Water Allocations described in Section 1 for the FORA Base Reuse Plan redevelopment projects over approximately the next 15 years. Those redevelopment projects are listed in MCWD's 2020 Master Plans. Phase 4 is any additional water needed by MCWD after Phases 1 – 3 to meet water demands within the Ord Community service area.

b. Phase 1 of the Regional Urban Water Augmentation Project ("RUWAP") will provide 600 AFY of Pure Water Monterey ("PWM") advanced treated water. Under the Pure Water Delivery and Supply Project Agreement dated April 8, 2016, as amended, between MRWPCA and MCWD, MCWD will receive up to 600 AFY of advance treated water.

c. When funded and constructed, Phase 2 of the RUWAP will provide 827 AFY, or a total 1,427 AFY of PWM advanced treated water from Phases 1 and 2 for the Ord Community and be allocated in accordance with Section 1 above.

d. Phase 3 of the RUWAP is for 973 AFY, the remaining balance of the 2,400 AFY Water Augmentation Target under the FORA Base Reuse Plan.

e. Phase 4 of the RUWAP would be additional water supplies over and above the 2,400 AFY to be supplied under Phases 1, 2, and 3. The Phase 4 water sources and

projects have yet to be identified, planned, and developed. Uses for this water could include, but are not limited to, water needed to meet increased water demand within the Ord Community service area, for new development, and to firm up and protect Potable groundwater supplies.

7. MCWD agrees to develop and secure the water supply sources necessary to supply the water for the Potable Allocations and the Recycled Water Allocations, subject to compliance with all applicable laws including, but not limited to, CEQA and SGMA. In the event of a Groundwater Action or other cause that limits MCWD's extraction of groundwater to less than the total Potable Allocations, MCWD commits to pursuing a replacement water supply in accordance with this Agreement.

a. Any project by MCWD to develop or secure new or replacement water supply sources under this Agreement shall be subject to a process of thorough public review and input and all necessary and appropriate approvals. That process must also include environmental review under CEQA before MCWD may consider approving the project; and the project may require discretionary approvals by a number of government bodies after public hearings and environmental review. Nothing in this Agreement commits, or shall be deemed to commit, MCWD or any other governmental body to approve or implement any project to develop or secure new water supplies, and they may not do so until environmental review of the project as required under CEQA has been completed. Accordingly, all references to new water supply projects in this Agreement shall mean the proposed project subject to future environmental review and consideration by MCWD. MCWD and any other public agency with jurisdiction over any part of the project shall have the absolute discretion before approving the project to: (i) make such modifications to the project as may be necessary to mitigate significant environmental impacts; (ii) select other feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii) require the implementation of specific measures to mitigate any specific impacts of the project; (iv) balance the benefits of the project against any significant environmental impacts before taking final action if such significant impacts cannot otherwise be avoided; and (v) determine whether or not to proceed with the project.

b. MCWD agrees to develop and provide other, additional, new water supplies as part of RUWAP Phase 4 or later phases as requested by City provided that MCWD can obtain sufficient rights in the new water supply source, a funding source to develop the new water supply has been secured, and the environmental review for the new supply as required under CEQA has been completed.

c. The Parties agree to work with the other LUJs for RUWAP Phase 4 and later phases to optimize economies of scale and scope in meeting the needs of all the parties that are participating in the applicable work and the needs of the Central Marina service area.

8. MCWD will not be required to proceed with the development of a new or replacement water supply (a) until a funding source and a rate structure to recover all costs are identified, secured, and approved by MCWD; (b) environmental review of the project as required under CEQA has been completed; (c) compliance with SGMA and any other

applicable law reasonably appear to be achievable; and (d) MCWD can obtain sufficient rights in the new or replacement water supply source.

9. Unutilized Federal Government Potable Water Allocation and Wastewater Treatment Capacity.

a. City agrees that the 38 AFY of the Army's potable water Allocation described in the footnote 2 to the Section 1 Allocations table of this Agreement shall be transferred by the Army to MCWD to be included in the City of Seaside's potable water Allocation.

b. City agrees that MCWD shall have the first right of refusal to any other potable water Allocation released by the Army. MCWD agrees to reallocate any such additional water on an equitable basis subject to agreement of all of the LUJs, provided that if all of the LUJs cannot agree, then MCWD will reallocate proportionately based upon the then current potable water Allocations in Section 1, subject to securing a funding source to develop the new water supply and the environmental review for the new supply as required under CEQA has been completed.

c. City agrees that MCWD shall have the first right of refusal to any sewer treatment capacity released by the Army.

10. Water User Advisory Committee. The Parties agree that regular coordination meetings will be held between MCWD and the LUJs who sign a New Ord Community Services Agreement.

11. Rights-of-Way/Easements for MCWD Water Infrastructure.

a. City agrees to provide the necessary rights-of-way/easements within its jurisdictional boundaries to MCWD without charge to MCWD in order for MCWD to provide potable and/or recycled water services to customers within the City's jurisdictional boundaries. Water Code Section 31060, et seq.

b. In accordance with Government Code Section 6103.6, City may recover staff time costs to process the rights-of-way/easements and to inspect any MCWD right-of-way work within its jurisdictional boundaries.

c. Where a right-of-way or easement is oversized to accommodate a larger pipeline or other infrastructure to serve customers outside of the City's jurisdictional boundaries, then City may receive reasonable compensation for the oversizing.

Dispute Resolution

12. Dispute Resolution

a. Dispute resolution procedure. If any dispute arises between the Parties as to the proper interpretation or application of this Agreement, the Parties shall resolve the dispute in accordance with this section.

b. Duty to meet and confer. If any dispute under this Agreement arises, the Parties shall first meet and confer, in an attempt to resolve the matter. Each Party shall make all reasonable efforts to provide to the other Party all the information that the Party has in its possession that is relevant to the dispute, so that both Parties will have ample information with which to reach a decision.

c. Mediation and Voluntary Binding Arbitration.

(1) If the dispute is not resolved within sixty (60) days after the first meeting under Subsection 12.b, then any Party may notify the other Party that the notifying Party elects to submit the dispute to mediation. If the other Party agree to submit the dispute to mediation, then the Parties will jointly select a mediator. The terms of mediation shall be set by agreement of the Parties and the mediator.

(2) If the dispute is not resolved by meeting and conferring, and mediation does not occur or is unsuccessful, any Party may serve the other Party with a request for binding arbitration by a single neutral arbitrator. The request must set forth the nature of the dispute and the claim or relief sought.

(3) If the other Party to the dispute does not agree to submit the dispute to binding arbitration, then the other Party shall serve written notice of that to the Party requesting binding arbitration. Alternatively, the Parties may agree to not submit the dispute to binding arbitration.

(4) If the Parties agree to submit the matter to binding arbitration, the Parties will jointly select a single arbitrator. If the Parties cannot agree on a person to serve as the arbitrator, the dispute shall be submitted to one neutral arbitrator selected from a list of at least three neutral arbitrators proposed by mutual agreement of the Parties. Each candidate shall have at least five (5) years' experience with the same or similar type disputes as the dispute or disputes at issue, unless the Parties agree otherwise. The Parties agree to select the arbitrator by alternate strikes. The Party who served the request for binding arbitration shall strike first. If the Parties are unable to agree on a single arbitrator, then the Parties shall request the Presiding Judge of the Monterey County Superior Court to appoint an arbitrator who has the above minimum required experience. The cost of the arbitrator shall be shared equally among the Parties. Unless otherwise agreed by the Parties, the arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules & Procedures ("Rules"), but not necessarily under the auspices of JAMS. The Parties agree that they will faithfully observe the Rules and will abide by and perform any award rendered by the arbitrator, and that a judgment of the court having jurisdiction may be entered on the award. Notwithstanding the Rules, discovery will be permitted and the provisions of the California Code of Civil Procedure Section 1283.05 are incorporated herein unless the Parties agree otherwise. The Parties hereby consent to the jurisdiction of the applicable Superior Court for the

confirmation, correction or vacation of any arbitration award, except that nothing in this Agreement is intended to prevent any disputing Party from filing a motion under Code of Civil Procedure Section 394. The arbitrator may grant any remedy or relief deemed by the arbitrator just and equitable under the circumstances, whether or not such relief could be awarded in a court of law. The arbitrator will have no power to award punitive damages or other damages not measured by the Party's actual damages against any Party. This limitation of the arbitrator's powers under this Agreement shall not operate as an exclusion of the issue of punitive damages from this Agreement to arbitrate sufficient to vest jurisdiction in a court with respect to that issue. The arbitrator's award will be deemed final, conclusive and binding to the fullest extent allowed by California law, and may be entered as a final judgment in court.

13. Lawsuit in lieu of Binding Arbitration. If the Parties do not agree to submit the dispute to binding arbitration, then any Party may file a lawsuit in a court with jurisdiction over the dispute within ninety (90) calendar days of the date of the notice or agreement under Subsection 12.c.(3) above. Nothing in this Agreement is intended to prevent any disputing Party from filing a motion under Code of Civil Procedure Section 394.

General Provisions

14. Assignment. No Party may sell, transfer, or assign any of its right or interest under this Agreement, in whole or in part, without prior written consent of the other Party.

15. Amendment. This Agreement or any provision hereof may be changed, waived, or terminated only by a writing signed by both Parties.

16. No Waiver. No delay in enforcing or failing to enforce any right under this Agreement will constitute a waiver of such right. No waiver of any default under this Agreement will operate as a waiver of any other default or of the same default on a future occasion.

17. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Agreement are to any extent declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, the Parties agree to amend the terms in a reasonable manner to achieve the intention of the Parties without invalidity. If the terms cannot be amended thusly, the invalidity of one or several terms will not affect the validity of the Agreement as a whole, unless the invalid terms are of such essential importance to this Agreement that it can be reasonably assumed that the Parties would not have contracted this Agreement without the invalid terms. In such case, the Party affected may terminate this Agreement by written notice to the other Party without prejudice to the affected Party's rights in law or equity.

18. Entire Agreement. This Agreement is intended by the Parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof. Acceptance of or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this

Agreement even though the accepting or acquiescing Party had knowledge of the nature of the performance and opportunity for objection.

19. Choice of Law. This Agreement will be construed in accordance with the laws of the State of California.

20. Further Assurances. Each Party agrees to execute and deliver all further instruments and documents and take all further action that may be reasonably necessary to complete performance of its obligations hereunder and otherwise to effectuate the purposes and intent of this Agreement.

21. Headings. The headings of the sections hereof are inserted for convenience only and shall not be deemed a part of this Agreement.

22. Notices. Any notice, demand, offer, or other written instrument required or permitted to be given pursuant to this Agreement shall be acknowledged by the Party giving such notice, and shall to the extent reasonably practicable be sent by hand delivery, and if not reasonably practicable to send by hand delivery, then by telecopy, overnight courier, electronic mail, or registered mail, in each case to the other Party at the address for such Party set forth below (Note: A Party may change its place of notice by a notice sent to all other Parties in compliance with this section):

If delivered to City:

Danial Pick
City Manager
350 Canyon Del Rey Blvd.
Del Rey Oaks, CA 93940

If delivered to MCWD:

Keith Van Der Maaten
General Manager
11 Reservation Road
Marina, CA 93933

23. No Third-Party Beneficiaries. Except for the Parties and their respective successors and assigners, nothing in this Agreement, whether express or implied, is intended to confer any rights on any person or entity whatsoever.

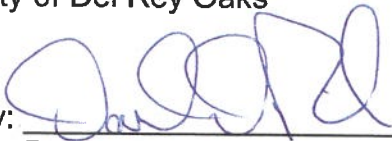
24. No Breach of Other Agreements. Each Party warrants that the Party's execution and performance of this Agreement will not result in the breach of any other agreement to which that Party is a party, or to which that Party is otherwise subject or bound.

25. No Party Drafter. No Party to this agreement shall be considered its drafter. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any Party.

26. Term of Agreement: This Agreement shall be effective on the Effective Date specified at the beginning of the Agreement and shall remain in effect unless and until terminated by mutual agreement of the Parties.

IN WITNESS WHEREOF, each Party has executed the Agreement with the approval of its governing body as of the date first written above.

City of Del Rey Oaks


By: 
Danial Pick, City Manager

Date: June 23, 2020

By: 
Alex Lorca, City Attorney

Date: 6-24-20

Marina Coast Water District

By: 
Thomas P. Moore, Board President

Date: 7/1/2020

By: 
Roger Masuda, District Counsel

Date: 7/3/2020

Exhibit A: MCWD's DRO Water Service Area

NOTE: ON EXHIBIT A, ONLY THE DRO WATER SERVICE AREA WILL BE HIGHLIGHTED.

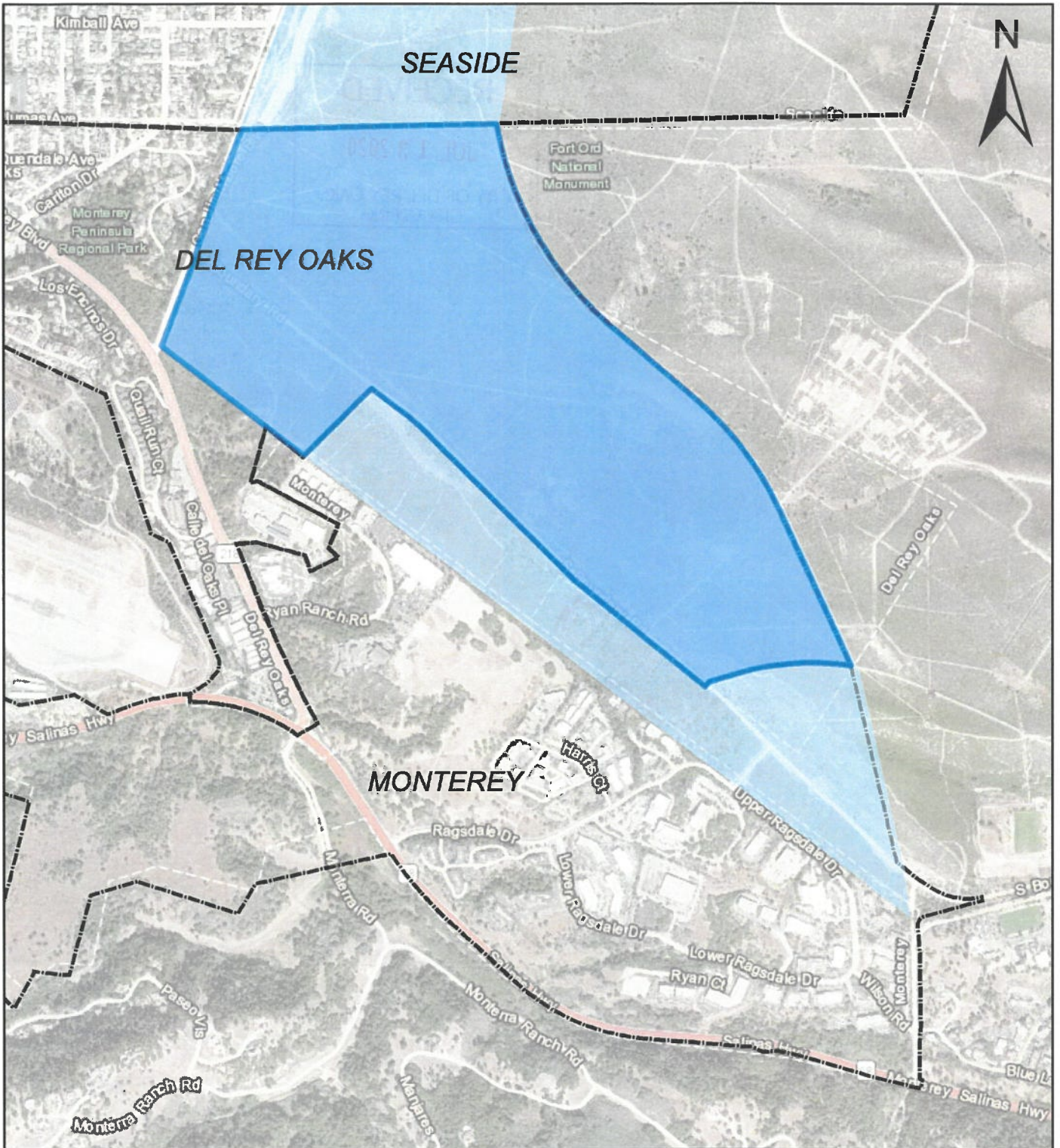
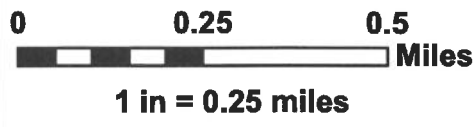


Exhibit A: MCWD's Del Rey Oaks Water Service Area

- MCWD Future Service Study Area
- Del Rey Oaks Future Service Area
- Municipal Boundary



Map Date: May 2020