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F6a

Click here to see the original staff report.

Click here to see additional correspondence received.

August 11, 2011

TO: Coastal Commissioners and Interested Parties

FROM: Alison Dettmer, Deputy Director
Tom Luster, Environmental Scientist

SUBJECT: Addendum to Staff Report E-11-019 – Test Slant Well adjacent to Monterey Bay shoreline in City of Marina (Monterey County Water Resources Agency, Marina Coast Water District, and California-American Water Company)

This addendum includes several revisions to the above-referenced staff report. The proposed revisions herein do not change staff's recommendation that the Commission ***conditionally approve*** the proposed project. The addendum also includes the following correspondence and *ex parte* forms received since publication of the staff report:

CORRESPONDENCE

- July 27, 2011 letter from LandWatch Monterey County
- July 29, 2011 letter from Molly Erickson, Law Offices of Michael W. Stamp
- August 1, 2011 letter from Monterey Peninsula mayors – Cities of Carmel, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside.
- August 4, 2011 letter from LandWatch Monterey County
- August 8, 2011 letter from Carmel Valley Association
- August 9, 2011 letter from CalDesal

***EX PARTE* FORMS**

- July 28, 2011 from Commissioner Stone
- August 5, 2011 from Commissioner Zimmer
- August 8, 2011 from Commissioner Zimmer

REVISIONS TO STAFF REPORT

Staff recommends modifying the staff report as shown below in ~~strikethrough~~/**bold underline** text:

Page 6, Special Condition 1:

"**Necessary Approvals:** ***Prior to permit issuance***, the Permittees shall provide to the Executive Director a copy of the State Lands Commission lease for the project's use of state tidelands~~ and a copy of the variance or other form of approval from the Monterey County Health Department allowing construction and operation of a new groundwater extraction facility in the Salinas Valley Groundwater Basin~~."

Page 6, Special Condition 4:

"**Future Development Restriction:** This permit is only for the development described in Coastal Development Permit E-11-019. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, grading, clearing or disturbance of vegetation, additional structures, withdrawing or discharging more than 1.2 million gallons of water from the test well, or conversion of the well to permanent or long-term use, shall require an additional coastal development permit from the Commission or from the applicable certified local government.

If within 36 months of permit issuance, the Permittees have not obtained a coastal development permit from the Commission allowing conversion of the well to long-term use, they shall submit a coastal development permit application for removal of the well and the associated development approved pursuant to this permit."

Page 9, Special Condition 8:

"**Liability for Costs and Attorneys Fees:** The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (1) those charged by the Office of the Attorney General; and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay – **and any damages** that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittees against the Coastal Commission, its officers, employees, agents, successors, and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission."

Page 9, last paragraph, Section 4.1 Project Purpose and Description:

"***Note:*** The proposed project evaluated herein is for construction and operation of a test slant well only meant to obtain data over an approximately ~~one~~**two**-year period."

Page 10, third paragraph, Section 4.1 Project Purpose and Description:

"***Note:*** The current proposal is to pump no more than approximately 1.2 million gallons of water from the test slant well and monitoring wells over about a ~~one~~**two**-year period (approximately 200,000 gallons during the two to four months of well construction and development and about 1 million gallons during the ~~three to six months of~~ proposed testing). The Findings herein evaluate only this amount of water withdrawal."

Page 16, first two bulleted paragraphs, Section 4.4 Other Permits and Approvals:

"The project is subject to a number of other permits and approvals, including:

- **State Lands Commission – pending application for lease of state tidelands:** Portions of the test slant well will be located on state tidelands under the management of the State Lands Commission. State Lands Commission staff have no objection to the Commission acting on this proposed project prior to the State Lands Commission's consideration of the requested lease (see State Lands Commission letter in Exhibit 6). **Special Condition 1** requires the applicants to submit an approved State Lands lease prior to issuance of the coastal development permit.

- ~~**Monterey County Health Department – variance to 1995 County ordinance prohibiting new groundwater extraction facilities from this area of the Salinas Valley Groundwater Basin:** The well will need a variance to allow groundwater withdrawal from this area. **Special Condition 1** requires the applicants to submit a variance or other approval prior to issuance of the coastal development permit.~~"

Page 18, first partial paragraph, Section 4.5.1 Coastal Erosion –

"To ensure the final design conforms to relevant Coastal Act 30253 policies, and to ensure any additional impacts to coastal resources that might result from implementing that design are addressed, **Special Condition 3** requires the applicants to submit the proposed final design for Executive Director review and approval. It also requires a description of how all surface and subsurface components will be removed, if necessary, due to seismic or other events, or if the Commission does not approve subsequent conversion of the development for long-term use. If the proposed design would result in additional impacts to coastal resources – e.g., to ESHA, water quality, etc. – beyond those evaluated in these Findings, the applicant may be required to submit an application to amend the CDP. **Additionally, if the Permittees do not obtain approval from the Commission to convert the well from a short-term test well to a long-term water source, Special Condition 4 requires that the Permittees submit within 36 months of permit issuance a coastal development permit application for removal of the well and associated development approved herein.**"

Page 18, last full paragraph, Section 4.5.1 Coastal Erosion –

"For this test slant well project, the predicted long-term erosion rate at this site is not expected to affect the proposed slant well or monitoring wells during the ~~one~~**two**-year test period, although it could be affected by extreme short-term erosion effects. During the longer term – i.e., if the applicants propose to use the well to provide source water for the RDP – the development could be within an area expected to experience coastal erosion due to predicted long-term rates. These issues are discussed below."

Page 19, second full paragraph, Section 4.5.1, Coastal Erosion –

"**Short-term test use of the well:** The surface of the slant well is located about 200 feet inland from the edge of the site's coastal bluff. During the approximately ~~one~~**two**-year construction and test period for the slant well, this distance, including a 1.5 factor of safety, would be sufficient for the development to be located outside of long-term predicted areas of coastal erosion. However, additional measures are needed to address potential short-term erosion events and to address potential erosion of project components closer to the shoreline."

Page 19, last paragraph, Section 4.5.1 Coastal Erosion –

"Because this area of the shoreline is not only subject to relatively high average long-term erosion rates but also high erosion rates from high-intensity single events (e.g., storm surges), the aforementioned **Special Condition 3** requires the applicants to identify measures that will be implemented should short-term, large-scale erosion threaten the slant well during the test phase and requires removal of all or some of the project components. In recognition of the potential that the applicants will propose converting the short-term test to long-term use, **Special Condition 4** requires that such a conversion be the subject of a separate Commission review and approval. **Special Condition 4 further requires that the Permittees submit a coastal development permit application for removal of the well and associated development approved pursuant to these Findings if the Commission has not approved conversion of the well to long-term use within 36 months of permit issuance.** Finally, **Special Condition 5** requires the applicants acknowledge the likely or potential coastal erosion effects on the proposed development and that shoreline protective devices will not be constructed to protect the development."

Page 29, first full paragraph, Section 4.5.4 Coastal Agriculture –

"**Effects of test slant well groundwater withdrawal on coastal agriculture:** For several reasons, the amount of groundwater withdrawn for the test project is expected to result in an insignificant effect on coastal agriculture. As noted above, total water withdrawal for construction, development and testing would total about 1.2 million gallons over the approximately ~~one~~**two**-year test period, most of which would be seawater or seawater-intruded groundwater from the sub-seafloor extent of the Pressure Subbasin. The "cone of depression" – that is, the area in which groundwater levels are

lowered due to this water withdrawal – is expected to be relatively small (i.e., a radius of dozens, or at most a few hundred feet) from the well, and would be far from any active wells, none of which are known to be within 1.5 miles of the site. This drawdown zone will be modeled during the well test period. Additionally, water withdrawn during the well test would be returned to groundwater via an existing injection well at the MCWD site. Further, any proposed groundwater withdrawals greater than the expected 1.2 million gallons – e.g., due to increased testing or conversion of the test well to a long-term source water well – would be subject to additional Commission review and approval pursuant to **Special Condition 4**. ~~Finally, to ensure that the project's groundwater withdrawal and reinjection is consistent with Basin management programs, the applicants plan to obtain from the Monterey County Health Department a variance to the 1995 County ordinance that prohibits new groundwater extraction facilities. **Special Condition 1** requires the applicants to submit that variance to the Executive Director prior to issuance of the CDP.~~

As noted above, this proposed project and its proposed water withdrawals are the subjects of at least two lawsuits that have not yet been resolved. Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 8** requiring reimbursement of any costs and attorneys fees **or any damages that** the Commission ~~incurs~~ **is required to pay** in connection with the defense of any action brought by a party other than the applicants (Permittees). **Based on California Government Code section 818.4, the Commission is not liable for any injury caused by its issuance or failure to issue a permit. It can, however, be liable for damages if a court finds that its action constitutes a taking of private property without just compensation, under the State or Federal Constitutions. Opponents of the proposed project allege that the Commission's approval of this permit would constitute a "taking." While the Commission does not believe that approval of the proposed project would constitute a taking, the applicants should bear this risk and should thus be required to reimburse the Commission if it is assessed damages for approving of the applicants' proposed project.**"

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Date Filed:	August 5, 2011
49th Day:	September 23, 2011
180th Day:	January 2, 2012
Staff:	TL-SF
Staff Report:	July 28, 2011
Hearing Date:	August 12, 2011

COMBINED STAFF REPORT
COASTAL DEVELOPMENT PERMIT APPLICATION

APPLICATION FILE NO.:	E-11-019 (changed from previous File No. 3-11-036)
APPLICANTS:	Monterey County Water Resources Agency, Marina Coast Water District, and California-American Water Company
PROJECT LOCATION:	Adjacent to the Monterey Bay shoreline at the Marina Coast Water District offices, 11 Reservation Road, City of Marina.
PROJECT DESCRIPTION:	A test slant well and associated monitoring wells to determine the feasibility of the project site as a potential long-term water source for the Monterey Regional Desalination Project.
SUBSTANTIVE FILE DOCUMENTS:	See Appendix A
STAFF RECOMMENDATION:	Approval with conditions.
EXHIBIT 1:	Project Location
EXHIBIT 2:	Site Layout
EXHIBIT 3:	Cross-section of Proposed Test Slant Well
EXHIBIT 4:	Special Condition from A-3-SNC-05-010 – Sand City Desalination Facility

EXHIBIT 5: Relevant CEQA Mitigation Measures for Protection of ESHA

EXHIBIT 6: Correspondence Received:

- July 21, 2011 letter from League of Women Voters of the Monterey Peninsula
- July 21, 2011 faxed correspondence from Ed Mitchell
- July 26, 2011 letter from Law Offices of Michael W. Stamp
- July 27, 2011 letter from State Lands Commission

SUMMARY OF STAFF RECOMMENDATION

The proposed project involves constructing and developing a test slant well meant to determine whether the well would be suitable for providing source water for the Monterey Regional Desalination Project (RDP). The RDP, which Commission staff expect the Commission will review separately at a future hearing, is meant to provide a water supply for parts of the Monterey Peninsula and nearby areas. The RDP includes a proposed desalination facility that would potentially use water from this test slant well and from other wells to provide a water supply in the Monterey area.

> ***Note:*** The project evaluated herein is a test slant well only. The test well is meant to obtain data over an approximately one-year period for potential use in the design of the RDP, which is the subject of a separate coastal development permit application. However, the full-scale RDP proposal anticipates that the well, if successful, would be converted to a permanent source water well for the full-scale project.
>
> The Findings herein address conformity to applicable Coastal Act Chapter 3 policies for the test well only. These Findings, and any permit for the proposed test slant well, do not authorize development that may be associated with long-term use of the well, including its use as a source water well for the separately proposed RDP. Any such proposal will require additional review and analysis for conformity to the Coastal Act, which will be conducted independently of the current decision. The Commission's current decision exerts no influence over, and causes no prejudice to, the outcome of that separate future decision.

This test slant well would be located at the Marina Coast Water District offices on Reservation Road, in the City of Marina. The well would be constructed at an angle to intercept water from beneath the seafloor of Monterey Bay. The proposed project includes four sets of monitoring wells to be located at the project site within about 200 feet of the surface of the slant well. The proposed wells would be constructed and tested over a period of about one year.

Key Coastal Act Issues: The proposed test slant well is evaluated herein for consistency with relevant Coastal Act policies, including:

- **Seismic safety and coastal erosion:** The project is located along the southern Monterey Bay shoreline, which has relatively high rates of short-term and long-term coastal erosion. Although long-term erosion rates are not expected to affect the project during the one-year test period, it could be affected by short-term erosion events.

  Special Condition 2 would require the applicants to acknowledge and assume the risks associated with the site and to waive any of their own claims and indemnify the Commission for other claims of liability against the Commission associated with permitting the project at this site. **Special Condition 3** would require the applicants to construct the development in accordance with a design provided by a geotechnical engineer or engineering geologist and to identify methods to be used if the development needs to be removed. **Special Condition 4** would require that any proposed conversion of the development for long-term use be subject to additional coastal development permit review and approval by the Commission. **Special Condition 5** would require the applicants to acknowledge that no future shoreline protective device will be constructed to protect this proposed development.

- **Protection of Marine Life and Water Quality:** The project would involve the use of fuel and other potentially hazardous substances at a site adjacent to coastal waters. **Special Condition 6** would require the applicants to submit a Spill Prevention and Response Plan to avoid and minimize potential water quality and marine life impacts that could occur due to a spill. Additionally, because the applicants have not yet identified a method to discharge more than a limited amount of water produced during well construction and testing, **Special Condition 4** would require that any such proposal be subject to additional coastal development permit review and approval by the Commission to ensure that the discharge is consistent with the Coastal Act's water quality protection policies.

- **Environmentally Sensitive Habitat Areas (ESHA):** The proposed surface features of the project are within the existing paved portions of the Marina Coast Water District offices and former wastewater treatment facility. However, the site is adjacent to coastal dune habitat that the Commission's ecologist has determined meets the Coastal Act definition of ESHA. While the applicants' initial proposal would have placed part of the proposed development within ESHA, they have modified the proposal so that all project components avoid direct ESHA impacts. To ensure direct ESHA impacts are avoided and to minimize impacts to adjacent ESHA, **Special Condition 7** would require the applicants implement several mitigation measures to protect nearby sensitive habitat and species.

- **Coastal Agriculture:** The test slant well would withdraw water from an aquifer used for coastal agriculture. However, the aquifer beneath the project site consists largely of intruded seawater and is therefore not usable for agricultural purposes. Additionally, the amount of water to be withdrawn during the test period is relatively small and is not likely to affect any nearby agricultural operations. To ensure the project does not adversely affect coastal agriculture, **Special Condition 4** would require separate Commission review and approval

for any additional water withdrawals. Further, in recognition of active litigation regarding the proposed project's potential effects on agricultural water rights, **Special Condition 8** would require the applicants to reimburse the Commission for any legal costs arising from a challenge to issuance of this coastal development permit.

- **Public Access and Recreation:** The proposed project would be located between the first public road and the sea; however, the project location is an industrial site that allows no public access. The site is adjacent to Marina State Beach, although any project-related impacts to public access or recreation are expected to be minimal. The noise-minimization measures required pursuant to **Special Condition 7** would be expected to further reduce the already minimal impacts to nearby public use areas.

Staff Recommendation: Staff is recommending the Commission ***conditionally approve*** the proposed project.

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1.0 RECOMMENDED MOTIONS AND RESOLUTIONS

1.1 MOTION

"*I move that the Commission approve Coastal Development Permit No. E-11-019 pursuant to the staff recommendation.*"

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

1.2 RESOLUTION

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

2.0 STANDARD CONDITIONS

This permit is subject to the following standard conditions:

1) **Notice of Receipt and Acknowledgment**. The permit is not valid and development shall not commence until a copy of the permit, signed by the applicants or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2) **Expiration**. If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3) **Interpretation**. Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.

4) **Assignment**. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5) **Terms and Conditions Run with the Land**. These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittees to bind all future owners and possessors of the subject property to the terms and conditions.

3.0 SPECIAL CONDITIONS

This permit is subject to the following special conditions:

1) **Necessary Approvals:** ***Prior to permit issuance***, the Permittees shall provide to the Executive Director a copy of the State Lands Commission lease for the project's use of state tidelands and a copy of the variance or other form of approval from the Monterey County Health Department allowing construction and operation of a new groundwater extraction facility in the Salinas Valley Groundwater Basin.

2) **Assumption of Risk, Waiver of Liability and Indemnity:** By acceptance of this permit, the Permittees acknowledge and agree (i) that the site may be subject to hazards from coastal erosion, storm conditions, wave uprush, and tsunami runup; (ii) to assume the risks to the Permittees and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

3) **Final Geotechnical Design:** ***Prior to permit issuance***, the Permittees shall provide for Executive Director review and approval the development's proposed final design based on geotechnical investigations conducted by a licensed geotechnical engineer or engineering geologist that incorporates the geotechnical recommendations of that licensed engineer or geologist (as described in Mitigation Measure 4.5-1 of the project's EIR Addendum). This proposed final design shall also include relevant designs and specifications needed for consistency with California Geological Survey Special Publication 117. The proposed final design shall also identify methods that would be used to remove surface and subsurface components of the proposed development at the end of the test period or should removal be necessary due to seismic action, coastal erosion, or other events.

4) **Future Development Restriction:** This permit is only for the development described in Coastal Development Permit E-11-019. Except as provided in Public Resources Code section 30610 and applicable regulations, any future development as defined in PRC section 30106, including, but not limited to, grading, clearing or disturbance of vegetation, additional structures, withdrawing or discharging more than 1.2 million gallons of water from the test well, or conversion of the well to permanent or long-term use, shall require an additional coastal development permit from the Commission or from the applicable certified local government.

5) **No Future Shoreline Protective Device:** By acceptance of this permit, the Permittees agree, on behalf of themselves and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this coastal development permit, including the wells, supporting infrastructure, and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions or other natural hazards in the future. By acceptance of this permit, the Permittees hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.

   By acceptance of this permit, the Permittees further agree, on behalf of themselves and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the wells, supporting infrastructure, and any future improvements, if any government agency has ordered that the development is not to be used due to any of the hazards identified in Special Condition 2. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

6) **Spill Prevention and Response Plan:** ***Prior to issuance of the coastal development permit***, the applicants shall submit for Executive Director review and approval a project-specific Spill Prevention and Response Plan that includes: (a) an estimate of a reasonable worst case release of fuel or other hazardous materials onto the project site or into adjacent ESHA resulting from project operations; (b) a specific protocol for monitoring and minimizing the use of fuel and hazardous materials during project operations; (c) a detailed response and clean-up plan in the event of a spill or accidental discharge of fuel or hazardous materials; (d) a list of all spill prevention and response equipment that will be maintained on-site; (e) the designation of the onsite person who will have responsibility for implementing the plan; (f) a telephone contact list of all regulatory and public trustee agencies, including Coastal Commission staff, having authority over the development and/or the project site and its resources to be notified in the event of a spill or material release; and (g) a list of all fuels and hazardous materials that will be used or might be used during the proposed project, together with Material Safety Data Sheets for each of these materials.

   In the event that a spill or accidental discharge of fuel or hazardous materials occurs during project construction or operations, all non-essential project construction and/or operation shall cease and the Permittees shall implement spill response measures of the approved Plan, including notification of Commission staff. Construction and operation shall not start again until authorized by Commission staff.

If project construction or operations result in a spill or accidental discharge that causes adverse effects to coastal water quality, ESHA, or other coastal resources, the Permittees shall submit an application to amend this coastal development permit, unless the Executive Director determines no amendment is required. The application shall identify proposed measures to prevent future spills or releases and shall include a proposed restoration plan for any coastal resources adversely affected by the spill or release.

7) **Protection of ESHA:** ***Prior to starting project construction***, the Permittees shall provide for Executive Director review and approval a proposed implementation plan identifying specific measures included in the project to avoid and reduce impacts to ESHA. This plan shall identify methods proposed to implement relevant mitigation measures identified in the project's EIR addendum, which shall include, but not be limited to, the following:
   - Identification of areas that will be fenced to avoid project-related access to non-paved areas of the site;
   - Information to be provided to project workers regarding protection of sensitive species at or near the project site and measures to avoid and reduce potential impacts to those species; and,
   - Noise reduction measures that will be incorporated into project activities to reduce noise to levels identified in EIR Addendum Mitigation Measures 4.9-1 and 4.9-2.

   The Permittees shall hire one or more Biologists to implement the approved Plan. The Biologist(s) are to be approved by the Executive Director and must meet the following minimum qualifications:
   - At least a bachelor's degree in biological sciences, zoology, botany, ecology, or a closely related field.
   - At least three years of field biology experience or current certification through a nationally recognized biological society, such as the Ecological Society of America or The Wildlife Society – and, at least one year of field experience with biological resources found in or near the project area.

   The Permittees shall employ the Biologist(s) during the duration of the approved project and shall ensure that the Biologists(s) conduct the following during any project activities involving mobilization, ground disturbance, grading, soil movement, water withdrawal or other activities that could adversely affect coastal waters, environmentally sensitive habitat areas, wetlands, or their associated biological resources:
   - Clearly mark sensitive biological resources on and near the site of planned project activities prior to the start of those activities.
   - Conduct monitoring at and near active construction areas to ensure mitigation measures are functioning in a manner that avoids adverse impacts, or if avoidance of adverse impacts is not possible, minimizes such impacts.
   - Provide reports regarding any failure of mitigation measures and the steps taken to correct those failures.
   - Conduct worker training to identify the location and types of sensitive biological resources on and near the project site and the measures to be taken to avoid impacts to these resources.

8) Liability for Costs and Attorneys Fees: The Permittees shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (1) those charged by the Office of the Attorney General; and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Permittees against the Coastal Commission, its officers, employees, agents, successors, and assigns challenging the approval or issuance of this permit, the interpretation and/or enforcement of permit conditions, or any other matter related to this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

4.0 FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

4.1 PROJECT PURPOSE AND DESCRIPTION

The proposed project consists primarily of constructing and operating a test slant well and associated monitoring wells at the MCWD offices at 11 Reservation Road, in the City of Marina (see Exhibit 1 – Project Location). The project purpose is to provide data to help determine whether the test slant well might be suitable for supplying part of the source water for the Monterey Regional Desalination Project (RDP), which is the subject of a separate CDP application submitted by the applicants (see description of the RDP in Section 4.2.1 below). [1] The applicants for both this test slant well project and the RDP are the Marina Coast Water District (MCWD), the Monterey County Water Resources Agency (MCWRA), and the California-American Water Company (Cal-Am). If tests are successful, the applicants are expected to propose the test well be converted to a long-term source water well for the RDP.

> ***Note:*** The proposed project evaluated herein is for construction and operation of a test slant well only meant to obtain data over an approximately one-year period. The Findings herein address only conformity of the proposed test well to applicable Coastal Act Chapter 3 policies. These Findings, and any coastal development permit issued pursuant to these Findings, apply only to the proposed test slant well and its associated monitoring wells and do not authorize development that may be associated with long-term use of the well, including converting the well to use as a water source for the separately proposed RDP. Any such proposal will require additional review and analysis for conformity to the Coastal Act and will be conducted independent of any decision arising from these Findings. Further, the Commission's decision regarding these Findings exerts no influence over, and causes no prejudice to, the outcome of that separate future decision.

[1] The Monterey Regional Desalination Project is also referred to in other relevant documents as the "Monterey Bay Regional Water Project", the "Regional Desalination Project, or "Phase I of the Monterey Regional Water Supply Program".

The proposed construction and testing of this slant well is a key component of a Water Purchase Agreement among the three entities proposing the RDP. That agreement requires that, prior to issuance of the Authorization of Construction for the RDP to be issued by the California Public Utilities Commission, MCWRA is to drill at least one vertical and one test slant well to determine water quality and to help select the particular combination of wells that will maximize seawater intake most cost-effectively.[2] The wells are to be designed so that they can be converted to permanent wells, if test results are favorable. The proposed vertical test well is the subject of a separate coastal development permit application being reviewed by Commission staff.

The main objectives for the test slant well include:

- Identifying the site's hydrogeologic and hydraulic characteristics, including transmissivity, storativity, the zone of influence, and hydraulic conductivity.
- Collecting water quality data to help determine design requirements of the proposed desalination facility, including pre-treatment and treatment methods, and brine discharge characteristics.
- Determining allowable pumping rates for long-term water production.
- Identifying seawater intrusion trends in this area of the intercepted aquifer and the effects of pumping on those trends.

> ***Note:*** The current proposal is to pump no more than approximately 1.2 million gallons of water from the test slant well and monitoring wells over about a one-year period (approximately 200,000 gallons during the two to four months of well construction and development and about 1 million gallons during the three to six months of proposed testing). The Findings herein evaluate only this amount of water withdrawal.

Well construction and testing is meant to provide detailed information about the type of water produced and potential water yields, which will help determine the type of pretreatment and treatment needed at the RDP's desalination facility. A key element of the test program is to identify the proportions of seawater and freshwater drawn from the well. The test slant well would withdraw water from a sub-seafloor extension of the Salinas Valley Groundwater Basin's 180-Foot Aquifer, which is expected to consist of about 95% seawater and 5% seawater-intruded groundwater. The proposed project site was selected in part to allow the well to withdraw water from areas of the aquifer already subject to seawater intrusion. Data collected from the well will be evaluated to identify actual proportions of seawater and freshwater.

[2] See December 2, 2010 Water Purchase Agreement between Marina Coast Water District, Monterey County Water Resources Agency, and California-American Water Company, as approved by the California Public Utilities Commission.

Data collected will also be used to determine whether using the well as a long-term source water supply will be consistent with a regional groundwater requirement that water from the Salinas Valley Groundwater Basin not be exported outside the Basin.[3] The RDP includes a proposed provision to return part of the water it produces to areas overlying the Basin to make up for any withdrawals.

Based on results from the test slant well program, the applicants are expected to separately propose, as part of the full-scale RDP, continued operation of this test well along with construction and operation of from one to five slant wells at or near this location and from one to six vertical wells at a separate location. Both the full-scale project and the vertical test wells are the subject of separate CDP applications currently being reviewed by Commission staff.

TEST SLANT WELL PROJECT COMPONENTS

The slant well and its associated monitoring wells and infrastructure would be located at the site of the Marina Coast Water Distinct offices on Reservation Road in the City of Marina (see Exhibit 2 – Site Layout). The site is adjacent to the shoreline and includes office buildings, a parking lot, and structures associated with a former wastewater treatment plant and desalination facility. Developed areas of the site are adjacent to environmentally sensitive habitat areas (ESHA) associated with the coastal dune complex of southern Monterey Bay; however, all surface development associated with the project would occur on previously developed and paved areas of the site.

The surface features of the slant well would be located on the south central area of the MCWD site. From its surface entry point, the slant well would be installed at a 23^{o} angle to an endpoint about 700 feet seaward and 300 feet below the ground surface (see Exhibit 3). It would intercept the 180-Foot Aquifer of the Salinas Valley Groundwater Basin at an offshore area of the aquifer consisting predominantly of seawater. The well would be constructed with up to a 22-inch stainless steel casing and will be completed to meet County and State well standards for municipal water supplies. Slant well construction is expected to take three to four months.

The monitoring wells would be located within no more than about 200 feet to the north, south, east, and west of the slant well, all on paved parts of the site. These wells would be constructed pursuant to well completion requirements of the Monterey County Health Department. Construction of each of the monitoring wells is expected to take about two months. The proposed project's staging area would also be located on the paved area of the MCWD site.

Once constructed, water quality samples will be taken over an approximately six-month period. At this time, long-term pump testing is not proposed, as the applicant has not yet identified a method to discharge up to 3,000 gallons per minute that would result from such a test (see **Special Condition 4**, which requires submittal of an application to amend this permit to allow pump testing).

[3] See Monterey County Water Resources Agency Act, Water Code Appendix (Chapter 52), which prohibits exportation of groundwater from the Salinas Valley Groundwater Basin.

4.2 PROJECT BACKGROUND

4.2.1 Recent History of Water Issues in Monterey Area

The Monterey area has had long-standing difficulties with its water supply. The area has no imported water sources, and local supplies have sometimes been insufficient to provide the expected amount of water. Over the past several decades, local sources have been further constrained due to legal decisions and several proposed projects meant to increase the region's water supply have been rejected by local voters.

Since 1966, Cal-Am has provided water to the Monterey Peninsula area. Its service area covers much of the southern Monterey Bay coastal region between the City of Seaside to the north and the Carmel Highlands to the south, and some distance inland. Cal-Am's primary source of water is a series of wells along the Carmel River, which draw water from the aquifer underlying the river. It also shares a network of wells in the Seaside Groundwater Basin with other water users.

In 1995, the State Water Resources Control Board issued Order No. WR 95-10, which found that Cal-Am had been diverting about 10,730 acre-feet per year[4] from the Carmel River Basin without adequate water rights. The State Board's Order required Cal-Am to take any of several steps to address this issue – either obtain the necessary appropriative rights, obtain water from other sources that would allow it to reduce its use of Carmel River water, and/or obtain water from entities that have the necessary rights to use Carmel River water. The Order also directed Cal-Am to reduce its Carmel River Basin water use in part by maximizing its use of water from the Seaside Basin.

At about the same time, the Monterey Peninsula Water Management District (MPWMD) proposed to construct a new dam on the Carmel River. In 1995, the State Board approved the dam; however, local voters shortly thereafter rejected the dam's financing plan. Subsequently, two species in the Carmel River watershed were listed as "threatened" under the federal Endangered Species Act – the red-legged frog in 1996 and the steelhead trout in 1997. Consequently, the CPUC was required through state legislation to develop a water supply plan for the Monterey Peninsula that did not include a dam. In 2002, the CPUC completed its plan, known as "Plan B", which proposed a 9,400 AFY desalination facility in Moss Landing and an Aquifer Storage and Recharge (ASR) system that would store about 1,300 AFY of Carmel River water in the Seaside Basin.

In 2004, Cal-Am used "Plan B" as the basis of its application to the CPUC for the proposed Coastal Water Project (CWP), which included a desalination facility to be located at the Moss Landing Power Plant, transmission pipelines from Moss Landing to the Monterey Peninsula, a reservoir, pump stations, and Aquifer Storage and Recovery (ASR) facilities. The CWP's proposed desalination facility would have produced 11,730 acre-feet of water per year to replace Cal-Am's excess withdrawals from the Carmel River Basin (totaling 10,730 AFY) and its

[4] An acre-foot is equal to approximately 326,000 gallons of water.

withdrawals from the overdrafted Seaside Basin (about 1,000 AFY). This proposal was meant to respond to State Board Order 95-10 and to address the long-term water supply alternatives contemplated by the above-referenced CPUC "Plan B".

As the CPUC conducted its review of the Coastal Water Project, several concerns led to development of alternative proposals. Concerns about the Coastal Water Project included its proposed use of a power plant open water intake, which would cause significant adverse effects on marine life, the distance of the desalination facility from the service area, and others. In response, a group of regional stakeholders proposed an alternative, the "Regional Water Project, Phase I". This alternative proposed using vertical and slant wells instead of an open water intake and moved the proposed desalination facility closer to the Monterey Peninsula, which shortened the length of the needed water delivery pipelines by several miles. In December 2010, the CPUC certified the Environmental Impact Report for this Regional Water Project and approved a Settlement Agreement and two associated implementing agreements.[5] The Settlement Agreement and the associated Water Purchase Agreement and Outfall Agreement establish project partner responsibilities regarding construction, ownership, operations, maintenance, and payments. They include specific requirements related to use of test well data in determining the design of the full-scale project.

During that same period, the Monterey County Superior Court in 2006 issued a decision requiring adjudication of water rights in the Seaside Basin. That adjudication process is expected to reduce overall groundwater withdrawals in the Basin by about 50%, and Cal-Am expects its allocation to decline from about 4,000 acre-feet per year to 1,474 acre-feet per year. More recently, in 2009, the State Board's Division of Water Rights issued a Cease-and-Desist Order to Cal-Am establishing a schedule for Cal-Am to reduce its Carmel River well water withdrawals from 10,730 acre-feet per year (in 2009) to 3,376 acre-feet per year by 2016.

There is ongoing litigation challenging whether the applicants have the necessary water rights to undertake the proposed Regional Desalination Project, though there has not yet been a court decision or settlement regarding this issue. The Commission's approval of a permit for the proposed test slant well does not constitute a determination regarding the status of the applicants' water rights. If a court rules that they do not have adequate water rights to undertake the proposed project, then the applicants would be unable to continue to pursue the project in violation of such an order, regardless of the Commission's approval of a CDP.

[5] The Settlement Agreement was to settle the CPUC's Proceeding A.04-09-019, "In the Matter of the Application of California-American Water Company (U 210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates." Signatories to the Settlement Agreement included Cal-Am, MCWD, MCWRA, the Monterey Regional Water Pollution Control Agency, the Surfrider Foundation, the Public Trust Alliance, and Citizens for Public Water.

There have also been recent allegations regarding possible conflicts of interest with some of the parties involved in the design, environmental review, and management of the RDP. The investigations into these allegations are ongoing and at this point, neither the proposed RDP nor the test slant well evaluated herein has been modified in response to these issues.

4.2.2 Prior Environmental Review

In September 2004, Cal-Am submitted to the CPUC its application for a Certificate of Public Convenience to build, own, and operate the proposed Coastal Water Project. The CPUC issued its CEQA Notice of Preparation in September 2006, followed by a Draft EIR in January 2009 and a Final EIR that was certified in December 2009.[6] The CPUC's EIR review and its concurrent ratesetting process (CPUC Proceeding #A0408012) considered alternatives to the proposed project, which included the RDP, of which the proposed test slant well is a part. In March 2011, the CPUC published two addenda to the EIR that evaluated two modified pipeline alignments for the RDP. In April 2011, MCWRA published an addendum evaluating the two test wells proposed as part of the RDP – the slant well proposed herein, and a test vertical well that would be located at the CEMEX sand mining site about a mile north of this project site.[7]

4.3 COASTAL COMMISSION JURISDICTION AND STANDARD OF REVIEW

Part of the proposed project is within the Coastal Commission's retained jurisdiction and part is within the City of Marina's LCP jurisdiction. Pursuant to a request by the applicants and the City, the Commission is reviewing the project under the consolidated permit review process established under Coastal Act Section 30601.3.[8] That section provides that the Coastal Act Chapter 3 policies serve as the legal standard of review, with certified LCPs serving as guidance.

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[6] On March 24, 2010, the PUC published an FEIR addendum that included several comment letters inadvertently omitted from the FEIR and errata discovered in the FEIR subsequent to its publication. The Addendum states that the letters and errata did not raise new issues and did not require changes to the FEIR analyses.

[7] There is litigation challenging the CEQA documentation approved for the full desalination facility project and questioning the adequacy of the CEQA review undertaken for the test well project. However, there has not yet been a court ruling or settlement of these issues, so the CEQA documentation for this project has not been invalidated at this time. Regardless of the status of this litigation, the Commission's review of coastal development permits has been certified by the California Secretary of Natural Resources as being the functional equivalent of environmental review under CEQA, and as a certified regulatory agency, the Commission is reviewing the proposed project under the Coastal Act and accompanying regulations.

[8] Coastal Act Section 30601.3 states:

> *"(a) Notwithstanding Section 30519, the commission may process and act upon a consolidated coastal development permit application if both of the following criteria are satisfied:*
> *(1) A proposed project requires a coastal development permit from both a local government with a certified local coastal program and the commission.*
> *(2) The applicant, the appropriate local government, and the commission, which may agree through its executive director, consent to consolidate the permit action, provided that public participation is not substantially impaired by that review consolidation.*
> *(b) The standard of review for a consolidated coastal development permit application submitted pursuant to subdivision (a) shall follow Chapter 3 (commencing with Section 30200), with the appropriate local coastal program used as guidance.*

The Coastal Act's consolidated permit review process also requires that public participation not be substantially impaired by conducting the consolidated review process. To ensure adequate public participation, Commission staff scheduled the Commission's hearing on the project in Watsonville, Monterey County, a location close to the proposed project. The applicants have also conducted or participated in a number of public meetings at which the test well or the associated Regional Desalination Project were discussed and evaluated. A list provided by the applicants includes about a dozen meetings since 2007 of the Regional Plenary Oversight Group (REPOG) and the Monterey Regional Plan Work Group, as well as public meetings of local water districts. A website (http://www.waterformontereycounty.org/index.php) established by the applicants includes project schedules, key documents, meeting announcements, and similar information. Ongoing public involvement includes occasional meetings of a Community Involvement Forum established to discuss the design and construction of the RDP. Commission staff have also requested the applicants provide additional public notice of the Commission's hearing for this proposed test slant well in the form of newspaper public notices and announcements on the project website.

Site Designation Pursuant to the City of Marina Coastal Land Use Plan: The City's Land Use Plan, which the Commission may use as guidance, designates the proposed project site as "Coastal Conservation and Development". The LUP states (at page 37):

> "*Coastal Conservation and Development shall include such uses as are dependent upon salt water, the unique coastal environment found in Marina, and/or on resources present only in this portion of Marina's Coastal Zone. Development shall be sited in already disturbed areas. Access roadways shall be kept to the minimum necessary to serve the proposed development and buildings shall be designed and sited to preserve sensitive habitats and views of the coastal dunes. No development shall be allowed in this area without proper environmental assessment by qualified professionals. The findings and recommendations of the environmental assessment shall be incorporated into project plans.*"

The LUP additional identifies (at page 22) the following allowable uses:

> "*Coastal Conservation and Development uses shall be allowed on the west side of Dunes Drive. These activities shall include, but not be limited to, marine agriculture (Mariculture); off-shore and surf-zone sand mining, and other commercial activities dependent for economic survival on proximity to the ocean, salt water or other elements only available in this particular environment, Development in this area will be allowed in already disturbed areas (see Sensitive Habitat section).*"

The proposed slant well test project is consistent with these policies in that it will be located on previously disturbed areas and depends on proximity to the salt water adjacent to the project site.

(c) The application fee for a consolidated coastal development permit shall be determined by reference to the commission's permit fee schedule.
(d) To implement this section, the commission may adopt guidelines, in the same manner as interpretive guidelines adopted pursuant to paragraph (3) of subdivision (a) of Section 30620."

4.4 OTHER PERMITS AND APPROVALS

The project is subject to a number of other permits and approvals, including:

- **State Lands Commission – pending application for lease of state tidelands:** Portions of the test slant well will be located on state tidelands under the management of the State Lands Commission. State Lands Commission staff have no objection to the Commission acting on this proposed project prior to the State Lands Commission's consideration of the requested lease (see State Lands Commission letter in Exhibit 6). **Special Condition 1** requires the applicants to submit an approved State Lands lease prior to issuance of the coastal development permit.

- **Monterey County Health Department – variance to 1995 County ordinance prohibiting new groundwater extraction facilities from this area of the Salinas Valley Groundwater Basin:** The well will need a variance to allow groundwater withdrawal from this area. **Special Condition 1** requires the applicants to submit a variance or other approval prior to issuance of the coastal development permit.

4.5 CONFORMITY TO APPLICABLE COASTAL ACT POLICIES

4.5.1 Geologic Hazards

Coastal Act Section 30253 states, in relevant part:

> *New development shall do all of the following:*
> *(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
> *(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

Coastal Act Section 30253 requires, in part, that new development minimize risks to life and property in areas of high geologic hazard and that it ensure stability and structural integrity. The entire project is within an area subject to relatively strong seismic events and is adjacent a part of the Monterey Bay shoreline that experiences relatively high rates of coastal erosion. The slant well and its associated monitoring wells would be therefore located in areas subject to seismic- and coastal erosion-related risks. **Special Condition 2** provides that the applicants acknowledge and assume the risks associated with the site and waive their own claims and indemnify the Commission for other claims of liability against the Commission associated with the site's risks. Of the known geologic hazards in this region[9], the test well could potentially be affected by those described below.

GROUND SHAKING AND LIQUEFACTION

The region is subject to large magnitude earthquakes that can cause high intensity ground shaking. The region's maximum expected ground shaking is based on a probabilistic seismic hazard assessment conducted over the past decade by the U.S. Geological Survey (USGS) and California Geological Survey (CGS). The EIR for the Regional Desalination Project identified peak ground acceleration in the area of the test wells of up to about 0.47g.

Primary and secondary ground shaking effects, such as liquefaction, could result in structural damage to both surface and subsurface components of the wells and supporting infrastructure. The EIR Addendum for the test well includes a mitigation measure requiring that all project facilities be subject to a geotechnical investigation by a licensed geotechnical engineer, who is to identify specific seismic and geologic hazards and recommended design criteria to address these hazards.[10] Those criteria are to be incorporated into the project design in accordance with CGS

[9] Geologic hazards present in the region but not likely to occur at the proposed slant well location include surface fault rupture, as there are no identified faults at the site, and landslides or slope stability hazards, as the site has very low susceptibility to slope failures.

[10] Mitigation Measure 4.5-1 states: "A California licensed geotechnical engineer or engineering geologist will conduct geotechnical investigations of all Project facilities and pipeline alignments prior to the final design and prepare recommendations applicable to foundation design, earthwork, backfill and site preparation prior to or during

standards. The EIR Addendum concludes that implementing this measure will reduce these potential seismic hazards to less than significant. To ensure the final design conforms to relevant Coastal Act 30253 policies, and to ensure any additional impacts to coastal resources that might result from implementing that design are addressed, **Special Condition 3** requires the applicants to submit the proposed final design for Executive Director review and approval. It also requires a description of how all surface and subsurface components will be removed, if necessary, due to seismic or other events, or if the Commission does not approve subsequent conversion of the development for long-term use. If the proposed design would result in additional impacts to coastal resources – e.g., to ESHA, water quality, etc. – beyond those evaluated in these Findings, the applicant may be required to submit an application to amend the CDP.

COASTAL EROSION

This stretch of the Monterey Bay shoreline is subject to relatively high short-term and long-term rates of coastal erosion. Single storm events or multiple storms over a single season have resulted in landward movement of the shoreline of up to several dozen feet, and long-term erosion rates average up to 5.5 feet per year.

Section 30253(2) of the Coastal Act requires, in part, that new development be sited so that it will not be subject to erosion during its design life and that it not require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The Commission has implemented this requirement by applying predicted long-term erosion rates to proposed project locations and requiring a 1.5 factor of safety – that is, structures are to be located sufficiently landward to accommodate one-and-one-half times the rate of bluff retreat predicted to occur during the economic life of the project. The Commission has also incorporated the effects of predicted sea level rise on the erosion rate in a number of recent permit decisions.

For this test slant well project, the predicted long-term erosion rate at this site is not expected to affect the proposed slant well or monitoring wells during the one-year test period, although it could be affected by extreme short-term erosion effects. During the longer term – i.e., if the applicants propose to use the well to provide source water for the RDP – the development could be within an area expected to experience coastal erosion due to predicted long-term rates. These issues are discussed below.

Predicted erosion rates at the project site: Studies conducted over the past several decades have identified long-term shoreline and bluff/cliff edge erosion rates along southern Monterey Bay ranging from about one foot per year to up to about six feet per year. The most

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the project design phase. The investigations will specify seismic and geologic hazards including potential ground movements and co-seismic effects (including liquefaction). The recommendations of the geotechnical engineer will be incorporated into the design and specifications in accordance with California Geological Survey Special Publication 117 and shall be implemented by the construction contractor. The construction manager will conduct inspections and certify that all design criteria have been met in accordance with the California Building Code as well as applicable City and County ordinances. Page 4.5-29 of the CPUC EIR discusses Mitigation Measure 4.5-1."

comprehensive of these studies is the November 2008 "Coastal Regional Sediment Management Plan for Southern Monterey Bay" (CRSMP), prepared for the Association of Monterey Bay Area Governments.[11] During the past several years, the Commission has used the CRSMP analyses to determine expected erosion rates at a number of projects along the Monterey Bay shoreline.

The CRSMP includes erosion data collected over various time periods and provides predicted long-term erosion rates based on findings from studies that measured several different environmental factors. For example, its analyses are based on studies that measured dune erosion between 1940-1984 and between 1985-2005, a study that estimated erosion rates based on movement of the Mean High Water line between 1910-2002 and between 1970-2002, an evaluation of aerial photographs between 1940 and 1988, and others. It also incorporates predicted sea level rise and determines that a rate of three feet rise during the next century would, on its own, result in a shoreline recession rate along Monterey Bay of about 0.8 feet per year. The CRSMP analyses also recognizes the effects of other regional factors on coastal erosion rates, including nearby beach sand mining and the presence of dams on nearby rivers, which decrease the sediment yield provided to the area beaches.

Short-term test use of the well: The surface of the slant well is located about 200 feet inland from the edge of the site's coastal bluff. During the approximately one-year construction and test period for the slant well, this distance, including a 1.5 factor of safety, would be sufficient for the development to be located outside of long-term predicted areas of coastal erosion. However, additional measures are needed to address potential short-term erosion events and to address potential erosion of project components closer to the shoreline.

As shown in Exhibit 3, portions of the slant well that extend under the beach and seafloor would likely be exposed due to erosion much sooner than components of the well at the ground surface. Additionally, some of the surrounding infrastructure used to support the test slant well, including two of the monitoring wells located somewhat closer to the site's bluff edge, are likely to be affected by erosion before the slant well surface location.

Because this area of the shoreline is not only subject to relatively high average long-term erosion rates but also high erosion rates from high-intensity single events (e.g., storm surges), the aforementioned **Special Condition 3** requires the applicants to identify measures that will be implemented should short-term, large-scale erosion threaten the slant well during the test phase and requires removal of all or some of the project components. In recognition of the potential that the applicants will propose converting the short-term test to long-term use, **Special Condition 4** requires that such a conversion be the subject of a separate Commission review and approval. Finally, **Special Condition 5** requires the applicants acknowledge the likely or potential coastal erosion effects on the proposed development and that shoreline protective devices will not be constructed to protect the development.

[11] See *Coastal Regional Sediment Management Plan for Southern Monterey Bay*, prepared for the Association of Monterey Bay Area Governments and the Coastal Sediment Management Workshop by Phillip Williams & Associates, Ltd, November 2008.

Potential long-term use of the development: As noted above, the CRSMP identifies a long-term erosion rate at the site of about 5.5 feet per year. The applicants describe the estimated Regional Desalination Project life to be 50 years and the operating life of the slant well to be 30 years. That would place at least some of the slant well project components within an area that could be adversely affected by predicted coastal erosion during that period.

The applicants propose that the Commission consider a lower rate – 3.5 feet per year – instead of the CRSMP-derived erosion rate of 5.5 feet per year. The applicants' proposal is based on their coastal erosion analysis that identified 11 studies conducted to determine erosion rates along the Monterey Bay shoreline. Of these, the applicants selected erosion rates from a 2006 U.S.G.S. study[12] that used available data from four different periods (1853-1910, 1929-1942, 1945-1976, and 1998-2002) to identify average erosion rates along several miles of the Monterey Bay shoreline. The study identified four transects across the beach at the MCWD property, with average erosion rates at these transect locations ranging from about 2.1 to 2.7 feet per year, which is about half the rate identified in the CRSMP. The applicants propose using the highest of these rates – 2.7 feet per year – and then adding the above-cited CRSMP rate of 0.8 feet per year to account for erosion resulting from sea level rise, which results in an average rate of 3.5 feet per year for the site.[13] With the slant well entry point at approximately 200 feet from the current bluff edge, this suggested rate of 3.5 feet per year would place the surface component of the slant well in an area predicted to erode within 35-40 years. This would provide only about a 1.2 factor of safety over a 50-year period, but about a 2.0 factor of safety over a 30-year slant well operating life. The applicants also state that the higher erosion rates identified in the CRSMP and other studies are based on short-term data and therefore are not appropriate to use.[14]

However, the Commission finds that this proposed 3.5 foot per year rate is not sufficient to ensure that the well, if converted to long-term use as a source water well for the Regional Desalination Project, will remain unaffected by coastal erosion. To ensure consistency with the Commission's approach to implementing applicable policies of Section 30253, the Commission finds instead that the CRSMP analysis provides a more appropriate rate of 5.5 feet per year.

As noted above, the applicants' analysis predicts the surface location of the slant well would be subject to erosion within about 35-40 years. For at least two reasons mentioned previously, however, the slant well could be affected even sooner: first, as shown in Exhibit 3, portions of the slant well under the beach and seafloor are likely to be exposed due to erosion much sooner than surface components of the well; and second, some of the surrounding infrastructure used to support the slant well site – including the monitoring wells that would be located seaward of the

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[12] See "USGS Open File Report (OFR) 2006-1251: *USGS National Assessment of Shoreline Change: A GIS Compilation of Vector Shorelines and Associated Shoreline Change Data for the Sandy Shorelines of the California Coast*."

[13] See May 31, 2011 "Response to Staff's Information Requests", Appendix P: *Summary of Historical Erosion Rates in the Vicinity of the Marina Coast Water District Office – Marina State Beach, Marina CA*, prepared for Monterey County Water Resources Agency by Geoscience Support Services, Inc., December 2010.

[14] We note, however, that the CRSMP identifies its analyses as providing "long-term" erosion rates.

slant well – is likely to be lost to erosion before the slant well surface location is directly affected. Additionally, the CRSMP specifically identifies the MCWD facilities surrounding the proposed slant well as being at "high risk" of erosion and notes that these existing facilities, which include structures and office buildings, are expected to be threatened by erosion within 10-15 years.

With this predicted rate of coastal erosion at the site, the separately proposed long-term use of this well could result in nonconformity with Coastal Act Section 30253. As noted in **Special Condition 4**, the proposed conversion of the test well to a long-term source water well will require the applicants to submit a new CDP application. To address this issue, the Commission expects that application to include an analysis and plan similar to the one it required in a similar project located nearby, as described below.

The Commission's approval of the City of Sand City's desalination facility (pursuant to a May 2005 *de novo* appeal hearing for No. A-3-SNC-05-010) included a requirement that the City provide an Adaptive Managed Retreat Plan in recognition of the proposed source water well for its facility being located in an area subject to potential coastal erosion during the operating life of the well. That Plan required the City to conduct monitoring that would provide sufficient notice of potential erosion risks and would allow relocating the well as needed without causing significant adverse effects on coastal resources. It also required the applicant to identify proposed locations and plans for constructing a new well inland of the current site and outside of ESHA and to ensure that the locations and necessary financing for relocation were available when needed. It also required regular reporting to Commission staff to allow assessment of the ongoing coastal erosion risks. The Special Condition required of the Sand City project is attached as Exhibit 4.

TSUNAMI

Predicted tsunami runup elevations along this stretch of the Monterey Bay coastline are 6.0 feet above mean sea level (MSL) for the 100-year event and 11.7 feet above MSL for the 500-year event. Expected storm surge wave heights for the area are even higher, however, and range up to about 27 feet above MSL.

The surface of the slant well would be located approximately 57 feet MSL, so it would not be expected to experience the direct effects of a tsunami. It is more likely that any effects would be the result of tsunami-caused erosion of the site, which is underlain by unconsolidated sands that could be quickly mobilized during high wave action or tsunami runup. However, the requirement of **Special Condition 3** to identify removal measures that would be implemented in the event of short-term, large-scale erosion addresses this potential effect.

Conclusion: For the reasons described above, the Commission finds that the proposed project, as conditioned, will be carried out in a manner consistent with applicable provisions of Coastal Act Section 30253.

4.5.2 Protection of Marine Life and Water Quality

Coastal Act Section 30230 states:

> *Marine resources shall be maintained, enhanced, and, where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Coastal Act Section 30231 states:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

Coastal Act Section 30232 states:

> *Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.*

These Coastal Act policies generally require that development protect water quality and marine life and not result in adverse effects to those coastal resources. They also require protection against spills of hazardous substances and effective management of spills should they occur.

As noted previously, the purpose of the project is to identify whether the test slant well can provide a suitable source of water for a proposed desalination facility. The applicants specifically selected the approach of using a slant well (along with the separately proposed vertical wells) instead of an open ocean water intake to avoid the adverse effects on marine life caused by open water intakes.[15] Any seawater pumped from the well will have been very slowly introduced into the aquifer through the seafloor, thus harmlessly filtering out any marine life.

[15] The primary adverse impacts caused by open water intakes are entrainment and impingement. Entrainment occurs when small organisms, such as plankton, fish eggs, larvae, etc., are pulled into an open-water intake. Entrainment caused by a desalination facility intake results in essentially 100% mortality due to the organisms being subjected to filters and high pressures within the facility's pre-treatment or treatment systems. Impingement occurs when larger fish or other organisms are caught on an intake's screening system and are either killed or injured.

Where feasible, the use of wells rather than open water intakes is the preferred method for obtaining desalination source water, as it completely eliminates these types of adverse effects on marine life.

Well construction and operation: Slant well construction would involve relatively minor amounts of excavation, grading, soil stockpiling, and backfilling, all of which could result in erosion and associated water quality impacts. Construction would also involve vehicle and machine use of fuel and other potential contaminants that could cause significant adverse impacts if released to nearby coastal waters or sensitive habitat areas.

The project will be subject to a General Construction Permit from the Regional Water Quality Control Board, which will require the applicants to identify measures to inspect and monitor project activities for potential hazards to water quality and to include measures meant to avoid and minimize those hazards. In addition, and in recognition of the site's proximity to sensitive coastal waters and habitat areas, **Special Condition 6** requires the applicant to submit, for Executive Director review and approval, a Spill Prevention and Response Plan that identifies all measures to be implemented to prevent water quality and erosion impacts and identifies all measures to prevent spills of fuel or other hazardous substances and to respond to such spills should they occur.

Water discharges: Well water quality at the slant well site is expected to be similar to that collected at a monitoring well that has been in place at the project site for several years. Water quality data from that well shows that the groundwater beneath the project site is essentially equivalent to seawater, with no detected contaminants.

Water produced from this test slant well would come from three different aspects of the project, as described below:

- **Drill cuttings:** Drill cuttings produced during the well drilling process would contain relatively small amounts of water. Cuttings would be placed in containers within the staging and containment areas. Because the selected drilling technique will not use drill muds or fluids, the cuttings are not expected to contain hazardous materials or contaminants. Any water drainage from the cuttings would remain onsite and percolated into the ground surface. No more than 30 cubic yards of cuttings would remain on site at any time, as the applicants will transport the drained cuttings to the MRWMD landfill for disposal. The applicants will develop a Stormwater Pollution Prevention Plan pursuant to Regional Water Quality Control Board requirements for handling the cuttings and other onsite materials, and, as noted above, Special **Condition 6** requires submittal of a Spill Prevention and Response Plan for Executive Director review and approval.

- **Initial well construction and development:** These phases of the project are expected to produce up to about 200,000 gallons of water, much of it containing sediment mobilized during drilling. This water would be pumped into temporary above-ground settling tanks located in the work or staging area. Once the turbidity of the water in the settling tanks is

below 75 NTU,[16] the water will be decanted and pumped to clarifiers at the site that were part of the former wastewater treatment plant. Any sediment remaining in the settling tanks will be disposed of at a nearby landfill. Water pumped to the clarifiers will be discharged into an existing MCWD injection well at the site pursuant to a Regional Water Quality Control Board permit.[17]

- **Well testing:** Well testing over a three to six month period would result in up to approximately 1,000,000 gallons of water that will be pumped into the clarifiers described above and then discharged into the existing injection well once turbidity is below allowable Regional Board limits.

The proposal at this time does not include long-term pump testing, as the applicants have not yet identified a method to dispose of the water that would be generated over the several months of pumping anticipated for such a test. A long-term pump test would generate up to 3,000 gallons per minute and could produce tens of millions of gallons over the course of the test period. These volumes are substantially higher than can be stored and treated in the on-site clarifiers and discharged to the onsite injection well. If a discharge location or method for these higher volumes becomes available, the applicants are expected to propose a long-term test; however, to ensure any such test and discharge is consistent with Coastal Act policies, **Special Condition 4** requires the applicants to submit to the Commission a complete application for a permit amendment to allow such a test.

Conclusion: For the reasons described above, the Commission finds that the proposed project, as conditioned, will be carried out in a manner that is protective of marine biological resources and water quality and is therefore consistent with Coastal Act Sections 30230-30232.

[16] NTU is the acronym for "Nephelometric Turbidity Units", which are used to identify the level of turbidity in water by measuring the amount of light reflected off particles in the water. Water with an NTU level of 75 is somewhat turbid in appearance.

[17] The discharge would be permitted under a Statewide General Waste Discharge Requirements (WDRs) for Discharges to Land with a Low Threat to Water Quality, State Water Resources Control Board Water Quality Order No. 2003-0003-DWQ.

4.5.3 Environmentally Sensitive Habitat Areas (ESHA)

Coastal Act Section 30240 states:

> *a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
> *b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

ESHA defined in Coastal Act Section 30107.5:

> *"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

City of Marina LCP:

> The City of Marina LCP, which the Commission may use as guidance, defines "primary sensitive habitats" as including: "*Habitat for all identified plant and animal species which are rare, endangered, threatened, or are necessary for survival of an endangered species…", "vernal ponds and their associated wetland vegetation…", "[a]ll native dune vegetation, where such vegetation is extensive enough to perform the special role of stabilizing Marina's natural sand dune formations…", and "areas otherwise defined as secondary habitat that have an especially valuable role in an ecosystem for sensitive plant or animal life, as determined by a qualified biologist approved by the City.*" The secondary habitat referred to in the LCP is defined as "*areas adjacent to primary habitat areas within which development must be sited and designed to prevent impacts which would significantly degrade the primary habitat*" and includes "*potential/known localities of rare and endangered plant species, potential wildlife habitats, and any areas within 100 feet of the landward boundary of a wetland primary habitat area.*"
>
> The LCP further requires that "*Primary habitat areas shall be protected and preserved. All development must be sited and designed so as not to interfere with the natural functions of such habitat areas. Management and enhancement opportunities should be incorporated into use or development proposals; potential impacts shall be full mitigated including the assurance of long-term mitigation and maintenance of habitat through the use of appropriate acreage replacement /restoration ratios for any unavoidable direct impacts to habitat areas.*"

The proposed test slant well site is within a coastal dune complex that extends along several miles of shoreline in southern Monterey Bay. This dune complex includes a variety of habitats and species adapted to the relatively harsh maritime conditions characterized by relatively

constant winds and associated air-borne salts and sands, episodic fog, and quickly-draining soils. The undeveloped portions of coastal sand dune habitats near the site are made up of sandy bluffs, open moving sand, and vegetated sand dunes. Parts of these dune habitats, including those within and adjacent to the project site, have been degraded by development and by invasive species such as iceplant; however, the Commission's ecologist has determined these areas still meet the Coastal Act's definition of ESHA. Additionally, the City of Marina's LCP, which the Commission may use for guidance, defines the non-paved areas of the proposed project site as ESHA. These sandy habitats support rare vegetation communities, such as central dune scrub, and a number of rare species, as described below. Approximately 300 feet east of the proposed test slant well site is a seasonal vernal pond that supports wetland species and habitats. Several of these ponds existing with the City of Marina, though this is the only one seaward of Highway 1. Its seasonal fresh and brackish water and associated vegetation provides habitat for migratory birds and other wildlife species. ESHA in this area is similar to that of the Asilomar dunes in southern Monterey County, where the Commission has recognized that, despite residential development and colonization by iceplant and other non-native plant species, the remaining habitat areas consist of ESHA.

The proposed project site includes existing development such as MCWD office buildings, structures remaining from a former wastewater treatment facility, paved parking areas, and associated infrastructure. Most of the site is paved, though unpaved areas immediately adjacent to this existing development include the ESHA noted above in the form of both disturbed and undisturbed dune habitat. While much of the site's unpaved area is dominated by invasive iceplant, botanical surveys conducted in 2009, 2010, and 2011 show that the site includes patches of the Monterey spineflower (*Chorizanthe pungens* var. *pungens*), which is a federally-listed endangered species, and individual specimens of dune buckwheat (*Eriogonum parvifolium*), which is an obligate host plant and key habitat component for the federally-listed endangered Smith's blue butterfly (*Euphilotes enoptes smithi*). The site also includes potential habitat for several sensitive animal species, including the California legless lizard (*Anniella pulchra*), Coast horned lizard (*Phrynosoma blainvilii*), and the White-tailed kite (*Elanus leucurus*), which are all State-listed Species of Special Concern.

Avoiding direct impacts to ESHA: As initially proposed, the slant well, monitoring wells, and associated construction activities had been partially sited on the site's unpaved areas, albeit in a way that would have avoided the twenty-four individual dune buckwheat plants identified at the site. The initial siting would have, however, directly affected small patches of the Monterey spineflower and would have been on dune habitat consisting of ESHA. Upon the Commission ecologist's determination that the unpaved parts of the site consist of ESHA, the applicants modified the project so that all development would occur on paved or already-developed parts of the MCWD site (as shown in Exhibit 2). With this modification, the proposed project avoids direct impacts to ESHA.

Avoiding impacts to adjacent ESHA: While the above modification ensures avoidance of direct ESHA impacts, the proposed development would remain immediately adjacent to ESHA and could cause indirect effects to those areas. To address these potential impacts, some of the project's mitigation measures that were identified in the EIR Addendum as meant to reduce

direct ESHA impacts can be applied to prevent degradation of adjacent ESHA. These measures are provided in Exhibit 4 – Relevant CEQA Mitigation Measures for Protection of ESHA. They include Mitigation Measure 4.4-1d, which requires pre-project fencing or flagging be placed to identify areas with sensitive plant species to avoid, and which will now include all non-paved areas of the site. Also included is Mitigation Measure 4.4-1c, which is meant to address potential impacts to the California legless lizard and the coast horned lizard, both of which potentially live in the loose, sandy soils found adjacent to the proposed development. This measure requires that a qualified biologist train the construction crew to identify the species and to understand provisions of USFWS and DFG avoidance and minimization methods included as part of project activities. The measure also requires that the biologist be present during grading and vegetation removal to take protective measures if any individuals of the species are encountered. To ensure these measures are implemented in a manner protective of the adjacent ESHA, **Special Condition 7** requires the applicant to submit the proposed implementation plan for these measures for Executive Director review and approval prior to the start of project construction.

Nearby sensitive animal species in the adjacent ESHA could also be disturbed by noise generated during well construction or operation. Well drilling would last for up to several months and would include occasionally 24-hour per day activities. The EIR Addendum includes several mitigation measures meant to reduce project-generated noise, including Mitigation Measures 4.9-1a-d, which requires equipment to be placed as far as possible from noise-sensitive receptors, that noise levels be no more than 85 decibels 50 feet distant from the drill rig, and that portable acoustic barriers be used to reduce noise by an additional 10 decibels. Nighttime drilling would include the use of noise control blankets to ensure that noise levels would be no more than 60 decibels at a 50-foot distance. Mitigation Measure 4.9-2 requires similar measures to reduce the noise of pumps and other machinery to be used during the project. To ensure these measures are implemented in a manner protective of adjacent ESHA, **Special Condition 7** requires that the applicants submit a proposed plan identifying the specific noise reduction materials and techniques for Executive Director review and approval.

This proposed test project is not expected to adversely affect the vernal pond located about 300 feet east of the project site due largely to the distance between the well intake and the pond (about 1000 feet), the depth of the intake (approximately 180 feet below the ground surface), and the relatively small amount of water to be withdrawn from the aquifer during the test program. If modeling conducted during the well test period identifies potential adverse effects from larger volumes of water withdrawal or from long-term use of the well, this would be addressed during the Commission's subsequent review of a new or amended coastal development permit application for those additional withdrawals or long-term use.

Conclusion: For the reasons described above, the Commission finds that the proposed project, as conditioned, will be carried out in a manner protective of nearby environmentally sensitive habitat areas and is therefore consistent with applicable policies of Coastal Act Section 30240.

4.5.4 Coastal Agriculture

Coastal Act Section 30241 states, in relevant part:

> *The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:*
> *…(e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*

Portions of the above policy relevant to the test well project require that public service and facility expansions not degrade water quality to the detriment of its use for agriculture. Nearby coastal agricultural operations are heavily reliant on groundwater from the aquifer proposed to be used by the test well project. However, as described below, water withdrawals during the test well project are not expected to result in diminished water supply or water quality for agricultural uses.

Background: During construction and testing, the test slant well would remove up to about 1.2 million gallons (about 3.6 acre-feet) of primarily seawater from a sub-seafloor extension of the 180-Foot Aquifer of the Salinas Valley Groundwater Basin. The Basin is a relatively long and narrow groundwater structure extending about 140 miles from the coast to the southeast along the Salinas River valley. The test slant well would be located over the Pressure Subbasin, which covers about 130 square miles of the seaward end of the Basin. The Pressure Subbasin includes three stratified aquifers – the 180-Foot, the 400-Foot, and the Deep Zone.

Much of the groundwater drawn from the Pressure Subbasin has been used for nearby agricultural activities. Past Subbasin water withdrawals have been as high as about 120,000 acre-feet (or about 39 billion gallons) per year. Heavy pumping rates in both the 180-Foot and 400-Foot Aquifers have resulted in seawater intrusion extending several miles inland, though groundwater withdrawals have been substantially reduced due to the decline of water quality for agricultural uses, lowered groundwater levels, water rights adjudication proceedings, and other factors. Management of the Basin to reduce impacts associated with these issues includes closure of nearby wells, programs focused on reducing seawater intrusion rates, and a County ordinance that since 1995 has prohibited new groundwater extraction facilities.[18] Seawater intrusion was recently estimated to occur at a baseline rate of about 10,000 acre-feet (equal to about three billion gallons) per year[19], though the Basin's groundwater management programs are attempting to significantly reduce this rate. Review conducted as part of the CPUC's EIR for

[18] In 1993, Monterey County approved Ordinance #3709, which prohibits the construction of new groundwater extraction facilities in certain locations within the Salinas Valley Groundwater Basin, including the test well site.

[19] See 2001 *Salinas Valley Water Project Environmental Impact Report*, published by Monterey County Water Resources Agency.

the full-scale RDP shows that the 180-Foot Aquifer in the vicinity of the test well site is too salty for use in agriculture. Due in part to the aquifer being seawater-intruded for the past several decades, there are no active wells on record near the site.

Effects of test slant well groundwater withdrawal on coastal agriculture: For several reasons, the amount of groundwater withdrawn for the test project is expected to result in an insignificant effect on coastal agriculture. As noted above, total water withdrawal for construction, development and testing would total about 1.2 million gallons over the approximately one-year test period, most of which would be seawater or seawater-intruded groundwater from the sub-seafloor extent of the Pressure Subbasin. The "cone of depression" – that is, the area in which groundwater levels are lowered due to this water withdrawal – is expected to be relatively small (i.e., a radius of dozens, or at most a few hundred feet) from the well, and would be far from any active wells, none of which are known to be within 1.5 miles of the site. This drawdown zone will be modeled during the well test period. Additionally, water withdrawn during the well test would be returned to groundwater via an existing injection well at the MCWD site. Further, any proposed groundwater withdrawals greater than the expected 1.2 million gallons – e.g., due to increased testing or conversion of the test well to a long-term source water well – would be subject to additional Commission review and approval pursuant to **Special Condition 4**. Finally, to ensure that the project's groundwater withdrawal and reinjection is consistent with Basin management programs, the applicants plan to obtain from the Monterey County Health Department a variance to the 1995 County ordinance that prohibits new groundwater extraction facilities. **Special Condition 1** requires the applicants to submit that variance to the Executive Director prior to issuance of the CDP.

As noted above, this proposed project and its proposed water withdrawals are the subjects of at least two lawsuits that have not yet been resolved. Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(e). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 8** requiring reimbursement of any costs and attorneys fees the Commission incurs in connection with the defense of any action brought by a party other than the applicants (Permittees).

Conclusion: For the reasons described above, the Commission finds that the proposed project, as conditioned, will be carried out in a manner that is protective of coastal agriculture and is therefore consistent with Coastal Act Section 30241.

4.5.5 Public Access and Recreation

Coastal Act Section 30210 states:

> *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Coastal Act Section 30211 states:

> *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Coastal Act Section 30212(a) states:

> *Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

The test well project is expected to cause few, if any, adverse effects on recreation or public access to the shoreline. The project site is a parcel owned by the Marina Coast Water District that currently does not include public access. Although the project would be located between the first public road and the sea, public access at the site would be inconsistent with public safety due to the industrial nature of the existing infrastructure on site. Additionally, adequate access exists nearby at the adjacent Marina State Beach.

All project activities, including staging of equipment and project staff parking, will take place on the MCWD site, so the project is not expected to adversely affect nearby parking or accessways used by the public for access to the shoreline. There may be traffic interruption along Reservation Road during the movement of the project's drill rigs and equipment on and off the site; however, these are expected to be minor and temporary.

Because the project would occur adjacent to the public access and recreational amenities of Marina State Beach, it could result in minor adverse effects due to the sight and sound of construction or test activities. For example, during the several months of well construction, the presence of a drill rig could cause minor visual impacts along the nearby stretch of public beach. However, the site is partially fenced and already includes industrial equipment in the form of structures from the former wastewater treatment plant, and the drill rig would likely fit within the

existing visual context. Also, as noted in Section 4.5.3 above, machinery used during the project, including the drill rig, pumps, and other equipment, would create noise that could be heard from the public beach. However, most project equipment will be set back at least 100 feet from the beach and several dozen feet higher than the beach. Additionally, with the imposition of noise controls described in **Special Condition 7**, potential noise impacts on public access and recreation would be further minimized.

Conclusion: For the reasons described above, the Commission finds that the proposed project, as conditioned, will be carried out in a manner that is protective of public access to the shoreline and coastal recreation and therefore consistent with relevant Coastal Act policies.

5.0 CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment.

As discussed above, the CPUC is the lead agency for the proposed Regional Desalination Project for purposes of CEQA compliance. It certified a Final EIR for the overall project in December 2009 and supplemented this approval with two addenda that were approved in March 2011. In April 2011, the MCWRA published an addendum to the EIR that evaluated the two test well proposals. There is at least one lawsuit challenging the adequacy of the CEQA documentation and process for this proposed project and for the RDP. To date, however, there has not been a court ruling invalidating the EIR or the various addenda.

In addition, the Commission's review and analysis of coastal development permit applications has been certified by the Secretary of Natural Resources as being the functional equivalent of environmental review under CEQA. The Commission has complied with the Coastal Act and accompanying regulations in its review of the proposed project. The Commission has conditioned the project to be found consistent with the policies of the Coastal Act. Mitigation measures that will minimize or avoid all significant adverse environmental impacts have been required. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, that would substantially lessen any significant adverse impact that the activity would have on the environment.

Appendix A: Substantive File Documents

Marina Coast Water District, Monterey County Water Resources Agency, California-American Water Company, *Coastal Development Permit Application 3-11-036 and associated submittals*, April through July 2011.

California Public Utilities Commission, *Final Environmental Impact Report for California American Water Company Coastal Water Project (SCH #2006101004)*, December 2009, and associated addenda.

Monterey County Water Resources Agency, *Addendum to the Coastal Water Project – Environmental Impact Report For the Test Well Program,* April 7, 2011

Association of Monterey Bay Area Governments and the Coastal Sediment Management Workshop. *Coastal Regional Sediment Management Plan for Southern Monterey Bay*, prepared by Phillip Williams & Associates, Ltd, November 2008.

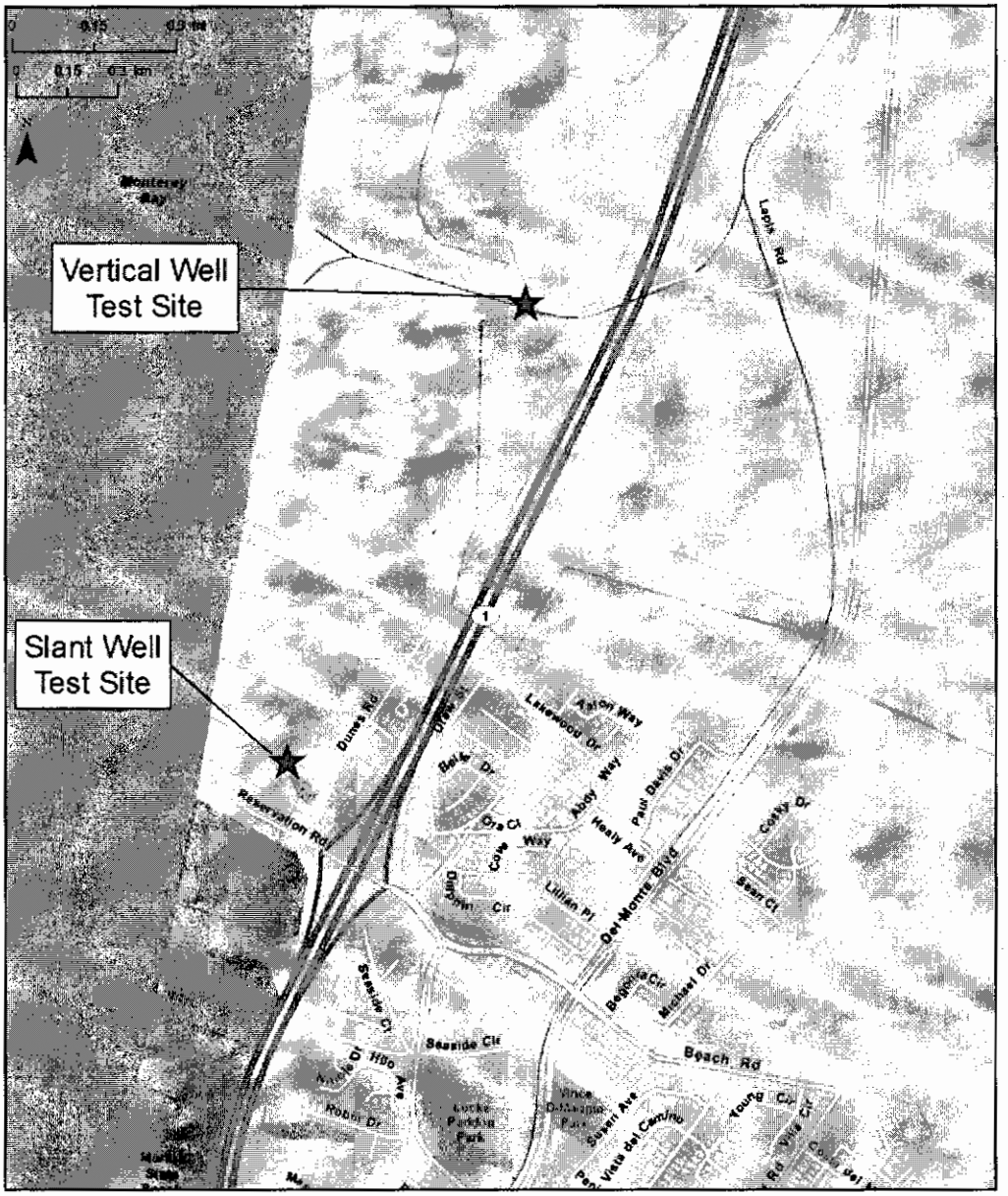


Figure 1 – Regional Location

N

0 30 60
Feet

Conceptual Construction and Staging Plan: Slant Test Well

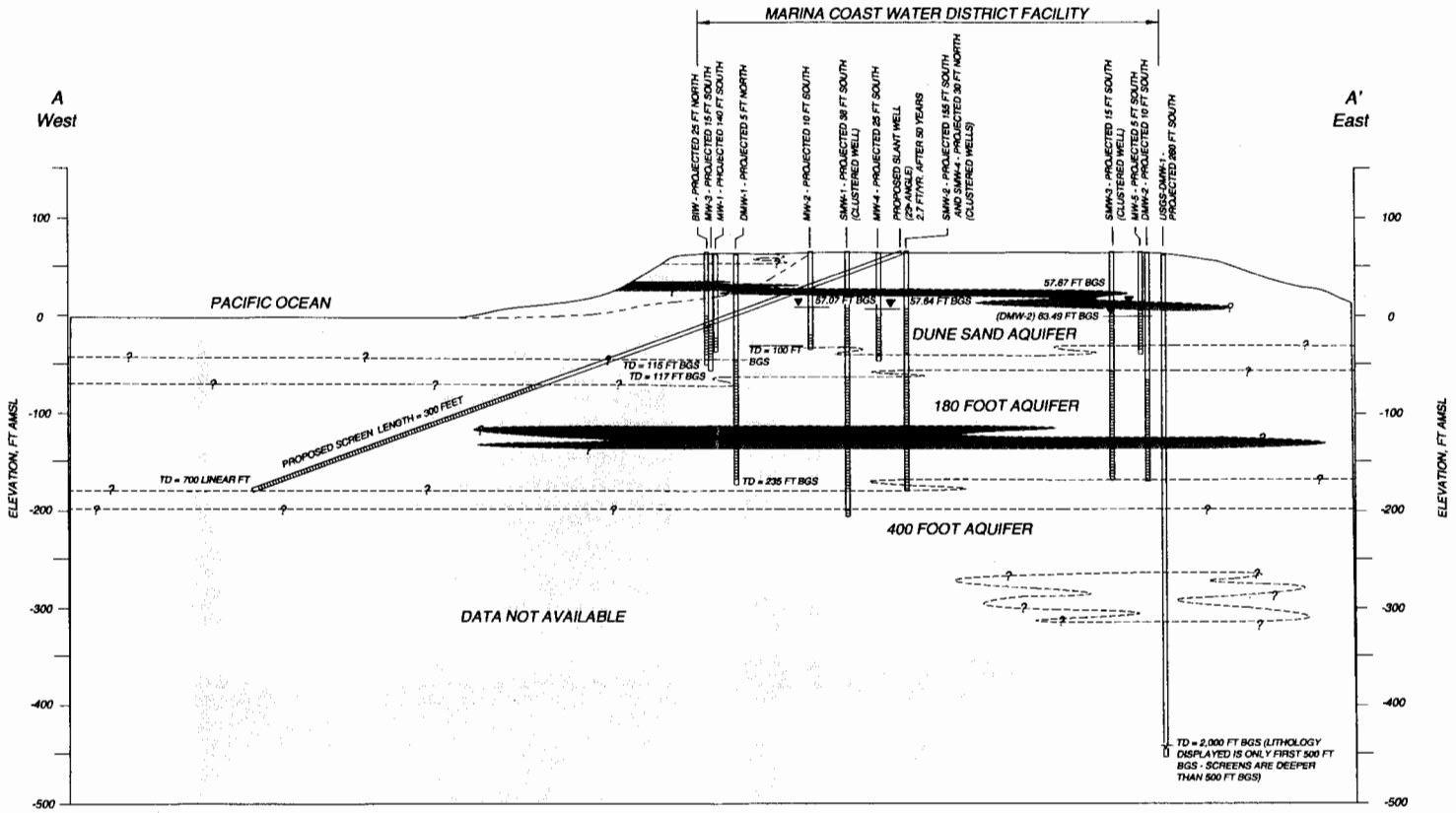
Legend

- Slant Well Borehole
- Construction Impact/Staging Area
- Monitoring Well Clusters

Source: RMC Water & Environment

\\Rmcat\RMCSF\Projects\0139-006 MCWD Desal-SW Treatment Plant\GIS\MXD\APE-APN_MCWD facils\SlantWell_DDAOverlays_03.25.11.mxd

EXHIBIT 2
E-11-019



A SHT-6 SECTION SLANT TEST WELL SITE

SAND, GRAVEL AND INTERBEDDED CLAYS AND SILTS

FINE GRAINED SILTS AND CLAYS

57.07 FT BGS GROUND WATER SURFACE, FEET BELOW GROUND SURFACE

PROJECTED BLUFF IN YEAR 2060 (2.7 FT/YR. EROSION RATE AFTER 50 YEARS)

0 100 200

APPROXIMATE HORIZONTAL SCALE (FEET)

90% Drawings

GEOSCIENCE
"setting the standard in water well design since 1978"
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PROJECT ENGINEER RCE. NO. DATE

CLIENT: MONTEREY COUNTY WATER RESOURCES AGENCY

PROJECT: MONTEREY BAY REGIONAL DESALINATION PROJECT

GEOLOGIC CROSS SECTION: SLANT TEST WELL SITE

Rev.	Date	By	Description
1			
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Date: 23 - DEC - 10
Designed: DEW
Checked: MDW
File: C:\MRSP-SHT_SLC.dwg

SHEET 8
SHEET 8 OF 45

EXHIBIT 3
E-11-019

– E-11-019 Exhibit 4 –

Special Condition #5 from A-3-SNC-05-010: Sand City Desalination Facility

Relocation / Removal of Wells. PRIOR TO ISSUANCE OF THE PERMIT, the Applicant shall submit a final Adaptive Water Supply Management Program, for Executive Director review and approval. Upon approval, Applicant shall implement the program for the life of the project. The Program shall have monitoring, relocation, and update components that expand on the narrative on page 14 of the *Draft EIR* as follows:

a. The monitoring component shall assure that the relocation component can be implemented in a timely manner to avoid (i.), creating or being materially adversely impacted by hazardous conditions (ii.) unpermitted or emergency permitted work and (iii.) the installation of shoreline protection measures. The monitoring component shall detail the frequency, methods, staffing, locations, and other specific aspects of the noted observations to be made (including beach profile and well water quality). This component shall be prepared by a licensed geologist, or civil or geotechnical engineer. It shall be sufficient to assess all potential erosion threats to the proposed development and shall include at a minimum: (iv.) provisions for taking measurements of the distance between the proposed surface level and buried development and the bluff face and beach features, including identification of exactly where such three-dimensional measurements will be taken, e.g. by reference to benchmarks, survey positions, points shown on an exhibit, etc. and the frequency with which such measurements will be taken; (v.) provisions for submission of "as-built" plans, showing the permitted development in relation to the existing topography and showing the bluff and beach conditions that would constitute the onset of a threat to the approved development ("onset of risk condition"); (vi.) provisions for inspection of the condition of the proposed development and project shoreline by a licensed geologist, or civil or geotechnical engineer, including the scope and frequency of such inspections.

b. The relocation component shall address methods and proposed locations for potentially threatened portions of the project, and how the abandoned portions of the project will be addressed, consistent with at a minimum (i.) avoidance of sensitive habitat disturbance and consistency with City LCP ESHA protection policies; (ii.) avoidance of public access disturbance, incorporation of access improvements, and consistency with City LCP access policies and (iii.) avoidance of hazardous locations, the need to install shoreline protective devices, and consistency with City LCP hazard policies. The relocation component shall contain a process to ensure timely success including, but not limited to ensuring that (iv.) financing willbe available; (v.) potential relocation sites will be acquired; (vi.) all permits and other permissions will be secured and (vii.) construction will take place.

c. The update components shall be prepared, and submitted to the Executive Director for review and approval, at least once every five years. Each update shall contain the monitoring results to date, with a conclusion as to what they mean for the timing of when the need for relocation is expected. The update shall include (i.) an evaluation of the condition and performance of the approved development, including an assessment of whether any erosion or bluff retreat has occurred that could adversely impact future performance of the device, (ii.) all measurements taken in conformance with the approved monitoring process, (iii.) an analysis of erosion trends, annual retreat, or rate of retreat of the beach and bluff, based upon the measurements and in conformance with the approved monitoring process, (iv.) an analysis of the stability of the approved development, an estimate of the foreseeable conditions that would modify the bluff or beach to an "onset of risk condition" as identified by the permittee on the "as-built" plans; and the anticipated life of development, based on the conditions of current site and the "onset of threat" conditions.

Each update shall also contain a relocation plan indicting what the results of the relocation analysis have been or are likely to be. The default first relocation site for the injection wells shall be Sand Dunes Drive, unless and until superseded by an approved update. The level of specificity of the relocation plan shall be commensurate with the monitoring conclusions; i.e., when monitoring indicates that relocation will not be necessary for several years, the relocation plan can be conceptual, schematic, and contain alternatives; when monitoring indicates that relocation will likely be necessary within the following three years, the relocation plan shall show an actual relocation site, evidence of approvals, and actual construction plans. As specified in Special Condition #2, an amendment to this Coastal Development Permit shall be required for relocation or removal of the permitted facilities. The application for the amendment shall include an assessment of existing conditions and an evaluation of the potential habitat or other coastal resource impacts associated with re-siting the wells. In addition, the amendment shall include a description of the method to be used for relocating facilities, whether or not existing facilities will be abandoned or removed, and include all mitigation measures necessary to avoid impacts on coastal resources.

– E-11-019 Exhibit 5 –

RELEVANT CEQA MITIGATION MEASURES FOR PROTECTION OF ESHA

From "Addendum to the Coastal Water Project – Environmental Impact Report For the Test Well Program", Monterey County Water Resources Agency, April 2011:

Mitigation Measure #4.4-1d: "*Avoid direct mortality and/or disturbance of special-status plant populations*. Floristic surveys of all suitable habitat for special-status plants shall be conducted prior to the permitting phase of the Project. Maps depicting the results of these surveys shall be prepared for use in final siting design. Project facilities shall be sited to avoid impacts on special-status plants and their required habitat constituent elements, when reasonably feasible. Unavoidable impacts on listed plants species require formal consultation with the USFWS and the CDFG. Impacts on non-listed species would likely involve informal consultation. [*Note: Compliance with this mitigation measure was completed as part of NEPA compliance process. The following additional species-specific mitigation measure is required.*] Prior to construction activities, Monterey spineflower shall be fenced or flagged for avoidance, where feasible, and a biological monitor shall be present to ensure compliance with off-limits areas. Where avoidance is not feasible, the project applicant shall collect seed from Monterey spineflower plants and salvage topsoil within the occupied areas that will be disturbed. Seed should be collected during the appropriate time of year (generally April – June) by a qualified biologist. At this time, the qualified biologist shall also prepare a map that identifies specific distribution of the spineflower for topsoil preservation. The collected seed shall be used in to revegetate temporarily disturbed areas, where practicable. This compensatory measure shall be approved by the USFWS prior to construction activities."

Mitigation Measure 4.4-1c: "Avoid harm or harassment of special-status amphibian and reptile species, as follows: *California legless lizard and coast horned lizard.* These species could occur in loose, sandy soils in the project area. Prior to construction activities, a qualified biologist shall conduct an Employee Education Program for the construction crew. The biologist shall meet with the construction crew at the project site at the onset of construction to educate the construction crew on the following: 1) a review of the project boundaries including staging areas and access routes; 2) the special-status species that may be present, their habitat, and proper identification; 3) the specific avoidance and minimization measures that will be incorporated into the construction effort; 4) the general provisions and protections afforded by the USFWS and the DFG; and 5) the proper procedures if a special-status animal is encountered within the project site.

The biological monitor shall be on-site during initial grading and vegetation removal activities to protect any special-status species encountered. The qualified biologist shall identify and explain the protection methods during the Employee Education Program as described above. These methods could include, but are not limited to, stopping work in the area where the animal is encountered until it has moved on its own outside of the project site or moving individuals outside of the project site to adjacent appropriate habitat."

Mitigation Measure 4.9-1a: "The contractor shall locate all stationary noise-generating equipment as far as possible from nearby noise-sensitive receptors. Contractor specifications shall include a requirement that drill rigs located within 500 feet of noise-sensitive receptors shall be equipped with noise reducing engine housings or other noise reducing technology such that drill rig noise levels are no more than 85 dBA at 50 feet, and the line of sight between the drill rig and nearby sensitive receptors shall be blocked by portable acoustic barriers and/or shields to reduce noise levels by at least an additional 10 dBA. For nighttime drilling activities within 500 feet of residences, the drill rig sites shall be equipped with noise control blankets designed to achieve a Sound Transmission Class (STC) rating of 25 or more so that noise levels 50 feet from the drilling site would be no more than 60 dBA. Pages 4.9-32 – 4.9-33 of the CPUC EIR discuss Mitigation Measure 4.9-1a."

Mitigation Measure 4.9-1b: "The construction contractor shall limit all non-ASR well development construction related activities to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and between 9:00 a.m. and 7:00 p.m. Saturdays, or as agreed upon by the local jurisdiction. Page 4.9-33 of the CPUC EIR discusses Mitigation Measure 4.9-1b."

Mitigation Measure 4.9-1c: "The contractor shall assure that construction equipment with internal combustion engines have sound control devices at least as effective as those provided by the original equipment manufacturer. No equipment shall be permitted to have an un-muffled exhaust. Page 4.9-33 of the CPUC EIR discusses Mitigation Measure 4.9-1c."

Mitigation Measure 4.9-1d: "Residences and other sensitive receptors within 500 feet of a construction area shall be notified of the construction schedule in writing, at least two weeks prior to the commencement of construction activities. A noise disturbance coordinator would be responsible for responding to complaints regarding construction noise. The coordinator shall determine the cause of the complaint and ensure that reasonable measures are implemented to correct the problem. A contact number for the noise disturbance coordinator shall be conspicuously placed on construction site fences and included in the construction schedule notification sent to nearby residences. Page 4.9-33 of the CPUC EIR discusses Mitigation Measure 4.9-1d."

Mitigation Measure 4.9-2: "All stationary noise sources (e.g., pump stations, permanent and emergency power generators, variable frequency drive motors, well heads with motors, etc.) shall be located within enclosed structures with adequate setback and screening, as necessary, to achieve acceptable regulatory noise standards for industrial uses as well as to achieve acceptable levels at the property lines of nearby residences, as determine by the applicable local jurisdiction. Noise enclosures shall be designed to reduce equipment noise levels by at least 20 dBA. Once the stationary noise sources have been installed, noise levels shall be monitored to ensure compliance with local noise standards. If project stationary noise sources exceed the applicable noise standards, an acoustical engineer shall by retained by the project sponsor to install additional noise attenuation measures in order to meet the applicable noise standards."

EXHIBIT 6

E-11-019
Monterey Regional Desalination Project

LEAGUE OF WOMEN VOTERS®
OF THE MONTEREY PENINSULA

RECEIVED
JUL 25 2011
CALIFORNIA
COASTAL COMMISSION

July 21, 2011

Mary Shallenberger, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: AGENDA ITEM 6A - REGIONAL DESALINATION PROJECT

Dear Chair Shallenber and Members of the Commission:

The League of Women Voters of the Monterey Peninsula (League) participated in efforts to develop a regional plan. We enthusiastically supported the preliminary effort which included a broad range of water supply options to meet regulatory requirements. Unfortunately, this initial approach was later sidelined in favor of a large scale and costly solution - the 10,000 AFY desalination plant that came to be called the "Regional Desalination Project."

In an effort to refocus the planning process, the League along with other major Monterey County non-profit public interest groups developed an alternative plan that reflected the initial broad approach mentioned above. This alternative plan was the Hybrid Regional Plan which was endorsed by the League, the Ventana Chapter of the Sierra Club, LandWatch Monterey County, the Carmel Valley Association and the Prunedale Neighbors Group. Unfortunately, this plan was dismissed out-of-hand as the initial effort had been.

The League continued to participate in the planning process throughout the years. The League commented on the Draft EIR and the Final EIR for the Coastal Water Project and participated in all public hearings held by the California Public Utilities Commission (CPUC).

The League and others consistently objected to the following Regional Project deficiencies:

- Lack of direct representation for Monterey Peninsula water users (called "ratepayers" by the CPUC).
- Lack of transparency in developing and approving the purchase and settlement agreements.
- Failure to adequately address groundwater rights for coastal wells to pump feedwater for the desalination plant.
- Exportation of groundwater from the Salinas Valley Groundwater Basin (SVGB) in violation of state law (the Monterey County Water Resources Agency Act, which is part of the state water code) that prohibits such export.
- Unanalyzed and unmitigated significant impacts of the proposed coastal wells on North County water supplies.

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LEAGUE OF WOMEN VOTERS®
OF THE MONTEREY PENINSULA

- Uncertainty regarding the availability of desalinated water to meet regulatory requirements because of the need to retain freshwater extracted from the SVGB within the Salinas Valley.
- Failure of the desalination project to offset its greenhouse gas emissions.
- The near total reliance on the costly desalinated water while virtually ignoring other less-costly and environmentally superior options such as expanded aquifer storage and recovery and a groundwater replenishment program similar to the one functioning in Orange County.

We think fundamental issues related to the Regional Desalination Project should be resolved before the project including the test wells moves forward and any more funds are expended on a program that appears in jeopardy. Issues requiring immediate resolution include:

- The serious conflict of interest matter with regard to the Monterey County Water Resources Agency direct Steve Collins which has jeopardized the water purchase and settlement agreements approved by the CPUC.
- Groundwater rights to the pumping of feedwater for the desalination plant.
- Exportation of water from the Salinas Valley Groundwater Basin in light of the state law prohibiting such exportation.
- Financing options and
- Litigation challenging the Regional Desalination Project raising issues of CEQA violations, illegal and harmful appropriation of groundwater and violation of the prohibition on groundwater export from the Salinas Valley Basin. (Ag Land Trust v. Marina Coast Water District (set for trial on September 29, 2011) and Ag Land Trust v. Monterey County Water Resources Agency).

Finally, the potential project specific impacts on ESHA as identified in the Coastal Commission staff letter to the applicant should be fully addressed prior to project approval.

Sincerely,

Beverly Bean
President

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Monterey CA 93942

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www.lwvmp.org

21 July 2011

To M. K. Wilson

From Ed Mitchell

Subject FPPC letters

Please include these letters in the staff docket/package presented to the Coastal Commission for Agenda Item 6A at the 12 August 2011 review.

Eddie Mitchell
LFCCRS, Monterey Resident
831-663-3021

FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

May 18, 2011

Eddie Mitchell
70 Carlsen Road
Salinas, CA 93901

Re: FPPC No. 11/431; Stephen "Steve" Collins

Dear Mr. Mitchell:

This letter is to notify you that the Enforcement Division of the Fair Political Practices Commission (the "FPPC") will investigate the allegations, under the jurisdiction of the FPPC, of the sworn complaint you submitted in the above-referenced matter. You will receive notification from us upon final disposition of the case. However, please be advised that at this time we have not made any determination about the validity of the allegations you have made or about the culpability, if any, of the persons you identify in your complaint.

Thank you for taking the time to bring this matter to our attention.

Sincerely,

Roman G. Porter
Executive Director

RGP: ak

cc: Stephen Collins/26153 Legends Court/Salinas, CA 93908

FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July 13, 2011

Eddie Mitchell
70 Carlsen Road
Salinas, CA 93901

Re: FPPC Case No. 11-498; Jim Heitzman, et al.

Dear Mr. Mitchell:

This letter is to notify you that the Enforcement Division of the Fair Political Practices Commission (the "FPPC") will investigate the allegations, under the jurisdiction of the FPPC, of the sworn complaint you submitted in the above-referenced matter. You will receive notification from us upon final disposition of the case. However, please be advised that at this time we have not made any determination about the validity of the allegations you have made or about the culpability, if any, of the persons you identify in your complaint.

Thank you for taking the time to bring this matter to our attention.

Sincerely,

Roman G. Porter
Executive Director

RGP: ak

cc: Monterey County Supervisors Fernando Armenta, Louis Calcagno, Simon Salinas, Jane Parker, and Dave Potter
Monterey County Counsel Charles McKee
Monterey County Deputy County Counsel Irv Grant
Marina Coast Water District General Manager Jim Heitzman
Monterey County Water Resources General Manager Curtis Weeks

LAW OFFICES OF
MICHAEL W. STAMP

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(831) 373-0242

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July 26, 2011

Mary K. Shallenberger, Chair and
Members of the California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

August 12, 2011
Item 6a

Subject: Regional Desalination Project Water Rights Issues; Rebuttal to Downey Brand letter of May 20, 2011 to RMC

Dear Chair Shallenberger and Coastal Commissioners:

This Office represents Ag Land Trust, a nonprofit corporation which owns agricultural properties in the Salinas Valley, including property north of Marina. Ag Land Trust's position is that the Regional Project's proposed pumping of groundwater as presented to the Commission substantially and irretrievably harms the Land Trust's groundwater rights on its agricultural property. The Regional Project's proponents are improperly asking the Commission to approve the project, which would harm the water supply and the water rights of others, an action for which the Commission has no authority. In your consideration of the Regional Project, please consider the Ag Land Trust's arguments on water rights in this letter.

Ag Land Trust has repeatedly pointed out that the Regional Project did not have groundwater rights and would harm the groundwater supply in the overdrafted Salinas Basin. (See Exhibits A and B to this letter.) Despite Ag Land Trust's protests, the Public Utilities Commission, Marina Coast Water District, and Monterey County Water Resources Agency approved the Regional Project that has vertical wells on and around Ag Land Trust property. (See Exhibit C.) The EIR ignored the fact that Ag Land Trust has a well on its property, and that Ag Land Trust's groundwater rights and supply would be harmed by the Regional Project's pumping of groundwater as source water for the desalination plant.

For Coastal Commission purposes, the environmental documents failed to adequately examine the issue of water rights for the Regional Project. The EIR did not include the key admission by Monterey County Water Resources Agency ("MCWRA") that it does not have water rights that would support the pumping of groundwater by the wells for the Regional Project. (See March 24, 2010 letter from MCWRA to Molly Erickson admitting that MCWRA does not have any documented water rights for the Regional Project, attached as Exhibit D to this letter, and MCWRA General Manager Curtis Weeks' statement that "Water rights to Salinas basin water will have to be acquired" in the Salinas *Californian*, March 31, 2010, attached as Exhibit E.) The environmental documents to date have failed to point to valid groundwater rights, and instead have taken various inconsistent and unsubstantiated positions on water rights.

This letter responds to new claims made by Downey Brand LLP, attorneys for Monterey County Water Resources Agency. Downey Brand wrote a letter dated May 20, 2011 to Lyndel Melton, P.E., of RMC Water and Environment. RMC submitted the Downey Brand letter to the Coastal Commission as part of the Regional Project proponents' supplemental application materials.

The Downey Brand letter to RMC raises various claims. The claims may have superficial appeal but in reality they do not identify any usable water rights for the Regional Project under California law. The claims made in the letter's discussion of "water rights and the groundwater basin" (letter to RMC, sec. 1, pp. 1-4) are addressed here. Of the four different Downey Brand claims, none has merit, and none provides the necessary proof of water rights.

Undisputed Information About the Status of Water Rights

The Salinas Valley Groundwater Basin is severely overdrafted, as demonstrated by the seawater intrusion which has reached inland to within 1500 feet of the city limits of Salinas, according to the latest mapping. (Historic Seawater Intrusion Map, Pressure 180-Foot Aquifer, attached as Exhibit F to this letter.) This significant overdraft condition has been specifically documented by federal and state agencies since the late 1940s. The Salinas Valley is not an adjudicated groundwater basin.

Monterey County Water Resources Agency has no groundwater storage rights, no overlying groundwater rights, and no "imported water rights." MCWRA would own and operate the Regional Project source water wells. Absent proof of secured groundwater rights by the Regional Project proponent appropriators, the Regional Project's use of water would be a wrongful taking of the water rights of overlying landowners.

Downey Brand's General Claims about Water Rights

The Coastal Commission should not be misled by the claims made by Downey Brand to RMC, starting with the claim that the project's source water "will" be 85% seawater and 15% groundwater. (Downey Brand letter, p. 1.) In fact, the EIR's Appendix Q predicted percentages of up to 40% groundwater in the source water throughout the 56-year modeled simulation period, which is two and two-thirds times greater than Downey Brand admits. (Final EIR, App. Q, p. Q-23.) That EIR analysis is of the brackish wells approved by the PUC, MCWRA, and Marina Coast.

The general claims made in the Downey Brand letter about water rights (at p. 1, bottom paragraph) should be disregarded because they make no specific citation to law or to specific rights, and the claims are not based on facts or law. The specific claims made by Downey Brand on the subsequent pages are addressed below, in order.

Downey Brand's Claim (a) – The "Broad Powers" of MCWRA

Downey Brand's claim (a) is that MCWRA "has broad powers." (Letter to RMC, p. 2.) While that may be true as an abstract proposition, MCWRA's powers do not include the wrongful taking of groundwater rights that then would be used to pump water for the Regional Project. MCWRA holds only limited surface water rights (used for the dams and reservoirs some 90 miles south of the Monterey Bay), but by design abandons and loses management and control of that surface water when the MCWRA releases the water into the rivers and the water is subsequently lost to percolation. "Management and control" are prerequisites to maintaining the use of a water right. Downey Brand's approach is inconsistent with California groundwater law, which holds that waters that have left a stream and are no longer part of the streamflow or part of any definite underground stream, are percolating waters. (*Vineland Irrigation Dist. v. Azusa Irrigating Co.* (1899) 126 Cal. 486, 494.) In its letter to RMC, Downey Brand mixes inapplicable references to surface water rights and imported water cases. The issue here is native groundwater, not surface water or imported water.

After the native water is released from MCWRA's dams, the water is lost through percolation into the unconfined aquifers of the Salinas Valley, where it becomes groundwater that belongs without limitation to the thousands of overlying land owners that divert it or pump it for their own uses. (For an informative discussion of the doctrine of abandonment, see Wells A. Hutchins, The California Law of Water Rights (1956) at pp. 284-291.) MCWRA by its own admission has no groundwater rights and has never been granted any such rights by either the state legislature or a court of competent jurisdiction. Further, a grant of groundwater rights is impossible in an overdrafted basin that is not adjudicated because under California law in an overdrafted groundwater basin there is no surplus water available for a "junior appropriator," which is what the MCWRA would be. (*Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 926.) MCWRA and its project co-proponents Cal-Am and Marina Coast Water District may not legally take groundwater from the overlying landowners of the Salinas Valley.

Under the MCWRA Act, MCWRA in theory could hold groundwater rights on which the Regional Project might rely. However, in fact MCWRA has acknowledged that it does not have any such groundwater rights, MCWRA has not pointed to any such rights, and MCWRA cannot acquire the necessary appropriative groundwater rights in the overdrafted Salinas Valley Groundwater Basin. This is because the right of an appropriator, being limited to the amount of the surplus water available, must yield to that of the overlying owner in the event of a shortage. (*Pasadena v. Alhambra, supra,* 33 Cal.2d 908, 926.) An appropriator's taking of groundwater which is not surplus is wrongful. (*Ibid.*; *Alpaugh Irr. Dist. v. County of Kern* (1958) 113 Cal.App.2d 286, 293.) Because an overdrafted basin has a shortage of groundwater, there is no surplus, and there is no groundwater available to new appropriators. The key holdings in *Pasadena v. Alhambra* were reaffirmed by the California Supreme Court opinion in *City of Barstow*

v. Mojave Water Agency (2000) 23 Cal.4th 1224. Under those cases and other California law, the doctrine of correlative overlying water rights applies. MCWRA has no groundwater rights in the basin.

The Downey Brand claim that "it is expected that the . . . real property interests acquired by MCWRA will be sufficiently broad to include water rights" is an empty hope, because MCWRA has not – and cannot – identify any properties that have appropriative groundwater rights that can be used for the Regional Project. The acquisition of real property might bring with it an overlier's groundwater rights. An overlying right is based on the ownership of the land and is appurtenant thereto. (*City of Barstow v. Mojave Water Agency*, *supra*, 23 Cal.4th 1224, 1240.) An overlying right is the owner's right to take water from the ground underneath for use on his land within the basin. That would not help the Regional Project, because overlier's rights do not allow the water to be appropriated (the taking of water for other than riparian or overlying uses), which is what the Regional Project proposes to do: provide desalinated water to water customers on the Monterey Peninsula, Marina, and the former Fort Ord.

Downey Brand's Claim (b) – A Right to "Developed" Groundwater

Claim (b) is that MCWRA has a right to withdraw groundwater "because its water storage operations augment groundwater supplies." (Letter to RMC, p. 2.) Downey Brand cites one inapplicable case for that claim: *City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199. That case dealt with imported water, as is evident from the quote cited by Downey Brand ("an undivided right to a quantity of water in the ground reservoir equal to the net amount by which the reservoir is augmented by [imported water]"). Imported water is "foreign" water from a different watershed – in the case of the *City of Los Angeles*, Los Angeles imported water from the Owens Valley watershed. (*City of Los Angeles, supra*, 14 Cal.3d at p. 261, fn. 55.) Because MCWRA does not import water from a different watershed, MCWRA cannot benefit from the rule that an importer gets "credit" for bringing into the basin water that would not otherwise be there (*ibid.*, at p. 261).

Under California law, rights to imported or foreign water are rights which attach to water originating outside of a given watershed. (*City of Los Angeles v. City of San Fernando*, *supra*, 14 Cal.3d 199, 255-256; *City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-77.) Rights to imported water are treated differently from rights to "native water," which is water that originates in the watershed.

MCWRA's two reservoirs do not contain imported water. The reservoirs store native water from the Salinas Valley watershed. MCWRA argues that when the stored water is released, it recharges the basin. Although it may be true that the released water recharges the basin, MCWRA does not have a unilateral right to get the water back after the water has been released from the reservoirs. "Even though all deliveries

produce a return flow, only deliveries derived from imported water add to the ground supply." (*City of Los Angeles, supra,* 14 Cal.3d at 261.)

The *City of Los Angeles* opinion does not help MCWRA because the opinion applies only to imported water and MCWRA does not import water. Downey Brand does not cite any other case in support of its "developed" water claim. The claim fails.

Downey Brand's Claim (c) – the Doctrine of "Salvaged" Water

Downey Brand's third claim is that "[t]he doctrine of salvaged water demonstrates that seawater-intruded groundwater is available for the Regional Project." (Downey Brand letter to RMC, p. 3.) Under California law, salvaged water refers to water that is saved from loss from the water supply by reason of artificial work. Salvaged water encompasses only waters that can be saved from loss without injury to existing vested water rights. (Hutchins, The California Law of Water Rights, *supra*, at pp. 383-385.) Appropriative rights to salvaged water depend on the original source of the water supply. (*Pomona Land and Water Co. v. San Antonio Water Co.* (1908) 152 Cal. 618.) The salvage efforts of native water supplies are bound by all the traditional considerations that are applicable to the exercise of the salvager's water right. The interests of other vested rights must be protected. (*Ibid.*, at p. 623.)

The Regional Project must respect existing vested groundwater rights of landowners and farmers in the Salinas Valley. MCWRA's claim to salvaged water fails because MCWRA does not have groundwater rights, the interests of the existing vested rights of the overlying property owners in the Salinas Valley must be protected, and there is not sufficient water in the overdrafted basin to satisfy those overlying claims.

Downey Brand cites the doctrine of salvaged water as discussed in *Pomona Land and Water Co. v. San Antonio Water Co., supra*, 152 Cal. 618, but that case does not help. *Pomona* involved a dispute between two water companies that appropriated water from a creek. The companies had existing water rights and a contractual agreement on how the waters flowing at a specific point in the creek were to be divided. San Antonio built a pipeline upstream and "saved" some water that otherwise would have been lost due to seepage, percolation, and evaporation. San Antonio argued that because Pomona was still receiving the same amount of "natural flow," San Antonio should be allowed to keep the extra amount it saved through its own efforts. The Court agreed, holding that Pomona was entitled only to the natural flow, and that San Antonio was entitled to the amount saved by its method of impounding the water upstream.

The current project has no similarities to *Pomona*. The Regional Project does not involve the "saving" of water by implementation of conservation methods. Rather, it involves pumping water from the overdrafted Salinas Groundwater Basin – which is fully appropriated – which would injure owners of existing vested water rights. Unlike the

parties in *Pomona* who held existing rights, MCWRA has no groundwater rights it can apply to the Regional Project.

The doctrine of salvaged water does not help the Regional Project proponents. The claim fails.

Downey Brand's Claim (d) – Use of "Product" Water

The claim regarding the use of desalinated water (letter to RMC, pp. 3-4) is not material to the issue of water rights. The claim is apparently meant to distract the Coastal Commission from the true issue. The Regional Project must have water rights in order to pump groundwater from the basin and use it to supply the desalination plant.

The Water Purchase Agreement is merely a contract between the Regional Project proponents and owners. And none of the Regional Project proponents and owners holds any groundwater rights that can be applied to the Regional Project. The Water Purchase Agreement does not even mention water rights.

Conclusion

None of the Downey Brand claims provides any proof of groundwater rights. In an overdrafted basin, proof of groundwater rights is essential before groundwater can be appropriated. Absent such proof, the Regional Project will cause grave environmental and economic damages from the wrongful taking of groundwater supply and groundwater rights of Salinas Valley landowners.

The Regional Project is proposed as a "solution" to the many years of illegal taking by Cal Am of water from the Carmel River. It makes no sense to exchange that illegal taking for even greater illegal taking of groundwater from the overdrafted Salinas Valley.

The Coastal Commission does not have the authority to grant groundwater rights or to grant approval of any permit or project that relies on or causes the illegal taking of groundwater that belongs solely to the overlying landowners of the Salinas Valley. We urge the Commission to consult with its own water rights counsel, and to avoid the wrongful acts that project proponents are soliciting from the Commission.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP

Molly Erickson

Attachments

Exhibit A: Ag Land Trust letter to Public Utilities Commission, April 15, 2009.

Exhibit B: Ag Land Trust letter to Public Utilities Commission, November 6, 2006.

Exhibit C: Final EIR "Revised Figure 5-3" showing locations for Regional Project wells in blue swath, annotated to show Ag Land Trust property.

Exhibit D: MCWRA letter to Molly Erickson, March 24, 2010.

Exhibit E: Salinas *Californian* article, March 31, 2011.

Exhibit F: "Historic Seawater Intrusion Map, Pressure 180-Foot Aquifer," November 16, 2010, showing intrusion into the Salinas Basin as of 2009.

MONTEREY COUNTY AGRICULTURAL AND HISTORICAL LAND CONSERVANCY
P.O. Box 1731, Salinas CA 93902

November 6, 2006

Jensen Uchida
c/o California Public Utilities Commission
Energy and Water Division
505 Van Ness Avenue, Room 4A
San Francisco, Ca. 94102
FAX 415-703-2200
JMU@cpuc.ca.gov

SUBJECT: California-American Water Company's Coastal Water Project EIR

Dear Mr. Uchida:

I am writing to you on behalf of the Monterey County Agricultural and Historic Lands Conservancy (MCAHLC), a farmland preservation trust located in Monterey County, California. Our Conservancy, which was formed in 1984 with the assistance of funds from the California Department of Conservation, owns over 15,000 acres of prime farmlands and agricultural conservation easements, including our overlying groundwater rights, in the Salinas Valley. We have large holdings in the Moss Landing/Castroville/Marina areas. Many of these acres of land and easements, and their attendant overlying groundwater rights, have been acquired with grant funds from the State of California as part of the state's long-term program to permanently preserve our state's productive agricultural lands.

We understand that the California-American Water Company is proposing to build a desalination plant somewhere (the location is unclear) in the vicinity of Moss Landing or Marina as a proposed remedy for their illegal over-drafting of the Carmel River. On behalf of our Conservancy and the farmers and agricultural interests that we represent, I wish to express our grave concerns and objections regarding the proposal by the California-American Water Company to install and pump beach wells for the purposes of exporting groundwater from our Salinas Valley groundwater aquifers to the Monterey Peninsula, which is outside our over-drafted groundwater basin. This proposal will adversely affect and damage our groundwater rights and supplies, and worsen seawater intrusion beneath our protected farmlands. We object to any action by the California Public Utilities Commission (CPUC) to allow, authorize, or approve the use of such beach wells to take groundwater from beneath our lands and out of our basin, as this

would be an "ultra-vires" act by the CPUC because the CPUC is not authorized by any law or statute to grant water rights, and because this would constitute the wrongful approval and authorization of the illegal taking of our groundwater and overlying groundwater rights. Further, we are distressed that, since this project directly and adversely affects our property rights, the CPUC failed to mail actual notice to us, and all other superior water rights holders in the Salinas Valley that will be affected, as is required by the California Environmental Quality Act (CEQA). The CPUC must provide such actual mailed notice of the project and the preparation of the EIR to all affected water rights holders because California-American has no water rights in our basin.

Any EIR that is prepared by the CPUC on the proposed Cal-Am project must included a full analysis of the legal rights to Salinas Valley groundwater that Cal-Am claims. The Salinas Valley percolated groundwater basin has been in overdraft for over five decades according to the U.S. Army Corps of Engineers and the California Department of Water Resources. Cal-Am, by definition in California law, is an appropriator of water. No water is available to new appropriators from overdrafted groundwater basins. The law on this issue in California was established over 100 years ago in the case of Katz v. Walkinshaw (141 Calif. 116), it was repeated in Pasadena v. Alhambra (33 Calif.2nd 908), and reaffirmed in the Barstow v. Mojave Water Agency case in 2000. Cal-Am has no groundwater rights in our basin and the CPUC has no authority to grant approval of a project that relies on water that belongs to the overlying landowners of the Marina/Castroville/Moss Landing areas.

Further, the EIR must fully and completely evaluate in detail each of the following issues, or it will be flawed and subject to successful challenge:

1. Complete and detailed hydrology and hydrogeologic analyses of the impacts of "beach well" pumping on groundwater wells on adjacent farmlands and properties. This must include the installation of monitoring wells on the potentially affected lands to evaluate well "drawdown", loss of groundwater storage capacity, loss of groundwater quality, loss of farmland and coastal agricultural resources that are protected by the California Coastal Act, and the potential for increased and potentially irreversible seawater intrusion.
2. A full analysis of potential land subsidence on adjacent properties due to increased (365 days per year) pumping of groundwater for Cal-Am's desalination plant.
3. A full, detailed, and complete environmental analysis of all other proposed desalination projects in Moss Landing.

On behalf of MCAHLC, I request that the CPUC include and fully address in detail all of the issues and adverse impacts raised in this letter in the proposed Cal-Am EIR. Moreover, I request that before the EIR process is initiated that the CPUC mail actual notice to all of the potentially overlying groundwater rights holders and property owners in the areas that will be affected by Cal-Am's proposed pumping and the cones of depression that will be permanently created by Cal-Am's wells. **The CPUC has an absolute obligation to property owners and the public to fully evaluate every**

reasonable alternative to identify the environmentally superior alternative that does not result in an illegal taking of third party groundwater rights. We ask that the CPUC satisfy its obligation.

Respectfully,

Brian Rianda

Brian Rianda, Managing Director

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To: California Public Utilities Commission
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April 15, 2009

Comments on Coastal Water Project Draft EIR

Dear Commissioners:

On behalf of the Monterey County Ag Land Trust, we hereby submit this comment letter and criticisms of the draft EIR that your staff has prepared for the Coastal Water Project located in Monterey County. Herewith attached is our letter to your commission dated November 6th, 2006. We hereby reiterate all of our comments and assertions found in that letter as comments on the Draft Environmental Impact Report.

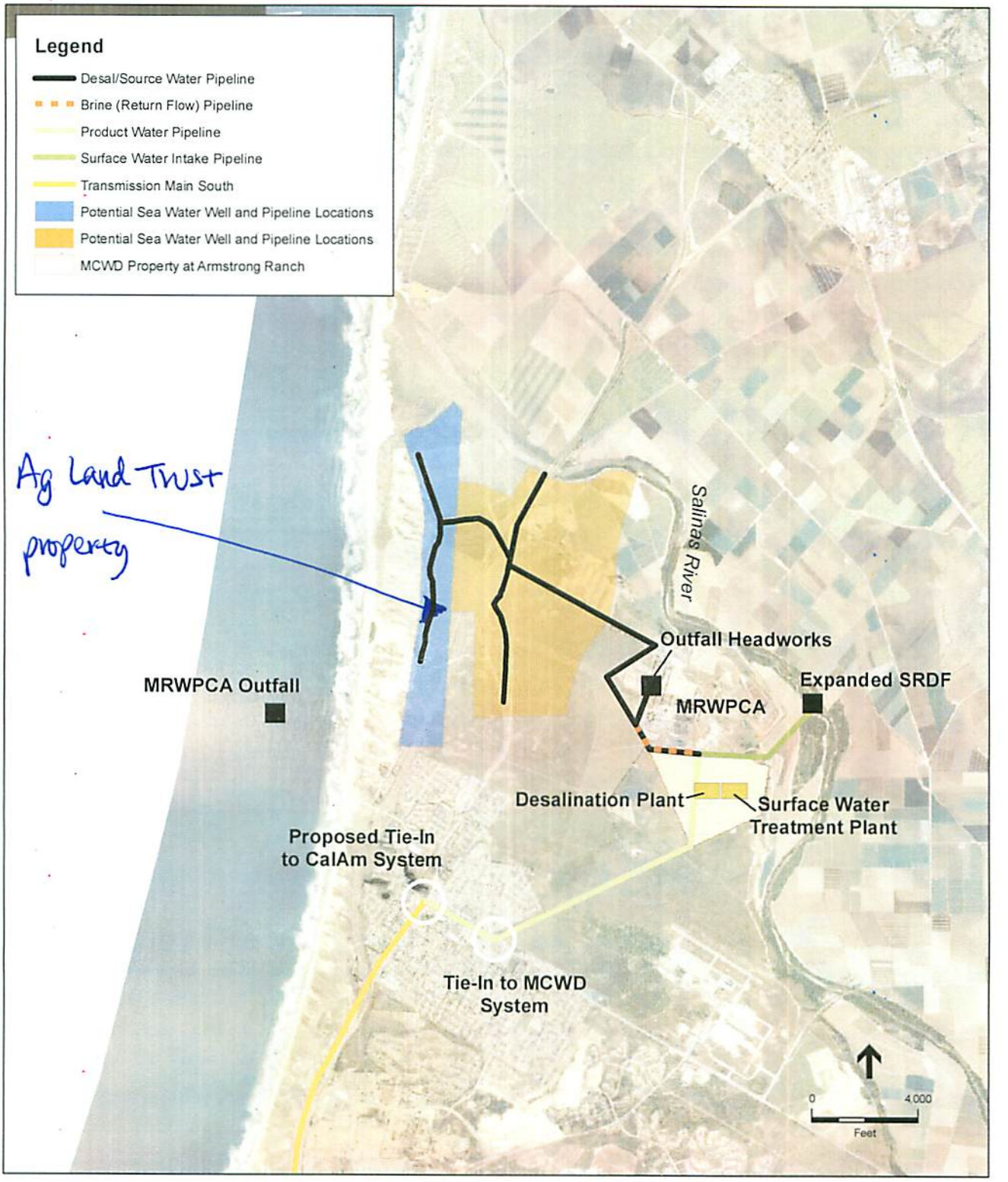
The Draft EIR is fatally flawed because of your staff's intentional failure to address the significant environmental and legal issues raised in our November 6th 2006 letter. The project as proposed violates and will results in a taking of our Trust's groundwater rights. Further, although we have requested that these issues be addressed, it appears that they have been ignored and it further appears that the CPUC is now advancing a project (preferred alternative) that constitutes an illegal taking of groundwater rights as well as violations of existing Monterey County General Plan policies, existing certified Local Coastal Plan policies and Monterey County Environmental Health code.

The EIR must be amended to fully address these issues that have been intentionally excluded from the draft. Further, the EIR must state that the preferred alternative as proposed violates numerous Monterey County ordinances, and California State Groundwater law. Failure to include these comments in the EIR will result in a successful challenge to the document.

Respectfully,

Virginia Jameson
Ag Land Trust

EXHIBIT B



SOURCE: ESA, 2009; RMC, 2009

CalAm Coastal Water Project . 205335

Revised Figure 5-3
Co-located North Marina Desalination Facility &Surface Water Treatment Plant

Final EIR figure showing proposed locations for Regional Project wells in blue swath.

EXHIBIT C

MONTEREY COUNTY

WATER RESOURCES AGENCY

PO BOX 930
SALINAS , CA 93902
(831)755-4860
FAX (831) 424-7935

CURTIS V. WEEKS
GENERAL MANAGER

STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93901-4455

March 24, 2010

Molly Erickson, Esq.
LAW OFFICES OF MICHAEL W. STAMP
479 Pacific Street, Suite 1
Monterey, CA 93940

Re: Your Letter of March 22, 2010

Dear Ms. Erickson:

You were wrong in considering MCWRA's response to your March 3, 2010 Public Records Request as "disingenuous." Consider the following:

At the Board hearing of February 26, 2010, Mr. Weeks addressed the development of basin water; that is water that the proposed Regional Desalination Project will produce. The project will rely upon the removal of sea water, which will most likely contain some percentage of ground water. Whatever percent is ground water will be returned to the basin as part of the project processing. As a result, no ground water will be exported. Mr. Weeks' comment to "pump groundwater," refers to this process. The process is allowable under the Agency Act. See the Agency Act (previously provided) and the EIR for the SVWP, which I believe your office has, but if you desire a copy, they are available at our offices for $5.00 a disc. In addition, a copy of the FEIR for the Coastal Water Project and Alternatives is also available for $5.00 a copy. Further, MCWRA intends to acquire an easement, including rights to ground water, from the necessary property owner(s) to install the desalination wells. These rights have not been perfected to date, hence no records can be produced.

As to MCWD, it was previously annexed into Zones 2 & 2A and as such has a right to ground water. These documents are hereby attached PDF files.

As for the reference to "every drop of water that we pump that is Salinas ground water will stay in the Salinas Ground Water Basin," this was a reference to the balancing of ground water in the basin. The development of the Salinas River Diversion Project is relevant, as it will further

EXHIBIT D, p. 1 of 2

relieve pressure on the ground water wells. As such, it is a component of the overall plan to protect and enhance the ground water supply, keep it in the basin, and prevent salt water intrusion. In your letter of March 22nd, you did not consider this project as relevant. Nevertheless these records are available for your review

Looking forward, one additional document is the staff report yet to be finalized for the Board's consideration in open session of the Regional Project. When available, this will be provided.

Very truly yours,

David Kimbrough
Chief of Admin Services/Finance Manager

Encls.

cc: Curtis V. Weeks

EXHIBIT D, p. 2 of 2

280M+ desalination plant, 10-mile pipeline agreed on for Monterey Peninsula

By MIKE HORNICK • mhornick@thecalfornian.com • March 31, 2010

MONTEREY — A 10 million-gallon-per-day desalination plant in north Marina and 10 miles of pipeline will be built by 2014 to give the Monterey Peninsula a new water supply and end reliance on Carmel River pumping, the parties involved in the project said Tuesday.

The agreement on a Monterey Bay Regional Water Project ends months of negotiations between the Monterey County Water Resources Agency, the Marina Coast Water District and California American Water, their representatives said at Colton Hall in Monterey. California American Water must comply with a November order by the state Water Resources Control Board to reduce Carmel River pumping from about 11,000 acre feet per year to no more than 3,336 by 2016. "The order ... hangs over this community like a sword of Damocles," Monterey County Supervisor Dave Potter said. "If you think this community can survive with a 70 percent reduction in our water consumption, that's a physical impossibility. The costs of doing nothing will be unbelievable to the ratepayer."

Curtis Weeks, general manager of the Monterey County Water Resources Agency, said customers' water bills in Monterey, Seaside and other Peninsula cities could double as a result of the project. But the supply shortage that would result from doing nothing, he said, would have the same effect. "The cost of not building a water supply would be equal to or greater than the project," Weeks said.

But Amy White, executive director of LandWatch Monterey County, said alternatives should still be considered. "We want to be sure that all the existing water out there is used," White said. "Maybe we can scale down this desal. It's enormous. There hasn't been a plant with this type of water and that size that's been operational when it starts. ... If 2016 comes and it's not working, or the water's not what they thought it'd be, what are they going to do? I'm concerned about them not having water when they say they're going to have water." Weeks had cited projects in Alameda and Orange counties as examples of successful desalination.

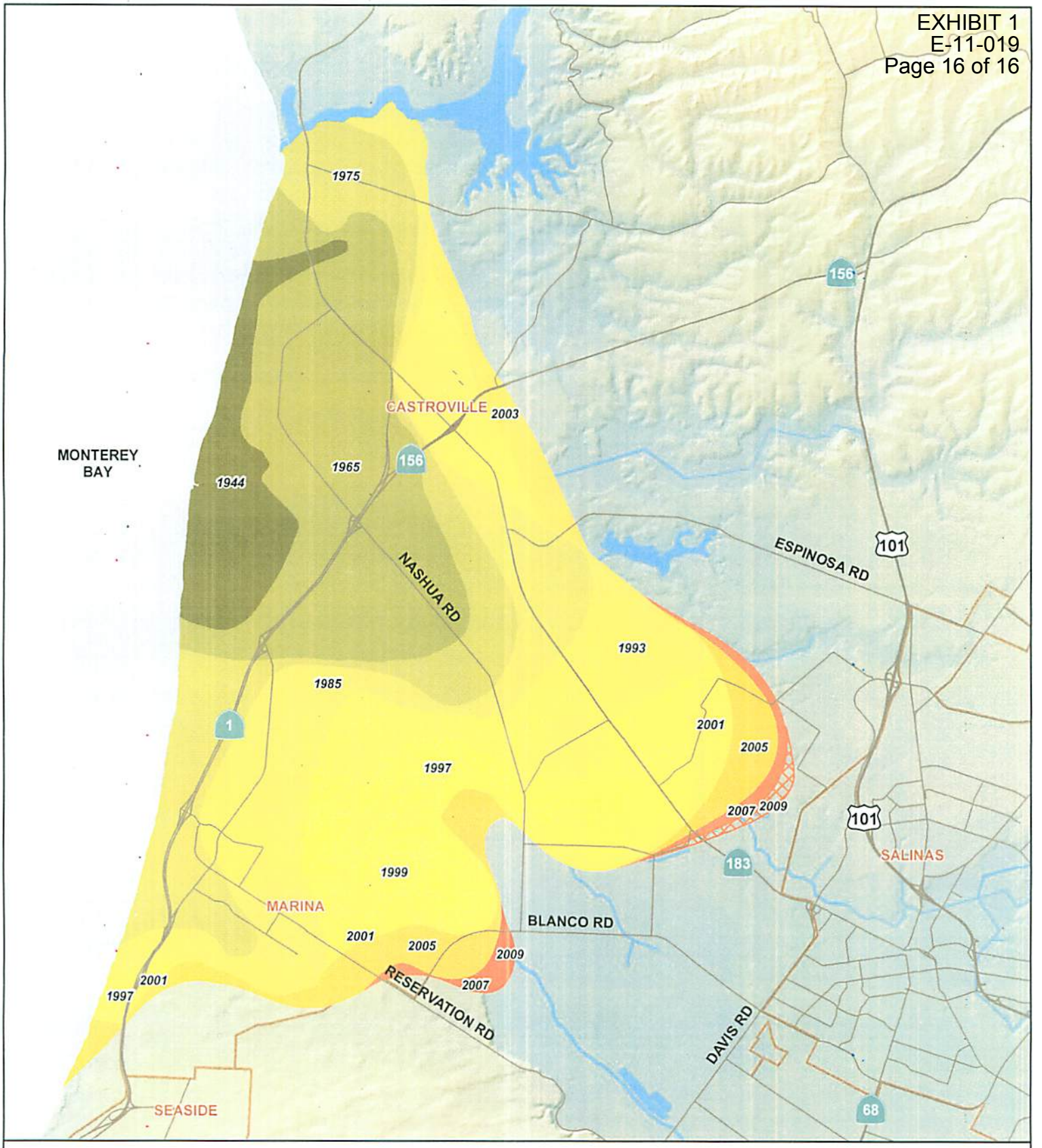
The plant and pipeline, plus wells and storage components, will cost between $280 million and $390 million. About two-thirds of the funding will come from public sources, including bonds, Weeks said. The rest will be financed by California American Water.

The water would originate in brackish wells along the beach south of the Salinas River and be piped to the desalination plant in the Armstrong Ranch area. Water rights to Salinas basin water will have to be acquired, Weeks said. His agency will operate the wells; Marina Coast Water District will operate the plant; and California American Water will handle distribution.

The three parties involved have reached a draft settlement for purchasing water with the Monterey Regional Water Pollution Control Agency, the Monterey Peninsula Water Management District, the Surfrider Foundation, the Public Trust Alliance, Citizens for Public Water, and the Statewide Desal Response Group. The settlement will go before the board of supervisors for a vote on April 6. The Public Utilities Commission is reviewing the purchase agreement. Court hearings are expected to finalize a settlement by June, Weeks said.

http://www.thecalifornian.com/article/20100331/NEWS01/3310307/280M+-desalination-plant-10-mile-pipeline-agreed-on-for-Monterey-Peninsula

EXHIBIT E



Historic Seawater Intrusion Map

Pressure 180-Foot Aquifer - 500 mg/L Chloride Areas

EXHIBIT F

Legend

Seawater Intruded Areas By Year

1944	1993	2003	Cities
1965	1997	2005	
1975	1999	2007	
1985	2001	2009	
		2009 Est	

0 0.5 1 1.5 2 Miles

Note: The scale and configuration of all information shown hereon are approximate and are not intended as a guide for survey or design work.

Map Date: November 16, 2010

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

CURTIS L. FOSSUM, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
California Relay Service from TDD Phone **1-800-735-2929**
from Voice Phone **1-800-735-2922**

Contact Phone: **(916) 574-1892**
Contact FAX: **(916) 574-1925**

July 26, 2011

File Ref: SD 2008-12-02.4

Tom Luster
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

SUBJECT: Coastal Development Permit Application No. 3-11-036, Monterey County Water Resources Agency, Marina Coast Water District, California-American Water Company, Application to Construct and Develop Test Slant Well to Determine Suitability for use as a Desalination Facility Source Water Well

Dear Mr. Luster:

It is our understanding that the subject application will be considered by the California Coastal Commission on August 12, 2011. Staff of the California State Lands Commission (CSLC) met in June with Leslie Dumas of RMC Water and Environment, the applicants' representative, and advised her that the project will involve sovereign lands under the jurisdiction of the California State Lands Commission (CSLC) and that a lease from the CSLC is required.

We have been advised by the applicants' representative that an application is expected shortly. Upon receipt and review of that application, it is our intent to schedule the application for consideration by the CSLC at its October 27, 2011 meeting.

Based on the above, we have no objection to the CCC considering the project at its August 12 meeting, conditioned on CSLC approval.

If you have any questions, please contact me at (916) 574-1892 or by email at smithj@slc.ca.gov.

Sincerely,

Jane E. Smith
Public Land Management Specialist

cc: Lindsey Clark, RMC Water and Environment
Cy Oggins
Eric Gillies
Grace Kato