

Click here to go to
original staff report

Click here to go to
first addendum

W14a & 15a

Addendum

Energy, Ocean Resources & Federal Consistency

For Wednesday, November 12, 2014

Item W14a & 15a

A-3-MRA-14-0050/9-14-1735

- Staff Report Modifications
- Staff Response to Comments
- Correspondence

CALIFORNIA COASTAL COMMISSION

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W14a & 15a

November 11, 2014

To: Coastal Commissioners and Interested Parties

From: Alison Dettmer, Deputy Director
Tom Luster, Senior Environmental Scientist

Subject: **Addendum to A-3-MRA-14-0050 and 9-14-1735 – California American Water Company Test Well**

This addendum provides proposed revisions to the staff report, staff's response to comments, *ex parte* submittals, and correspondence received. The proposed revisions do not change staff's recommendation that the Commission find that substantial issue **exists** and conditionally **approve** the coastal development permits.

Additions are shown below in underline and deletions in ~~striketrough~~.

Proposed Revisions to the Staff Report

Page 2, Project Description:

"The test wellhead would be located approximately ~~450~~650 feet inland of mean sea level at an elevation of about 25 feet."

Page 8, Special Condition 1:

"b. ~~PRIOR TO COMMENCEMENT OF CONSTRUCTION~~ PRIOR TO CONNECTING TO THE OUTFALL, the negotiated agreement or memorandum of understanding between the Permittee and the Monterey Regional Water Pollution Control Agency ("MRWPCA") regarding connection and use of the ocean outfall for discharge of water produced from the test well."

"c. ~~PRIOR TO ISSUANCE OF CDP 9-14-1735~~ COMMENCEMENT OF CONSTRUCTION BENEATH STATE TIDELANDS, a lease from the State Lands Commission.

Page 9, Special Condition 3:

“The Permittee shall conduct project construction as described and conditioned herein, including the following measures:

- a. Project-related construction shall occur only in areas as described in the permit application.
- b. Project-related construction, including site preparation, equipment staging, and installation or removal of equipment or wells, ~~shall not occurring~~ between February 28 and October 1 of any year is subject to the timing and species protection requirements of Special Condition 14.”

Page 12, Special Condition 8:

“By acceptance of this permit, the Permittee further agrees, on behalf of itself and all successors and assigns, that the Permittee shall remove the development authorized by this permit, including the wells, supporting infrastructure, and any future improvements, if any government agency with the requisite jurisdiction and authority has ordered, and the Executive Director has concurred, that the development is not to be used due to any of the hazards identified in **Special Condition 7.**”

Page 13, Special Condition 11:

“Protection of Nearby Wells. PRIOR TO STARTING PROJECT-RELATED PUMP TESTS, the Permittee shall install monitoring devices at a minimum of four wells on the CEMEX site, within 2,000 feet of the test well, and one or more offsite wells within 5,000 feet of the project site to record water and salinity levels within the wells and shall provide to the Executive Director the baseline water and Total Dissolved Solids (“TDS”) levels in those wells prior to commencement of pumping from the test well. The Hydrogeology Working Group shall establish the baseline water and TDS levels for the monitoring wells. During the project pump tests, the Permittee shall, at least once per day, monitor water and salinity TDS levels within those wells in-person and/or with electronic logging devices. The Permittee shall post data collected from all monitoring wells on a publicly-available internet site at least once per week and shall provide all monitoring data to the Executive Director upon request. If water levels at Monitoring Well 4 (“MW 4”, located as shown on the Permittee’s project description) drop ~~more than~~ one foot or more, or if salinity TDS levels increase more than two thousand parts per million from pre-pump test conditions, the Permittee shall immediately stop the pump test and inform the Executive Director. The Hydrogeology Working Group shall examine the data from Monitoring Well 4 if the test well is shut down due to either of these causes. The Hydrogeology Working Group shall determine whether the drop in water level or increase in TDS is from a cause or causes other than the test well, and it will submit its determination to the Executive Director. If the Executive Director agrees with the Hydrogeology Working Group that the cause of the drop in water level or increase in TDS was a source or sources other than the test well, then the Executive Director may allow testing to resume. If, however, the Executive Director determines that the drop in water level was caused at least in part by the test well, then ~~the~~ Permittee shall not re-start the pump test until receiving an amendment to this permit.”

Page 13, Special Condition 12, paragraph 2:

“The approved biologist(s) shall be present during daylight hours for all project construction and decommissioning activities and on a periodic basis when the biologist determines operational activities may affect areas previously undisturbed by project activities.”

Page 14, Special Condition 14.a:

“No more than 14 days before the start of onsite activities or any activities planned for areas previously undisturbed by project activities, the biologist(s) shall conduct a field evaluation of the nature and extent of ~~wintering~~ Western snowy plover activity in the project area and shall identify measures needed to ensure construction activities minimize potential effects to the species. Those measures shall, at a minimum, meet the standards and requirements of the mitigation measures included in Exhibit 5 as well as those included in subsection (d) of this special condition. Those measures shall also be submitted for Executive Director review and approval at least five days before the start of construction activities. The Permittee shall implement the measures as approved by the Executive Director.”

Page 14, Special Condition 14.d:

~~“At least once per week during the project operational phase between March 1 and October 1 of any year, the approved biologist(s) shall monitor plover nesting within 500 feet of project activities. Starting no later than February 1 of each year of project construction, operation, and decommissioning, the approved biologist(s) shall conduct breeding and nesting surveys of sensitive avian species within 500 feet of the project footprint. The approved biologist(s) shall continue those surveys at least once per week during periods of project construction, well re-packing, and decommissioning that occur between February 1 and October 1 each year.~~

In the event that any sensitive species are present in the project area but do not exhibit reproductive behavior and are not within the estimated breeding/reproductive cycle of the subject species, the qualified biologist shall either: (1) initiate a salvage and relocation program prior to any excavation/maintenance activities to move sensitive species by hand to safe locations elsewhere along the project reach or (2) as appropriate, implement a resource avoidance program with sufficient buffer areas to ensure adverse impacts to such resources are avoided. The Permittee shall also immediately notify the Executive Director of the presence of such species and which of the above actions are being taken. If the presence of any such sensitive species requires review by the United States Fish and Wildlife Service and/or the California Department of Fish and Game, then no development activities shall be allowed or continue until any such review and authorizations to proceed are received and also authorizes construction to proceed.

If an active nest of a federally or state-listed threatened or endangered species, species of special concern, or any species of raptor or heron is found, the Permittee shall notify the appropriate State and Federal wildlife agencies within 24 hours, and shall develop an appropriate action specific to each incident. The Permittee shall notify the California Coastal Commission in writing by facsimile or e-mail within 24 hours and consult with the Commission regarding determinations of State and Federal agencies.

If the biologist(s) identify an active nest of any federally- or state-listed threatened or endangered species, species of special concern, or any species of raptor or heron within 300 feet of construction activities (500 feet for raptors), the biologist(s) shall monitor bird behavior and construction noise levels. The biologist(s) shall be present at all relevant construction meetings and during all significant construction activities (those with potential noise impacts) to ensure that nesting birds are not disturbed by construction-related noise. The biologist(s) shall monitor birds and noise every day at the beginning of the project and during all periods of significant construction activities. Construction activities may occur only if construction noise levels are at or below a peak of 65 dB at the nest(s) site. If construction noise exceeds a peak level of 65 dB at the nest(s) site, sound mitigation measures such as sound shields, blankets around smaller equipment, mixing concrete batches off-site, use of mufflers, and minimizing the use of back-up alarms shall be employed. If these sound mitigation measures do not reduce noise levels, construction within 300 ft. (500 ft. for raptors) of the nesting areas shall cease and shall not re-start until either new sound mitigation can be employed or nesting is complete.

If active plover nests are located within ~~250~~ 300 feet of the project or access routes, avoidance buffers shall be established to minimize potential disturbance of nesting activity, and the biologist shall coordinate with and accompany the Permittee's operational staff as necessary during the nesting season to guide access and activities to avoid impacts to nesting plovers. The biologist shall contact the USFWS and CDFW immediately if a nest is found in areas near the wellhead that could be affected by project operations. Operations shall be immediately suspended until the Permittee submits to the Executive Director written authorization to proceed from the USFWS.

If, after starting project activities, the Permittee must stop construction due to the presence of sensitive species or due to the lack of necessary approvals or permits (e.g., a lease from the State Lands Commission), the Permittee shall remove and properly store all project-related equipment and vehicles away from the project site in a manner that does not adversely affect sensitive species.”

Page 16, Project Components – Slant Well:

“The test wellhead would be located about ~~450-650~~ feet from the current shoreline at an elevation of about 25 feet above mean sea level.”

Page 17, Project Components – Disposal Piping:

“To discharge water pumped from the well during the tests, Cal-Am would construct an approximately 12-inch diameter disposal pipeline that would connect to an existing subsurface manhole located about ~~250~~ 450 feet seaward from the wellhead and about three feet below grade.”

Page 18, first paragraph, Project Activities, Timing, and Work Effort:

“These activities would occur primarily during daylight hours between Monday and Friday, although development of the test slant well will require continuous drilling operations for ~~up to 72 hours~~ several weeks. Construction will occur primarily outside the Western snowy plover nesting season, which runs from February 28 to October 1 each year.”

Page 18, Project Objectives, footnote 2:

“See Monterey Bay National Marine Sanctuary, *Environmental Assessment Finding of No Significant Impact for the California American Water Slant Test Well Project*, Section 6.1.2 – Water Supply and Quality, ~~June~~ October 2014.”

Page 18, Project Objectives, last paragraph on page, continuing to page 19:

“Water quality data collected from nearby areas over the past several years show that both aquifers exhibit relatively high salinity levels and that there is not an aquitard separating the two. More recently, Cal-Am drilled test boreholes at several locations between Marina and Moss Landing earlier this year, including six at the CEMEX site. Those data show that salinity and Total Dissolved Solid (“TDS”) concentrations in nearby areas of the aquifers already exceed levels that are suitable for agricultural crop production. For example, the U.S. Department of Agriculture considers water with TDS levels about 2,000 parts per million as representing a “severe” hazard to crops, and water samples taken at and near CEMEX show that TDS levels range from more than eight to seventeen times higher than this “severe” level.^{FN}”

“FN See, for example, the U.S. Department of Agriculture Irrigation Water Quality Guidelines at https://prod.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs144p2_068163.pdf. See also Table 5-3 of the Hydrogeology Working Group, *Monterey Peninsula Water Supply Project Hydrogeologic Investigation Technical Memorandum Summary of Results – Exploratory Boreholes*, July 2014, which shows TDS levels in surrounding areas of the two aquifers ranging from 16,122 to 35,600 parts per million.”

Page 21, first paragraph – Project Background:

“In December 2010, the CPUC certified an Environmental Impact Report for this Regional Water Project and approved several agreements among stakeholders that established project partner responsibilities regarding construction, ownership, operations, maintenance, and payments. In 2012, however, the CPUC ~~voted to end its review of the project due to several problems and disputes~~ determined it was no longer reasonable for

Cal-Am to continue to pursue the Regional Water Project because, due to a significant change in circumstances since 2010, the project no longer had a reasonable prospect of achieving its goals.”

Page 21, The Monterey Peninsula Water Supply Project (“MPWSP”), first paragraph:

“In ~~2013-2012~~, Cal-Am and other stakeholders proposed the Monterey Peninsula Water Supply Project (“MPWSP”) as a replacement for the defunct Regional Water Project. In April ~~2013-2012~~, Cal-Am filed an application with the CPUC for the MPWSP...”

Page 22, Other Agency Approvals & Consultations, footnote 9:

“The Sanctuary is serving as lead agency under the National Environmental Policy Act (“NEPA”) and has prepared a ~~June 2014 Draft Environmental Assessment~~ an October 2014 Finding of No Significant Impact (“FONSI”) as part of its ~~its~~ NEPA obligations.”

Page 22, Landowner Approval:

“The project will be subject to landowner approval from two entities – CEMEX for the land-based portion of the project, and the State Lands Commission, for the portion of the slant well that would extend beneath state tidelands.

Regarding CEMEX, Cal-Am has been negotiating terms of a lease of CEMEX lands for the past several months. ~~The lease terms have not yet been agreed to; however, Cal-Am, as a regulated utility under State law, has the power of eminent domain. In September 2014, Cal-Am filed an eminent domain suit with the intent of acquiring timely access to the site.⁴⁰ The initial hearing for that suit is scheduled for October 31, 2014. On November 5, 2014, Cal-Am and CEMEX announced they had reached agreement on allowing access to the property.~~ To ensure Cal-Am has the property interest necessary for its proposed test slant well project, **Special Condition 1** requires it to provide proof of legal interest prior to starting construction.”

Page 23, last paragraph of Landowner Approval:

“However, should approval be granted, this approach will allow Cal-Am to start work and complete the well, presuming State Lands Commission approval, largely before the work ~~closure~~ limitations imposed due to the Western snowy plover nesting season, which runs from February 28 to October 1 of each year. These Findings discuss this issue in more detail below in Section IV. H – Protection of Sensitive Habitat Areas.”

Page 24, Local Action, last sentence of first paragraph:

“The City’s Final Local Action Notice (“FLAN”) is ~~provided in Exhibit 5~~ included as a Substantive File Document.”

Page 28, *Public Access and Recreation*, second paragraph:

“All project work will occur at some distance from the shoreline and is not expected to affect lateral beach access. The well drilling and support activities will be set back approximately ~~450-650~~ feet from the mean high tide line, with no activities or structures on the beach itself. Activities to connect the well discharge pipe to the existing outfall will be about ~~250~~ 450 feet from the shoreline.”

Page 29, *Effects of Construction Activities*, footnote 23:

“See Monterey Bay National Marine Sanctuary, *Environmental Assessment Finding of No Significant Impact for the California American Water Slant Test Well Project, Section 6.3 – Marine Biological Environment*, ~~June~~ October 2014.”

Page 32, *Site-Specific Resources*:

“**Western snowy plover** (*Charadrius nivosus*), listed as threatened under the federal ESA and is considered a Species of Special Concern by the CDFW. The shoreline along the project site is within designated critical habitat for the species. The CEMEX site provides nesting habitat for the plover, with recent evidence of successful nesting. Most nests have been located between the shoreline and the base of the foredunes, though some have been adjacent to the project area. Some of Cal-Am’s proposed project construction activities would occur ~~outside of~~ during the breeding and nesting period, which runs from February 15 to ~~September~~ October 1 of each year.”

...

California legless lizard (*Anniella pulchra*), considered a Species of Special Concern by the CDFW. The species lives beneath the dune surface in the project area and forages beneath leaf litter and sand for insects and other invertebrates. No lizards were identified in the biological surveys, but this species is active in the overall dune complex, primarily in areas with some vegetative cover which provides a means for temperature regulation as well as insects for foraging. As noted in the biological reports done for the project, the lack of native vegetation and the relatively unvegetated project area is thus less likely to attract this species, the Black Legless Lizard, or the Coast horned lizard, which are also found in the area and largely dependent on native vegetation. Although these reports demonstrate that it is unlikely for any of these species of special concern to be found at the site and therefore to be adversely affected by the project, mitigation measures are nevertheless imposed to ensure that the project will not adversely affect these species (See Special Conditions 13 and 14 and discussion of mitigation measures in Section P of this report).^{FN}”

“FN See, for example, Zander Associates, *Biological Resources Assessment MPWSP Temporary Slant Test Well Project*, October 2013.”

Page 37, *Protection of Sensitive Habitat Areas – Conclusion*, last sentence:

“The analysis and findings related to Section 30260 are provided below in Section IV. ~~Ø~~ P of these Findings.”

Page 39, Protection of Coastal Waters and Marine Resources – Effects of Construction Activities:

“Most construction activities would occur about ~~450~~ 650 feet from the beach at the location of the slant wellhead where the drilling rig would operate. The closest land-based activities to the shoreline would be the work needed to connect the test well discharge pipeline to the existing outfall, which would occur about ~~250~~ 450 feet from the shoreline.”

Page 44, Coastal and Geologic Hazards – Tsunami:

“Portions of the CEMEX site are subject to tsunami runup, and the LCP requires that development be located inland of areas subject to tsunami hazards. The most recent (2009) California Geological Society tsunami inundation map for the area shows the potential runup area extending about two hundred feet inland from the shoreline. As noted previously, the wellhead would be set back about ~~450~~ 650 feet from mean sea level at an elevation of about 25 feet. At that location, it is not expected to be subject to tsunami hazards during the expected project life. Nonetheless, the above-noted **Special Conditions 6 & 8** requiring removal of the test well will act to reduce the potential for the development to be affected by current or future tsunami-related hazards.”

Page 51, Effects of test slant well groundwater withdrawal on coastal agriculture:

“Given the relatively small amount of water to be pumped, the distance to other active wells, and the above mitigation measure, the project is not expected to adversely affect coastal agriculture. ~~Nonetheless,~~ As a mitigation measure included in its project description, Cal-Am will stop pumping if water levels in nearby wells levels drop one foot due to the pump tests. Additionally, and in recognition of the uncertain hydrogeologic characteristics of the substrate and aquifers beneath and near the project site that the project’s tests are meant to address, the Commission imposes **Special Condition 11**, which requires Cal-Am to conduct monitoring before and during all pumping activities and to record all drawdown levels and changes in salinity Total Dissolved Solids (“TDS”) in its onsite wells and at one or more ~~those nearby~~ inland wells. **Special Condition 11** also requires that Cal-Am cease its pump tests if monitoring at its most inland onsite well (MW4) or at any offsite monitoring well shows a drawdown of one foot or more or shows an increase of more than ~~two parts per thousand of salinity~~ two thousand parts per million of TDS (which is a 0.2% increase).

Cal-Am’s MW4 monitoring well will be on the CEMEX site and within about 1500 feet of the test well, which is closer to the test well than any off-site wells that could potentially be used for irrigation.¹ **Special Condition 11** requires that the test well be shut down if this monitoring well detects a .2% increase in TDS from TDS levels

¹ As noted above, the nearby areas of the two aquifers Cal-Am will pump from already exhibit TDS significantly above levels considered to cause severe hazards to crops, so the closest off-site wells are not currently being used for irrigation.

established at this monitoring well prior to commencement of pumping.² Once the well is shut down due to this trigger, the Hydrogeology Working Group will independently determine whether the increase in TDS was caused by a source other than the test well. The Hydrogeology Working Group will submit its findings to the Executive Director, and if the Executive Director concurs that the increase in TDS was caused by a source or sources other than the test well, then the Executive Director may allow testing to resume. If, however, the Executive Director determines that the increase in TDS was caused at least in part by the test well, then Cal-Am may not resume testing until it obtains an amendment to this CDP.

This ensures that if there is a minor increase in TDS, excluding natural variability, at the inland-most monitoring well on the CEMEX site, then the test well will cease operating, thereby preventing the proposed project from adversely affecting wells further inland. So this minor allowable increase in TDS will not adversely affect agricultural water use or coastal agriculture but will provide an alert for possible increased seawater intrusion in the area.

As far as the drawdown in water levels, Special Condition 11 requires that if water levels drop one foot below a baseline established prior to the commencement of pumping, then the test well will be shut down. The baseline will be established by the Hydrogeology Working Group using established scientific protocols, laid out in a technical memo submitted by Cal-Am, that take into account factors such as changes in barometric pressure, tidal changes, offsite pumping, and rainfall events. Once the well is shut down due to the one-foot drop in water level, the Hydrogeology Working Group will determine whether the drop in water level was caused by a source or sources other than the test well, and it will submit its determination to the Executive Director. If the Executive Director agrees with the Hydrogeology Working Group that the cause of the drop in water level was a source or sources other than the test well, then the Executive Director may allow testing to resume. If, however, the Executive Director determines that the drop in water level was caused at least in part by the test well, then Cal-Am may not resume testing until it obtains an amendment to this CDP.

In order to further protect agricultural interests, Commission staff discussed with Cal-Am the potential for monitoring water levels and TDS at the site of the nearest wells currently used to support agriculture, as this would provide more direct data about the potential effects of the test well on agricultural interests. Cal-Am has informed Commission staff, however, that it does not have the permission to collect this data at the privately held wells closest to the project.”

² Seawater fluctuates from about 30,000 ppm TDS to 33,000 ppm TDS, representing a 3,000 ppm of TDS natural variability. The project is conditioned to require shut down of the test well when there is a change of 2,000 ppm of TDS, well below natural variability of ocean water. In addition, the proposed test well is accessing water that Cal-Am’s preliminary tests show to be about 16,000 ppm TDS to 26,000 ppm TDS, so the 2,000 ppm of TDS shut down trigger is well below the existing variability of the water Cal-Am proposes to access and is therefore chosen as a conservative figure for when the monitoring wells may begin to detect an adverse effect.”

Page 53, *Alternative Methods, Alternative Locations, and “No Action” Alternative, second paragraph:*

“For this proposed project, Cal-Am identified a number of candidate sites between Marina and Moss Landing and conducted a hydrogeologic investigation to determine potential alternative locations for a subsurface intake.³² This investigation was the product of the aforementioned Settlement Agreement prepared as part of Cal-Am’s CPUC project review, and involved representatives from several involved parties and stakeholders.³³ The investigation included drilling test boreholes at several sites, including the CEMEX site, to determine the suitability of subsurface characteristics. The investigation concluded that slant wells would be feasible at the CEMEX site and identified a secondary site about eight miles further north near Moss Landing that might also be suitable for subsurface intakes. Cal-Am also prepared a biological assessment, consulted with state and federal wildlife agencies and other stakeholders, and considered other feasibility issues – e.g., availability of electrical service, proximity to acceptable discharge point for well water, effects on habitat, access, and other coastal resources – to narrow the set of potential sites. As noted above in Section IV.B – Project Background, a site in Moss Landing had been dismissed previously due in part to its distance to the Cal-Am service area on the Monterey Peninsula and its additional adverse impacts. The recent investigation included a single borehole at a site on Potrero Road, near Moss Landing. Data from that borehole identified the site as likely suitable for a slant well. Compared to the CEMEX site, the Potrero Road site presented higher hydraulic conductivity values but less available aquifer depth and a wider range of water quality in the underlying aquifer. The Potrero Road site is also within a parking lot used for public access to the Salinas River State Beach, and conducting test well construction and operation at this site would result in higher adverse effects on public access and recreation compared to the CEMEX site. The Potrero Road site is also closer to the Salinas River National Wildlife Refuge, which, along with the Salinas River State Beach, provides important habitat areas for the Western snowy plover and the Caspian tern, which could be adversely affected by well-related construction and operations. The Potrero Road site is also further from Cal-Am’s separately proposed desalination facility, and if used as a site for permanent wells would require construction of several additional miles of pipeline that would adversely affect areas of sensitive habitat and coastal agriculture and would increase adverse impacts on public access to the shoreline.”

Page 57, *Coastal-Dependent Industrial Facility:*

“The test well is also considered a type of industrial facility. It falls within the standard definition of “industry” and “primary industry” because it involves the processing of raw materials, in this case water.^{FN} The purpose of the test well is to provide data regarding the environmental effects of withdrawing water at this location and that will enable Cal-Am to determine whether this site can be used to produce water for a full scale desalination facility that would provide water to consumers. It would be built within an active industrial site using similar equipment and methods as are currently occurring at the site. It falls within at least one category of the North American Industry Classification System (“NAICS”) – i.e., NAICS #237110: Water and Sewer Line and Related Structures Construction.³⁷ Further, it is being implemented by Cal-Am, an entity that,

along with being a publicly-regulated utility, is considered part of the water and wastewater industry.”

“^{FN} The Oxford American English Dictionary, for example, defines “industry” as “economic activity concerned with the processing of raw materials and manufacturing of goods in factories,” and defines “primary industry” as “industry, such as mining, agriculture, or forestry, that is concerned with obtaining or providing natural raw materials for conversion into commodities and products for the consumer.”

Page 57, Application of Tests for Approval of Coastal-Dependent Industrial Facilities, first paragraph:

“Because the test slant well is a coastal-dependent industrial facility, and the LCP finds that the designation of dune areas as appropriate for coastal-dependent industrial uses is consistent with section 30260, the Commission may apply the LCP policies consistently with section 30260 to approve a project despite an inconsistency with other LCP policies.”

Page 59, Adverse environmental effects are mitigated to the maximum extent feasible, first and second bullet:

- “Requiring project construction, well pack replacement, and decommissioning to occur primarily outside of the Western snowy plover breeding and nesting season, the active season for the Smith’s blue butterfly, and the blooming period of the Monterey spineflower. Any work that occurs during plover breeding and nesting season will be subject to surveys, monitoring, noise mitigation, and possible work shutdown should active nests be potentially affected by project activities. Specifically, Special Condition 14 requires an approved biologist(s) to identify any active nest of any federally or state-listed threatened or endangered species, species of special concern, or any species of raptor or heron within 300 feet of construction activities (500 feet for raptors). This condition empowers the approved biologist(s) to ensure that construction activities are conducted in such manner that nesting birds are not disturbed. At a minimum, construction noise levels at any of these protected nests must be at or below a peak level of 65 dB. If this noise threshold cannot be met, construction activities are prohibited.
- Requiring a pre-construction survey to identify protected species that may be present at or near project work areas, and requiring measures to avoid or minimize effects on those species. The surveys are intended to identify and avoid potential impacts to sensitive animal and plant species at and near the site, including the Monterey spineflower, Western snowy plover, Coast horned lizard, legless lizard, and others.^{FN}”

“^{FN} See Zander Associates, *Biological Resources Assessment MPWSP Temporary Slant Test Well Project*, October 2013”

Page 59, Adverse environmental effects are mitigated to the maximum extent feasible, add 5th, 6th, and 7th bullets:

- Requiring project activities avoid adverse impacts to sensitive species that exist in the project area at the time of project activities. For sensitive species present in the project area that are not within the breeding and nesting season and that do not exhibit reproductive behavior, Special Condition 14 requires project activities to avoid adverse impacts to such resources. It requires the approved biologist(s) to either salvage and relocate such species by hand to safe locations elsewhere along the project reach or to implement a resource avoidance program that will ensure no adverse impacts to the resource.
- Requiring proper storage and removal of construction equipment if Cal-Am must cease construction activities either due to the requirements of Special Condition 14 to protect sensitive species or if Cal-Am does not obtain landowner approval from the State Lands Commission prior to the time that it must drill beneath state tidelands.
- Requiring training of construction personnel by a qualified biologist to ensure that they can identify species of special concern, such as western snowy plovers and the California legless lizard so that construction activities will avoid disturbance of these and other sensitive species.”

Exhibit 11 – Cal-Am Appeal Statement: The October 31st staff report erroneously included Exhibit 10 as Exhibit 11. The correct Exhibit 11 is provided following the Response to Comments below.

Appendix A – Substantive File Documents: add –

“Monterey Bay National Marine Sanctuary, Finding of No Significant Impact, October 2014.”

Staff Responses to Comments

Appealability: Several opponents of the proposed project have raised questions about whether this project is appealable to the Coastal Commission at this time. They primarily make the following three arguments: (1) because the City denied the coastal development permit for the project “without prejudice,” the Commission lacks jurisdiction; (2) the Commission should defer to the City’s implementation of its LCP and its CEQA process; and (3) the project is not a major public works project. None of these arguments is a basis for the Commission to reject Cal-Am’s appeal under the Coastal Act.

The scope of the Commission’s appellate jurisdiction is laid out in the Coastal Act. The proposed project raises one of the two unusual situations in which a local government denial of a CDP is appealable to the Commission. Section 30603 generally only allows appeals to the Commission of local government *approvals* of CDPs, but in the case of major public works

facilities and major energy facilities, *any action* taken by a local government on development which constitutes a major public works facility or a major energy facility is appealable to the Commission. This section states:

- (a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: ... (5) *Any development* which constitutes a major public works project or a major energy facility. (emphasis added)

The City denied Cal-Am's CDP for its proposed test well facility. The City's resolution regarding the Coastal Development Permit states: "Based upon the above conclusions regarding CEQA, the City is unable to approve the Project and therefore *denies the Project* without prejudice to reconsideration as [sic] such time as the appropriate CEQA review is completed." (emphasis added). After its denial of Cal-Am's CDP, the City sent the Commission its Final Local Action Notice (see Appendix A – Substantive File Documents), notifying the Commission of its decision to deny the CDP, after which the Commission opened the ten working day appeals period for this project, consistent with Coastal Act section 30603(d) and the Commission's regulations section 13110.

Once the Commission has received the City's final local action notice, the Commission's appeal procedures are triggered (see Section IV, E of this report). If the Commission did not hear this appeal within the 49 days allowed in Section 30621, Coastal Act Section 30625 provides that the local government decision shall be final. Thus, unless Cal-Am waives this 49-day requirement, the Commission is *required* to act or the City's decision will become final because the Commission failed to exercise its appellate authority. Neither the Coastal Act nor its implementing regulations distinguish between local government denials with or without prejudice, and there is no basis for the Commission to do so here.

Deferral to the City: Opponents of the project next argue that the Commission should allow the City to complete its CDP review process and CEQA review before acting on the CDP. The opponents argue that the Coastal Act is intended to provide local governments with primary authority over their local coastal programs and the Commission should defer to that process in this case. First, the City did act on Cal-Am's CDP application, so in accepting this appeal the Commission is complying with the Coastal Act.

Second, while the opponents are correct that once an LCP is certified the primary authority for implementing the Coastal Act is delegated to local governments, the Coastal Act nevertheless reserves to the Commission appellate authority over certain types of development specified in Section 30603. If the Commission finds that an appeal raises a substantial issue of conformity with the certified LCP, then it conducts a de novo review of the project and is not bound by the determinations of the local government.³

³ *Kaczorowski v. Mendocino County Bd. of Supervisors* (2001) 88 Cal.App.4th 564, 569; *Coronado Yacht Club v. California Coastal Com.* (1993) 13 Cal.App.4th 860, 871-72 (The Commission must "evaluat[e] all aspects of the permit application as if no decision had previously been rendered."), *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 294 (Commission's de novo review "superseded" County's decision.)

The Commission's exercise of its appellate jurisdiction is entirely consistent with the purpose and provisions of the Coastal Act. This is particularly true in this case, when the proposed development is a public works project. The Coastal Act treats public works projects and energy facilities differently than other types of development subject to local government review after certification of an LCP. Section 30515 allows persons authorized to undertake public works projects or energy facilities to bypass local governments and take LCP amendments to the Commission under certain circumstances; this is the only Coastal Act provision allowing an entity other than a local government to submit an LCP amendment. Similarly, the only types of developments for which a local government denial is appealable to the Commission are major energy facilities and major public works projects. (Section 30603(a)(5)). The legislature recognized that these types of projects could have regional effects, so it created mechanisms in Sections 30515 and 30603 to ensure additional state oversight of local government decisions on such projects.

The opponents imply that if the Commission finds that Cal-Am's appeal raises a substantial issue of LCP conformity under the Coastal Act that this somehow should be construed as the Commission usurping the City's CEQA authority. This is not the case. In finding that the City's denial of Cal-Am's CDP raises a substantial issue of LCP conformity, the Commission is simply implementing the Coastal Act as it is required to do.

Major Public Works Project: The final primary argument raised by project opponents is that the proposed project is not a major public works project as that term is defined in the Coastal Act. The opponents concede that the project meets the monetary threshold for being "major" as that term is defined in the Commission's regulations section 13012(a). They claim, however, that the project is not a public works project under Coastal Act section 30114(a), which defines public works projects as:

All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.

The opponents do not dispute that the project is proposed by a utility subject to the jurisdiction of the Public Utilities Commission or that the project will produce, store and transmit water. Instead, they argue that the test well itself will not "serve anyone" or constitute a reasonable public use. (Marina Coast Water District October 30, 2014 letter to Susan Craig, p. 7). But these requirements are not included in the text of 30114 – that section simply requires the project to be undertaken by a regulated public utility and that it involve the types of development undertaken by utilities, such as production, storage, transmission and recovery of water.

Furthermore, the project does benefit and serve the public. The test well will provide the data necessary to evaluate the feasibility and environmental effects of a full-scale desalination facility that would draw its source water from similar wells nearby. Subsurface intakes are less environmentally damaging than open water intakes. In addition, the water produced by a full-scale desalination facility would replace water that Cal-Am is currently withdrawing from the Carmel River at rates that are harmful to threatened and endangered species. Thus, the proposed

test well is a necessary step to evaluate a project that could greatly reduce environmental impacts to marine resources and state- and federally-protected species.

Non-Coastal Act Issues: Several opponents have also raised claims that are not related to the proposed project's consistency with the City's certified LCP or the Coastal Act. They claim that the Commission should not approve this project because Cal-Am does not have the appropriate water rights for the proposed development. Cal-Am's water rights are within the purview of the State Water Resources Control Board and are not a subject of the City's LCP provisions. Approval of a CDP provides a project applicant with nothing more than its compliance with the requirements of the Coastal Act. Applicants must still comply with all other applicable laws and required approvals. If Cal-Am has not yet obtained necessary water rights to operate its well, as some project opponents argue, then Cal-Am must obtain those rights. But this does not raise an issue of LCP or Coastal Act conformity.

Opponents also argue that the proposed project would violate a 1996 agreement to which CEMEX is a party that purportedly limits the volume of water that CEMEX withdraws for its operations. This is potentially a contract dispute among the parties to this agreement, but the Commission's standard of review in this case is whether the proposed project is consistent with the City's LCP and the Coastal Act. Neither the water rights nor contractual issue raise a question of LCP or Coastal Act conformity.

Finally, at least two project opponents claim that the proposed project is inconsistent with the certified LCP for Monterey County. The Commission's appellate review is limited to whether a proposed project is in conformity with the certified LCP for the jurisdiction in which the project is proposed. In this case, the only applicable LCP is that for the City of Marina. Thus, the Monterey County LCP is not the proper standard of review and the Commission cannot deny the project or condition it for failure to meet the requirements of Monterey County's LCP.

~~ATTACHMENT 2~~**STATEMENT OF REASONS SUPPORTING THE APPEAL****Appeal by California-American Water Company from the City of Marina Denial of Coastal Development Permit 2012-05 for Construction, Temporary Operation, and Decommissioning of a Slant Test Well Project****I. Introduction and Summary**

California-American Water Company ("California American Water") appeals the September 4, 2014 decision of the City Council of the City of Marina, CA ("City"), denying Coastal Development Permit Application 2012-05 ("CDP") for development of a temporary slant test well to determine the feasibility of using subsurface slant wells for production of seawater to a proposed desalination facility. Prior to the City Council's decision, the City Planning Commission declined to issue or deny the CDP after conducting a public hearing on July 10, 2014.

This appeal is filed pursuant to Public Resources Code Section 30603(a)(5), which provides that the California Coastal Commission ("Commission") may hear an appeal of a local agency denial of a major public works project. The California American Water Slant Test Well Project ("Project") is a "public works project" because it is a facility for the production of water to be owned and operated by a public utility subject to the jurisdiction of the California Public Utilities Commission ("CPUC"). Cal. Pub. Res. Code § 30114. The proposed Project is a "major" public works project because, if approved, it would cost more than \$100,000 to complete. 14 Cal. Code Regs. § 13012. The City notified the Commission of its action on the CDP on September 11, 2014 (see Attachment 3), so this appeal is timely filed. 14 Cal. Code Regs. § 13111(c), Cal. Pub. Res. Code § 30603(c)(setting ten working day appeal period).

Pursuant to Section 30603(b)(2), the grounds for an appeal of a denial of a permit for a major public works project "shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division." As described in more detail below, the proposed Project fully conforms to the standards set forth in the City's certified local coastal program ("LCP") and the public access policies of the California Coastal Act (Cal. Pub. Res. Code §§ 30000, *et seq.*, "Coastal Act"). In denying the CDP, the City did not make any finding that the proposed Project fails to conform to the standards of the LCP or interferes with coastal access. In fact, the City's Planning Department Staff ("City Staff") and outside expert consultants found that the proposed Project is entirely consistent with the LCP and in no way restricts coastal access. Because the proposed Project conforms to the standards of the LCP and the public access policies in the Coastal Act, the Commission should grant this appeal and issue the CDP.

II. Background

a. Carmel River and the Monterey Peninsula Water Supply Project

In April 2013, California American Water filed an application with the CPUC for approval of the Monterey Peninsula Water Supply Project ("MPWSP"). If approved, the MPWSP would replace a significant portion of the existing public water supply from the Carmel River. Through two separate Orders (issued in 1995 and 2009), the State Water Resources Control Board ("SWRCB") directed California American Water to develop and implement a plan to replace more than 70% of the water it historically diverted each year from the Carmel River to serve drinking water to customers in its Monterey County service area. One of the primary purposes of reducing diversions from the Carmel River is to protect species that are listed as threatened under state and federal law, such as the South-Central California Coast Steelhead and the California Red-Legged Frog. If approved and constructed, the MPWSP will consist of slant intake wells, brackish water pipelines, a desalination plant, product water pipelines, brine disposal facilities, and related appurtenant facilities. Detailed background information on the MPWSP is included in Attachment 4 at 5-6. The overall MPWSP will be subject to a separate coastal development permit application that California American Water plans to submit to the Commission in 2015 after the CPUC completes and certifies an Environmental Impact Report and its own project approval.

b. Subsurface Intake Slant Wells

In connection with California American Water's application for approval of the MPWSP, a diverse set of parties filed a proposed settlement in July 2013 that sets certain technical, financial, governance, and other conditions for its completion. A copy of the parties' joint motion to approve the settlement agreement and the agreement itself are included together as Attachment 4. In addition to California American Water, the parties to the settlement agreement are:

- Citizens for Public Water;
- City of Pacific Grove;
- Coalition of Peninsula Businesses;
- County of Monterey;
- CPUC Division of Ratepayer Advocates;
- Landwatch Monterey County;
- Monterey County Farm Bureau;
- Monterey County Water Resources Agency;
- Monterey Peninsula Regional Water Authority;
- Monterey Peninsula Water Management District;
- Monterey Regional Water Pollution Control Agency;
- Planning and Conservation League Foundation;
- Salinas Valley Water Coalition;
- Sierra Club; and
- Surfrider Foundation.

Among other things, the settlement identifies the use of subsurface slant wells at the site where the proposed Project would be completed as the preferred alternative for intake of seawater, "subject to confirmation of the feasibility of this option by the test well results and hydro-geologic studies." Attachment 4 at 41-42¹. California American Water and the settling parties are unified in their goal to complete the proposed slant test well Project to provide information that will inform whether it is feasible to use subsurface slant wells as intake sources for the MPWSP.

Subsurface intake wells, including slant wells, are also the preferred desalination intake methodology for multiple state and federal agencies with permitting and/or other regulatory authority over the MPWSP. These include the Commission (see Attachment 5 at 13, 70-72, 74), SWRCB (see Attachment 6 at 4, 6-10, 15, 28), and the National Oceanic and Atmospheric Administration, Monterey Bay National Marine Sanctuary ("MBNMS") (see Attachment 7 at 9, 11). In fact, the MBNMS's *GUIDELINES FOR DESALINATION PLANTS IN THE MONTEREY BAY NATIONAL MARINE SANCTUARY* state clearly and unconditionally that desalination project proponents "should investigate the feasibility of using subsurface intakes [including slant wells] as an alternative to traditional [i.e., open ocean] intake methods," and that is precisely the purpose of the proposed Project. Attachment 7 at 9. The Commission participated in the NOAA Desalination Working Group that was convened to develop an action plan to guide MBNMS's approach to desalination facility review and approval. Attachment 7 at 4, 19. Additionally, the Department of Water Resources recently awarded California American Water a \$1,000,000 grant to partially fund the proposed Project, indicating that it "look[s] forward to working with [California American Water] to achieve a successful [slant test well] project in furtherance of water desalination as a viable water supply to meet California's needs." See Attachment 8 at 1.

c. Proposed Project Site

The parties to the settlement described above also agreed that California American Water should, if feasible, locate the slant test well within the active surface mining area of CEMEX, Inc.'s ("CEMEX's") Lapis Road Facility, which is the location of the proposed Project. Attachment 4 at 9. The CEMEX Lapis Road Facility has been used as an active surface mine for more than a century. Attachment 11 at 13, 83, 408. Based on input from the settling parties and numerous state and federal agencies, this location was deemed suitable for a number of reasons, including: geologic conditions; proximity to an existing outfall; and proximity to a potential alternative energy source (a landfill). Attachment 4 at 42.

The site was also selected to reduce the potential for impacts to environmentally sensitive habitat by locating the proposed Project entirely within an active surface mining area. Attachment 4 at 42. The proposed Project has been specifically located within areas of the parcel that already experience heavy levels of disturbance associated with ongoing mining activities and truck traffic. The majority of proposed development would occur within and directly adjacent to an existing access road that is used by heavy equipment and trucks on a daily basis. The access road is unpaved and regularly graded. See Attachment 11 at 13, 19-24 (Figures 3 – 3e), 26-27, 30-33, 52-72 for detailed discussion of proposed Project site, identified environmentally sensitive habitat, and how the proposed Project is designed to avoid significant impact to such habitat.

¹ All citations to Attachment page numbers refer to the overlay numbers found at the bottom left of each corresponding Attachment in red text.

CEMEX has agreed to allow California American Water to file applications for the coastal development permits needed to complete the proposed Project. Attachment 9 at 4-5.

III. Application for Coastal Development Permit to City of Marina

On August 23, 2012, California American Water filed an application for the CDP with the City, seeking authorization to construct, temporarily operate, then decommission a slant test well and related monitoring wells and infrastructure. The purpose of the proposed Project is to gather technical data related to the potential hydro-geologic and water quality effects of the proposed MPWSP, and ultimately to determine whether subsurface slant wells are feasible for use as production intake wells at the site. California American Water also filed a coastal development permit application (No. E-11-019) with the Commission for the portions of the slant test well that would be constructed in the Commission's original jurisdiction. If approved, the Project would be completed in a twenty-four to twenty-eight month period, with a maximum of twenty-four months of actual well operation. The slant test well would be constructed in approximately a four month period, and seawater would then be circulated through the well until sufficient data could be gathered. The well would then be shut down and decommissioned.² While the current plan is to fully abandon the slant test well in compliance with applicable laws and regulations once data collection is complete, if the results show that use of slant intake wells is feasible and additional approvals are obtained, it is possible that components of the slant test well could be converted into a production well to save expense and reduce environmental impacts of the MPWSP.

a. City of Marina Evaluation of Coastal Development Permit Application

A copy of the City Staff's Report regarding the proposed Project is included as Attachment 10.

In its analysis of the CDP application, the City Staff and outside expert consultants found that the proposed Project was consistent with the City's certified LCP, which is comprised of the Local Coastal Land Use Plan ("LCLUP") and Local Coastal Plan Implementation Plan ("LCPIP"), the latter of which is codified as Marina Zoning Ordinance Chapter 17.41. Attachment 10 at 4. City Staff found that the proposed Project is "both a coastal research and educational use and a coastal-dependent industrial use" for purposes of the LCLUP and the LCPIP. Attachment 10 at 4-5. In keeping with these designations and the requirements of the LCLUP and the LCPIP, the City Staff proposed that the City Planning Commission adopt a series of detailed findings demonstrating how the proposed Project conforms to the standards set forth in the certified LCP. Attachment 10 at 9-14 (Findings 2-5). The City Staff considered and specifically analyzed, among others, the following applicable factors:

- Protection of public access (lateral and from roadway to coastline);
- Restriction of development to disturbed area;

² As discussed in detail in Attachment 11 (see. e.g., pages 31, 54), construction and decommissioning activities would be limited to approximately October through February due to the potential presence of protected western snowy plover (*Charadrius nivosus*) during March through September. Should construction or decommissioning not be completed before the western snowy plover return in approximately March 2015, the applicant would like the ability to complete drilling once the plover vacate the site in approximately October 2015.

- Identification and protection of rare and endangered plants and animals and habitat;
- Preservation of views, visibility of project infrastructure from Highway 1 and coastline;
- Protection of public safety and vulnerability to wave erosion;
- Protection of project infrastructure against tsunami and other coastal hazards;
- Identification and mitigation of any significant environmental effects; and
- Minimization of grading and roadway construction.

Attachment 10 at 9-14 (Findings 2-5).

With respect to the public access policies set forth in the Coastal Act, the City Staff found that:

The proposed project will be located on private property. No activity will take place on the beach and lateral beach access will not be restricted. The slant test well insertion point and wellhead vault would be situated approximately 450 feet inland of mean sea level. During construction and decommissioning of the project there will be 7 to 15 construction crew onsite with drilling rigs, trucks, cranes, forklift, excavators and other equipment. During the operational testing phase of the project the slant test well, wellhead vault and almost all other project infrastructure would be located below surface, with disturbed surface areas re-contoured and restored to as close to their original condition as possible.

Attachment 10 at 10 (Finding 3(a)).

As Lead Agency for purposes of the California Environmental Quality Act (“CEQA”), the City Staff and outside CEQA experts prepared an Initial Study and Mitigated Negative Declaration (“IS/MND”), a copy of which is included (together with its own Appendices A-E) as Attachment 11. As part of the CEQA process, the City Staff consulted the following Responsible Agencies: the Commission; MBNMS; Central Coast Regional Water Quality Control Board; Monterey Bay Unified Air Pollution Control District; Monterey County Environmental Health Bureau, Drinking Water Protection Services Unit; California State Lands Commission; Monterey Regional Water Pollution Control Agency; and the United States Fish and Wildlife Service. Attachment 11 at 34. The City Staff and outside CEQA experts, the Sierra Club, and each of the Responsible Agencies, agreed that the proposed Project “had the potential to result in significant adverse effects on the environment, but that any such effects could be avoided or reduced to a less than significant level through project design modifications and development and implementation of feasible mitigation.” Attachment 11 at 10. The City also circulated a draft of the IS/MND for public review and comment, and responded to each of the eight written comments it received. Copies of the eight “agency comment” and one “non-agency comment” letters that the City received, as well as the City Staff’s responses to those comments, can be found at pages 42-114 of Attachment 10.

The City Staff prepared and recommended that the City Planning Commission adopt a resolution certifying the IS/MND and approving the CDP. Attachment 10 at 7-14.

b. Actions by the City of Marina Planning Commission and City Council

The City Planning Commission held a public hearing July 10, 2014. After consideration, the City Planning Commission declined to certify the IS/MND and neither approved nor denied the CDP. California American Water appealed the City Planning Commission's action to the City Council.

The City Council held a public hearing to consider the appeal on September 3, 2014 and a continued public hearing on September 4, 2014. At the conclusion of the hearing, the City Council declined to follow City Staff's recommendation, and approved (on a 3-2 vote) a resolution: (1) rejecting the IS/MND; and (2) denying the CDP. Attachment 12 at 2.

Neither the City Planning Commission nor the City Council made any findings regarding the proposed Project's consistency with the certified LCP or the public access policies set forth in the Coastal Act.

IV. Conclusion

Because the proposed Project conforms to the standards set forth in the City's certified LCP and the public access policies set forth in the Coastal Act, the Commission should grant California American Water's request for the CDP. Issuing the CDP would allow completion of a critical test well program that will further the policies and interests of numerous State and Federal agencies, and will help ensure protection of the critical Carmel River ecosystem while addressing the significant water supply crisis that the Monterey Peninsula is facing. As described above, the proposed Project has broad support among State agencies and environmental organizations, and would help inform decision-making on critical statewide water supply questions.

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LATHAM & WATKINS LLP

November 11, 2014

**Agenda Items
W14a & 15a**

VIA EMAIL

Chair Kinsey and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

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Madrid	Washington, D.C.

File No. 055604-0000

Re: Appeal No. A-3-MRA-14-0050 & Application No. 9-14-1735:
(California-American Water Company Test Well Project)

Dear Chair Kinsey and Honorable Commissioners:

On behalf of California-American Water Company ("Cal-Am"), we write with our continued support of Commission staff's recommendations in the Staff Report for Cal-Am's proposed temporary test slant well project in the City of Marina (the "Project"). However, we also want to correct the record and respond to several inaccurate, erroneous and misleading comments about the Project made by the Marina Coast Water District ("MCWD") in MCWD's November 7, 2014, letter to the Commission. Contrary to MCWD's claims, the Project as proposed, conditioned, and analyzed in the Staff Report will be consistent with all applicable Coastal Act and City of Marina Local Coastal Program ("LCP") policies, and the Staff Report's analysis satisfies the Commission's obligations under the California Environmental Quality Act ("CEQA").

Attached to this letter as Attachment 1 is a detailed response to MCWD's November 7 letter. As explained in detail in Attachment 1:

- Cal-Am has **diligently pursued alternative water supply projects** in the region;
- The City of Marina's denial of the Project's Coastal Development Permit constituted a **final action that is legally appealable to the Commission** under Coastal Act section 30603;
- The Commission's environmental analysis has been **conducted in accordance with the Commission's certified regulatory program**, which exempts the Commission from CEQA Chapters 3 and 4;

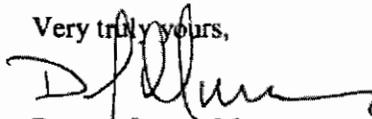
These materials have been provided to the Coastal Commission Staff

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- The Commission has not engaged in improper project piecemealing under CEQA because **the test well Project has independent utility from the Monterey Peninsula Water Supply Project** and will provide important, needed data about the feasibility of slant wells for desalination projects in this region to the public and state resource agencies;
- The Staff Report's **project description is thorough and accurate;**
- The Staff Report has **appropriately identified existing groundwater conditions** in the vicinity of the Project;
- The Staff Report analyzes a **reasonable range of alternatives, including two locations at the CEMEX sand mining facility site, a location near Moss Landing, and a "No Project" alternative;**
- **The Commission's certified regulatory program is exempt from CEQA's public notice requirements;** accordingly, a longer public review and comment period is not required for the Staff Report;
- The Commission is **authorized to approve the Project before the State Lands Commission approves a lease for drilling activities beneath state tidelands;**
- The Commission has identified **feasible mitigation for the Project's potential environmental impacts;** and
- There is **no significant new information requiring recirculation** of the Staff Report.

We appreciate the opportunity to respond to MCWD's baseless challenges to both the Project and the thorough analysis undertaken by Commission staff in the Staff Report. We look forward to the Commission's consideration of Cal-Am's Project at tomorrow's Commission meeting.

Very truly yours,



Duncan Joseph Moore
of LATHAM & WATKINS LLP

cc: Andrew Homer, California-American Water Company
Tom Luster, California Coastal Commission

Attachment

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These materials have been provided to the Coastal Commission Staff

ATTACHMENT 1

CALIFORNIA-AMERICAN WATER COMPANY RESPONSES TO MARINA COAST WATER DISTRICT COMMENTS

Appeal No. A-3-MRA-14-0050

Application No. 9-14-1735

Agenda Items W14a & 15a

California American Water Company ("Cal-Am") submits the following responses to the Marina Coast Water District's ("MCWD") letter dated November 7, 2014, which was submitted in advance of the California Coastal Commission's ("Commission") consideration of Cal-Am's (1) appeal of the City of Marina's ("City") denial of Cal-Am's Coastal Development Permit ("CDP") application to construct, operate, and decommission a temporary test slant well at the CEMEX sand mining facility (the "Project"); and (2) CDP application for that portion of the Project in the Commission's retained jurisdiction.

I. MCWD'S INNUENDO ABOUT CAL-AM IS FALSE

As reflected in the Staff Report, Cal-Am is subject to an Order issued by the State Water Resources Control Board ("State Board") that requires Cal-Am to reduce its use of Carmel River water, and/or obtain water rights from other entities that have rights to use Carmel River water. (Staff Report at 20.) MWCD asserts that Cal-Am has ignored the State Board for nearly two-decades. That is simply untrue. In fact, the Commission's Staff Report on the Project summarizes these efforts:

In 1998, state legislation directed the California Public Utilities Commission ("CPUC") 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 included a 9,400 AFY desalination facility at 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. Plan B then served as the basis for Cal-Am's 2004 application to the CPUC for the proposed Coastal Water Project ("CWP"), which included a desalination facility at the Moss Landing Power Plant, transmission pipelines from Moss Landing to the Monterey Peninsula, a reservoir, pump stations, and ASR facilities. During the CPUC's review, the State Water Board's Division of Water Rights in 2009 issued a Cease and Desist Order to Cal-Am that required Cal-Am to significantly reduce its Carmel River withdrawals by 2016, thereby increasing the urgency of selecting and constructing a water supply project. Nonetheless, several concerns were raised about the desalination facility's proposed use of a power plant open water intake and the resulting significant adverse effects on marine life, the distance of the facility from the service area and the associated increased transmission costs, and others. These concerns led to the development of alternative water supply proposals, including one developed by regional stakeholders known as the "Regional Water Project, Phase I." This

These materials have been provided to Coastal Commission Staff

alternative proposed moving the desalination facility closer to the Monterey Peninsula and using vertical and slant wells instead of an open water intake. In December 2010, the CPUC certified an Environmental Impact Report for this Regional Water Project and approved several agreements among stakeholders that established project partner responsibilities regarding construction, ownership, operations, maintenance, and payments.

(Staff Report at 20-21.) MCWD is well aware of these efforts, as it was a party to the agreements that governed a previous iteration of a proposed desalination project for this region. MCWD is also aware of the fact that a direct conflict of interest was created when it hired a member of another government agency party's Board of Directors to work as a sub-consultant on that project, which contributed to that project's demise. The MCWD sub-consultant pled no contest to a felony conflict of interest violation, and based on the conflict Cal-Am was forced to terminate the project agreements. Regardless, and as reflected in the Staff Report, Cal-Am has diligently pursued alternative water supply projects in the region and has not ignored the State Board.

II. THE COMMISSION HAS JURISDICTION TO HEAR CAL-AM'S APPEAL

A. The City's Denial of Cal-Am's Coastal Development Permit Application is a Final Action

MCWD reasserts its claim that the City's denial of the CDP for the Project is not a "final" action. To that end, MCWD asserts that because the denial of the CDP is not "final," Cal-Am has unlawfully appealed the City's decision regarding environmental review of the Project under the California Environmental Quality Act ("CEQA"). As described in Cal-Am's November 7, 2014 submittal to the Commission, these contentions are red herrings, without legal foundation and wholly lack merit.

MCWD continues to suggest that because the City did not make findings about the Project's consistency with the City's Local Coastal Program ("LCP"), there is no basis for appeal here. Again, as Cal-Am has already explained to the Commission, MCWD's claims have no merit. Cal-Am did not appeal the City's CEQA determination. Cal-Am did what it is legally entitled to do under the Coastal Act: appeal the denial of a CDP for a major public works project by alleging that the project conforms to the LCP and the Coastal Act's public access policies. (Pub. Resources Code §§ 30603(a)(5), 30603(b)(2).) That the City made no findings regarding consistency with the LCP has no impact on whether Cal-Am, the Project applicant, could appeal the City's final action denying the CDP.

To that end, MCWD wrongly asserts that the "only grounds for asserting jurisdiction . . . would be a denial of the CDP on the grounds that it did not conform to the standards in the certified LCP." (MCWD Letter at 4.) MCWD attempts to obfuscate the issue. MCWD's argument is based on Coastal Act section 30603(b)(1), which is *not applicable here* because the City did not approve the CDP. Instead, the standard applied to the appeal of a denial of a major public works project – which applies to this Project – is "an allegation that the development *conforms to the standards* set forth in the certified local coastal program and the public access

polices” in the Coastal Act. (Pub. Resources Code § 30603(b)(2).) Cal-Am’s stated grounds for the present appeal are that “the proposed Project fully conforms to the standards set forth in the City’s certified [LCP] and the public access policies of the California Coastal Act.” (Staff Report, Exhibit 11.) Cal-Am demonstrated in its appeal the reasons why the Project conforms to the LCP and the public access policies of the Coastal Act. (See *id.* at 4-5; Cal-Am’s Appeal, Attachment 10, at 4-5, 9-14 [on file with the Commission].) Accordingly, Cal-Am satisfied the appeal requirements in the Coastal Act that are applicable here.

MCWD also alleges that even if the Commission has jurisdiction on the appeal, the proposed findings in the Staff Report are an abuse of discretion.¹ MCWD states that the Staff Report confirms that the Project does not conform to the LCP, and so the Commission must deny the appeal. (MCWD Letter at 4-5.) MCWD ignores that the Commission’s review of those portions of the Project in the City’s LCP jurisdiction has two separate components.

First, in an appeal to the Commission where the local government has a certified LCP, the Commission must first determine whether a substantial issue “exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.” (Pub. Resources Code § 30625(b)(2).) A substantial issue is one that presents a “significant question” as to conformity with the LCP. (14 Cal. Code Regs., § 13115.)

MCWD wrongly argues that in order for the Commission to determine that there is a substantial issue on appeal, the Commission must somehow make a preliminary determination that a project is consistent with a certified LCP. MCWD’s argument is a complete misreading of the Coastal Act. In assessing whether there is a substantial issue, the Commission does not determine whether a project is consistent with the LCP. Rather, the Coastal Commission generally looks at five factors to interpret whether the appeal raises a significant question as to conformity with the LCP:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations of its LCP; and

¹ The MCWD Letter states: “As stated in the Coastal Act, the only grounds for appeal are that the permit was improperly denied because the development actually ‘conforms to the standards set forth in the local coastal program.’” (MCWD Letter at 4.) MCWD misreads the plain language of the statute. The grounds for appeal are that “*the development* conforms to the standards set forth in the certified [LCP]. . . .” (Pub. Resources Code § 30603(b)(2), emphasis added.) The Coastal Act does not require an appellant to allege that the “permit was improperly denied.” That language appears *nowhere* in the Coastal Act.

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

(Staff Report at 25; *see also Hines v. Cal. Coastal Com.* (2011) 186 Cal.App.4th 830, 849 [citing factors].) The Commission has broad authority to interpret the Coastal Act and Coastal Act Regulations because “great weight must be given to the administrative construction of those charged with the enforcement and interpretation of a statute.” (*Alberstone v. Cal. Coastal Com.* (2008) 169 Cal.App.4th 859, 864; *Hines, supra*, 186 Cal.App.4th at 849.) As such, the Commission has considerable discretion to determine whether an appeal raises a substantial issue.

In making its substantial issue determination on the Project, the Commission will not reach a determination on whether the Project is consistent with the LCP as MCWD claims. Instead, the Commission will apply the factors stated above and based on its evaluation, determine whether the appeal should be heard by the Commission. Cal-Am fully agrees with Staff’s recommendation that the appeal raises a substantial issue regarding conformity with the LCP and the Coastal Act’s public access policies. (Staff Report at 25-26.)

Second, once the Commission determines that a substantial issue is presented, the Commission reviews the local CDP application *de novo* at a public hearing. (*Citizens for a Better Eureka v. Cal. Coastal Com.* (2011) 196 Cal.App.4th 1577, 1580-1581 [citing Pub. Resources Code § 30621(a); 14 Cal. Code Regs., § 13115(b)].) It is on *de novo* review where the Commission makes findings with respect to the Project’s consistency with the LCP.

The Coastal Act clearly and unambiguously allows the Commission to find that if a new or expanded coastal-dependent industrial facility is potentially inconsistent with the Coastal Act or LCP, that facility may nonetheless be approved if the Commission makes certain findings. (Pub. Resources Code § 30260.)² However, MCWD argues that the Staff Report “recommends that the Commission find that—although the project does not conform with the LCP—the City ought to have permitted project [sic] notwithstanding these inconsistencies under Public Resources Code section 30260.” (MCWD Letter at 5.) MCWD is incorrect.

Contrary to MCWD’s assertions, the Commission is not ruling on the City’s actions (or lack thereof). Nothing the Commission does on appeal “second guess[es] the City’s discretionary authority.” (MCWD Letter at 5.) Rather, the Commission is acting under the authority of the Coastal Act to *independently review* the Project and its consistency with the LCP *de novo*. (Pub. Resources Code § 30621(a) [“The Commission shall provide for a *de novo* public hearing on . . . any appeals brought pursuant to this division. . . .”].) “[I]n effect, the Commission hears the application *as if no local governmental unit was previously involved*,

² The Project qualifies as a coastal-dependent. The Coastal Act defines “coastal-dependent development or use” as “any development or use which requires a site on, or adjacent to, the sea to be able to function at all.” (Pub. Resources Code § 30101.) The Project will be directionally drilled in a manner that extends beneath the beach and seafloor. The Project’s purpose is to gather technical data to determine the feasibility of using slant wells for the production of seawater to a proposed desalination facility. As such, it is “coastal-dependent.”

deciding for itself whether the proposed project satisfies legal standards and requirements.” (*Kaczorowski v. Mendocino County Bd. of Supervisors* (2001) 88 Cal.App.4th 564, 569.)

Accordingly, MCWD’s assertion that the proposed findings are an “abuse of discretion” is incorrect and contrary to the Coastal Act’s plain text. The Coastal Act vests the Commission with the authority to independently review the Project, confirm whether it is consistent or inconsistent with the Coastal Act or LCP, and confirm whether specific Coastal Act factors are met that allow the Project to proceed even if an inconsistency is found. MCWD’s inaccurate and self-serving reading of the Coastal Act and its requirements has no basis.

III. THE COMMISSION ANALYZED THE PROJECT’S POTENTIAL ENVIRONMENTAL IMPACTS PROPERLY PURSUANT TO ITS CERTIFIED REGULATORY PROGRAM

A. The Commission Has Not Engaged in Improper Piecemealing

MCWD wrongly claims that the Commission, in analyzing the environmental impacts of the test well Project, has engaged in improper “piecemealing” because the Commission did not analyze the environmental effects of the entire Monterey Peninsula Water Supply Project (“MPWSP”). MCWD’s argument overlooks the entire line of CEQA caselaw confirming that two projects may properly undergo separate environmental review when the projects have independent utility and can be implemented independently. (*See, e.g., Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712, 736 [EIR for one section of a proposed freeway need not include a potential later extension of that freeway because the individual segment served its own purpose by connecting two logical terminus points]; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 99 [refinery upgrade and construction of pipeline exporting excess hydrogen from upgraded refinery were “independently justified separate projects”]; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1224 [park and access road project were independent of residential development that would use same access road].) As demonstrated, both the Courts and CEQA practitioners have long recognized that conducting separate CEQA analyses for related projects does not constitute unlawful piecemealing where the projects have independent utility. “California law . . . provides that an EIR (and, the authors believe, a negative declaration) can focus solely on one project that is arguably part of a larger scheme where that project has ‘independent utility’ that justifies its separate processing and approval.” (Michael H. Remy, *et al. Guide to the California Environmental Quality Act*, at 92 (11th ed. 2007).)

Here, it is entirely appropriate under CEQA for the test well Project to be analyzed in a separate CEQA document from the larger MPWSP because the test well Project has independent utility. As described in the Staff Report, the fundamental purpose of the test well Project is to “gather technical data” regarding the feasibility of slant wells for water production in the area of the Monterey Bay. (Staff Report at 2.) The data produced would be publicly available and could be used by the MPWSP, or any other desalination facility proposed for the area to determine if this type of well design in this general location would provide the necessary amount of water for a desalination facility without causing “unacceptable adverse effects.” (*See id.*) Accordingly, the information that will be learned from the test well Project will have value to the public, desalination proponents, environmental groups and California water agencies, regardless of

whether the MPWSP is ever approved or constructed. For this reason, the California Department of Water Resources selected the test well Project for a \$1,000,000 grant in furtherance of the development of the technical data it will provide.

In addition, the test well Project would not legally compel the construction of the MPWSP. (*Cf. Tuolumne County Citizens for Responsible Growth v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231 [home improvement center “cannot be completed and opened legally without the completion of [a] road realignment”].) Specifically, in order to constitute unlawful piecemealing under CEQA, a future project must be “a reasonably foreseeable consequence of the initial project” and the future project must “likely change the scope or nature of the initial project and its environmental effects.” (*Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1998) 47 Cal.3d 376, 396.) The test well Project proposed by Cal-Am does not meet this threshold and therefore the Commission’s analysis of the Project does not constitute piecemealing.

While the MPWSP Settlement Agreement provides that slant wells are the preferred intake method for a desalination facility on the Monterey Peninsula, “subject to confirmation of this option by the test well results and hydrogeologic studies,” there is no requirement that a slant well be used as part of any desalination project if it is ultimately shown to be infeasible, or that the test well Project be constructed in order for the MPWSP to legally proceed. (*See also* Staff Report at 21 [noting that, even if the test well Project is unsuccessful, the MPWSP could proceed with changes to the current design, location, or intake method].)

Because the test well Project has utility independent of the MPWSP, the Commission is justified in reviewing the test well Project separately from the MPWSP, and can appropriately consider the MPWSP at the November 12, 2014 meeting. In addition, because the California Public Utilities Commission is currently in the process of evaluating the environmental impacts of the MPWSP, there is no reason to believe that environmental review of the MPWSP as a whole has been compromised. (Staff Report at 21.) As expressly noted in the Staff Report, “the Commission’s approval of this proposed test well would not authorize any additional activities that may be associated with a larger or more permanent facility.” (*Id.* at 2.) Accordingly, the Staff Report fully acknowledges that the MPWSP or any other future desalination project would be subject to an entirely separate, independent and rigorous analysis before the Commission.

B. The Staff Report’s Description of the Project is Accurate and Informative

MCWD claims that the project description provided in the Staff Report is not “stable” and is “erroneous and misleading” because, in a separate proceeding, a Cal-Am employee noted that the electrical contractor may continue working (i.e., pulling cable, connecting cables and control panels, and programming) on the Project site after February 28, the last day that construction would be permitted to occur under the Staff Report’s proposed Special Condition 3. (*See* Declaration of Ian Crooks, Ex. B to MCWD Letter, at ¶ 1.) MCWD is grasping at straws in its attempt to cast doubt on the Staff Report’s thorough project description. The description of

the Project's construction operations in the declaration of Mr. Ian Crooks³ (Cal-Am's Monterey District Engineering Manager) is fully consistent with the project description set forth in the Staff Report and in Cal-Am's permit application. (Staff Report at 9; Permit Application at 2.) Specifically, Mr. Crooks confirms that, under the current schedule, "construction operations will cease on February 28, 2015." (See Declaration of Ian Crooks, Ex. B to MCWD Letter, at ¶ 1.) Activities that may continue after February 28, 2015 include limited electrical work (such as pulling cable, connecting cables and control panels, and programming), which would not require construction equipment. (*Id.*) Thus, there is no inconsistency between the Staff Report's project description and the intended construction schedule.

Further, the Staff Report's proposed Special Condition that would require Cal-Am to cease construction by February 28 is intended to prevent adverse impacts to the Western Snowy Plover during nesting season. Notably, the mitigation measures incorporated into Cal-Am's Project, set forth in Exhibit 5 to the Staff Report, include additional measures to protect nesting birds that Cal-Am would be required to implement at all times. For example, MM BIO-2 and MM BIO-6 require biological monitoring and avoidance buffers around active nests. (Staff Report at Ex. 5, pp. 4, 6.) Thus, should the electrical contractor encounter any active nests during the limited electrical activities that may occur after February 28, the electrical contractor would abide by MM BIO-2, ensuring that no adverse impacts to nesting Western Snowy Plover would occur.⁴

MCWD completely ignores these mitigation measures, which have been incorporated into the project description,⁵ and appears to suggest that no activities should be allowed to occur on the Project site after February 28. That is absurd. Ongoing incidental activities that do not involve heavy construction equipment have always been contemplated to occur on the Project site after February 28. This is why several mitigation measures related to these activities have been made a part of the project description – to ensure that adverse impacts to the Western Snowy Plover would not occur while ongoing Project activities are occurring after Project construction has been completed.

C. The Staff Report Appropriately Identifies Existing Environmental Conditions

MCWD alleges that the Commission has failed to establish an adequate environmental baseline with respect to the current conditions of the Salinas Valley Groundwater Basin. As a result, MCWD argues that there is no way to determine whether the Commission has mitigated adequately the potential groundwater impacts of the test well Project. MCWD's arguments,

³ Mr. Crooks' declaration was submitted in *California-American Water Company v. Lonestar California, Inc., et al.*, Monterey County Superior Court Case Nos. M129290, 129303.

⁴ MCWD also claims that, as a result of the expected construction schedule, undisclosed impacts to the Western Snowy Plover could occur. However, as described above, measures are incorporated into the Project to ensure that no nesting plover are affected by Project activities. Thus, the Commission has appropriately analyzed potential impacts to Western Snowy Plover.

⁵ See Staff Report at 58, Exhibit 5.

however, ignore the well-known reality that groundwater in the vicinity of the Project site is *already* severely impacted by seawater intrusion and contamination, and ignore ample evidence in the Commission's record establishing the groundwater "baseline."

The Staff Report summarizes the existing groundwater conditions in the vicinity of the test well Project as follows:

The [Salinas Valley Groundwater] Basin is a relatively long and narrow groundwater structure extending about 140 miles from the coast to the southeast along the Salinas River valley. Past groundwater pumping in nearby portions of the Basin for agriculture have exceeded 100,000 acre-feet per year, and have resulted in seawater intrusion that extends several miles inland. This has both reduced the quality of groundwater for agricultural use and reduced the amount of groundwater pumped from sites close to the CEMEX facility. Seawater intrusion has been estimated to occur at a baseline rate of about 10,000 acre-feet (equal to about three billion gallons) per year, though the Basin's groundwater management programs are attempting to significantly reduce this rate. The Basin is divided into eight sub-regions, with the project area within what is known as the 180/400-Foot Sub-Basin, which has an estimated groundwater storage capacity of about 6.8 million acre-feet. Due in part to the aquifer being seawater-intruded near the site, the closest active off-site wells in the Sub-Basin are about 5,000 feet from the proposed test well.

(Staff Report at 50.)

In addition, as described in the State Board's "Final Review of California American Water Company's Monterey Peninsula Water Supply Project," (July 21, 2013) ("State Board Report"), the Monterey County Water Resources Agency currently estimates that seawater has intruded into the 180-Foot Aquifer approximately five miles inland. (State Board Report at 14.) "This seawater intrusion has resulted in the degradation of groundwater supplies, requiring numerous urban and agricultural supply wells to be abandoned or destroyed." (*Id.*) Thus, from a practical standpoint, there are no wells operating in the 180-Foot Aquifer that are likely to be impacted by the test well Project due to the severe saltwater intrusion. (*Id.* at 15 ["Since this groundwater is reportedly impaired, it is unlikely that this water is, or will be put to beneficial use."]; Draft Initial Study and Mitigated Negative Declaration for the California American Water Slant Test Well Project (May 2014) ("IS/MND") at 44 ["[T]he Dune Sand and 180-FTE Aquifers are heavily contaminated in the project areas due to decades of seawater intrusion. Therefore, a drawdown of water levels in these aquifers would not impact adjacent agricultural users, who must pump groundwater from a substantially greater depth to produce useable non-saline water."].) Thus, the record adequately describes the baseline groundwater conditions in the vicinity of the test well Project.

Further, there is ample evidence in the record demonstrating that the Project is not expected to result in any significant drawdown of the local groundwater. The IS/MND explains

that “[a]nalytical modeling indicates that no significant drawdown of groundwater wells would occur as a result of the test pumping activities.” (IS/MND at 44; *see also id.* at 117-119.) Additionally, Cal-Am has modeled the expected “cone of depression,” or the area in which groundwater levels may be lowered due to test well withdrawal, to extend about 2,500 feet from the well, where the drawdown is expected to be only approximately four inches. (Staff Report at 51.) Nonetheless, to ensure that an early warning system is in place in the unlikely event that greater-than-anticipated drawdown occurs, the Staff Report recommends Special Condition 11, which requires Cal-Am to monitor both the quantity and quality of water in areas that may be affected by operation of its test well. If these monitoring wells show a reduction in water quantity of one foot above natural fluctuations or a two parts per thousand increase in salinity, Cal-Am is required to stop pumping at the test well.⁶ (*Id.* at 61.) Therefore, the test well Project has been designed and conditioned to ensure that it will have no significant adverse environmental effect on water quantity or quality in the area surrounding the Project. (*Id.*)

More specifically, based on the existing conditions in the Salinas Valley Groundwater Basin, the Commission has established a threshold of one foot drawdown or two parts per thousand increase in salinity, and continuous monitoring to ensure that this threshold is not exceeded. This is exactly what CEQA requires. (*North Coast Rivers Alliance v. Marin Municipal Water District* (2013) 216 Cal.App.4th 614, 647-49 [mitigation plan found sufficient when it identified methods to mitigate the impact and set out standards that the agency committed to meet].) MCWD’s arguments ignore the careful consideration given to this issue in the Staff Report, and that the Staff Report recommends detailed mitigation to ensure that no adverse impacts to water quantity or quality will occur.

D. The Commission Analyzed a Reasonable Range of Alternatives

MCWD contends that the Commission has failed to analyze adequately alternative sites for the test well Project. Notably, MCWD fails to identify *any* suitable alternative sites that have not been considered by Cal-Am or the Commission. MCWD’s alternative sites arguments are as transparent as they are flawed. MCWD wants to stop the test well Project at any cost—regardless of where it is precisely located—and no alternative site would be acceptable to MCWD for this Project. Regardless, and contrary to MCWD’s assertions, the Commission has analyzed a reasonable range of alternatives, including alternative sites, and has complied with the requirements of CEQA and the Coastal Act.⁷

⁶ MCWD suggests that the one-foot drawdown or two parts per thousand increase in salinity levels threshold is not justified. MCWD’s argument fails to recognize that the Commission, as lead agency for CEQA-equivalent environmental review, has the authority to develop thresholds of significance for a particular project. (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) The Commission’s selection of the one-foot drawdown or two parts per thousand increase in salinity levels baseline is justified based on recommendations from City of Marina staff and the possibility that groundwater levels could fluctuate between the time of environmental review and the time that pumping commences.

⁷ The requirement for an EIR to analyze alternatives to a project is contained in Chapter 3 of CEQA. (Pub. Resources Code § 21100(b).) As discussed above, the Commission’s certified

Under CEQA, a lead agency must consider a “reasonable range” of alternatives to a project, or to the location of a project, “which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” (14 Cal. Code Regs., § 15126.6(a).) An agency is not required to consider “every conceivable alternative to a project.” (*Id.*) Further, an agency has the discretion to determine how many alternatives will constitute a reasonable range. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566.) The CEQA Guidelines also recognize that, for some projects, no feasible alternative locations may exist. (14 Cal. Code Regs., § 15126.6(f)(2)(B) [“For example, in some cases there may be no feasible alternative locations for a geothermal plant or mining project which must be in close proximity to natural resources at a given location.”]; *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745 [upholding determination that project was required to be located in limited geographical area when no alternative sites were available].)

Here, the Commission has analyzed a reasonable range of alternative locations for the test well Project. As described in the Staff Report, location is critical for this Project. (Staff Report at 3.) Cal-Am has recognized the State’s preference for using subsurface intakes, where feasible, to provide source water for desalination. As a result, the consideration of potential alternative locations for the test well Project has been focused on sites within the Monterey Bay region where geologic and hydrogeologic characteristics are favorable for subsurface intake methods. (Staff Report at 52.) Therefore, the availability of alternative sites is extremely limited. (*Id.* at 53.)

Nonetheless, Cal-Am identified a number of candidate sites between Marina and the Moss Landing Power Plant and conducted a hydrogeologic investigation to determine potential alternative locations for a subsurface intake. (Staff Report at 53.) The investigation was led by a Hydrogeology Working Group that consisted of representatives from the California Public Utilities Commission, Salinas Valley Water Coalition, and Monterey County Farm Bureau. (*Id.*) The investigation concluded that slant wells may be feasible at two locations at the CEMEX property, where the proposed Project site is located, and also identified a third site approximately eight miles north, near Moss Landing, that might also be suitable for subsurface intakes. (*Id.*)

With respect to the two CEMEX property sites, as described in the Staff Report, one location was initially considered at the northern end of the CEMEX sand mining facility, but consultation with state and federal wildlife agencies revealed that locating a test well in that area could cause potential significant impacts to nesting Western Snowy Plovers, and therefore is environmentally inferior compared to the proposed Project site. (Staff Report at 53.) In addition, the northern CEMEX site would have involved more excavation, required shoreline protective devices, and would have been subject to more erosion and associated coastal hazards. (*Id.*) Therefore, the current site at the south end of the CEMEX facility, which is within an already disturbed area, is further from the shoreline, and would avoid potential significant

regulatory program is exempt from the requirements of CEQA Chapters 3 and 4. (Pub. Resources Code § 21080.5(c).) Nonetheless, the Coastal Act Regulations require permit applicants to describe “any feasible alternatives” that would “substantially lessen any significant adverse impact which the development may have on the environment.” (14 Cal. Code Regs., § 13053.5(a).)

impacts to snowy plovers through implementation of mitigation, was identified as a preferable location for the test well Project. (*Id.*)

The alternative Moss Landing site described in the Staff Report would be far removed from the Cal-Am service area on the Monterey Peninsula, would increase Project costs, and would require additional transmission pipelines, which would result in increased environmental impacts. (*Id.* at 20, 53.) Therefore, the Staff Report concludes that the Moss Landing site “would result in greater environmental impacts due to an overall larger area of disturbance.” (Staff Report at 3.) Because the Moss Landing site would result in greater environmental impacts than the proposed Project site, the Commission is justified in excluding the Moss Landing location from further consideration.⁸ (See 14 Cal. Code Regs., § 15126.6(f)(2)(A) [“Only locations that would avoid or substantially lessen any of the significant effects of the project need be considered”].)

A fourth alternative, the “No Action” alternative, was also considered in detail in the Staff Report. (Staff Report at 53-54.) As described in the Staff Report, however, the “No Action” alternative would likely result in greater adverse environmental impacts than the Project because, among other things, not completing or delaying the test well Project would deprive Cal-Am and state resources agencies with important technical data regarding the feasibility of slant wells in the Monterey Bay, which could further delay any future water supply project in the Monterey Peninsula—whether it be a desalination facility or an alternative water supply project. As a result, a “No Action” alternative could extend withdrawals from the Carmel River, exacerbating the ongoing adverse effects of withdrawals on fish and habitat in that watershed. (*Id.*)

Therefore, the Commission has complied with the Coastal Act’s requirements by analyzing a reasonable range of four potential alternatives. As courts have routinely held in the CEQA context, lead agencies are not required to analyze every conceivable alternative to a project. (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1992) 134 Cal.App.3d 1022, 1029 [an EIR need not consider “each and every conceivable variation of the alternatives stated.”] [citing *Brooks v. Coleman* (9th Cir. 1975) 518 F.2d 17, 19].) Here, the Staff Report analyzed a sufficient range of alternatives based on the limited geographic area within the

⁸ MCWD also asserts that “legal impediments”—namely, the 1996 Annexation Agreement between MCWD and MCWRA—preclude the development of the Project at the CEMEX site. (MCWD Letter at 10-11.) As discussed at length in Cal-Am’s November 7, 2014 letter to the Commission, the Project is unaffected by the Annexation Agreement, which is not applicable or relevant to the Project. First, the annexation contemplated in the Annexation Agreement has not occurred, and, therefore, the provisions of the Annexation Agreement do not apply. Second, even if the annexation has occurred, which it has not, the Annexation Agreement does not purport to limit the otherwise lawful development of seawater and contaminated brackish groundwater from the CEMEX site. Rather, the commitment in the Annexation Agreement by Lonestar/CEMEX to limit groundwater pumping applies only as a limit on groundwater extracted by the CEMEX site owner to be used on the CEMEX site. Cal-Am is not proposing to receive water service from the agencies on this property or to exercise the landowner’s water right. Therefore, the Annexation Agreement does not apply to the Project.

Monterey Bay region where slant wells may be feasible to inform the public and decisionmakers. Contrary to MCWD's claims, no additional alternatives analysis is required.

E. The Commission Is Exempt From The Public Notice Requirements Set Forth In CEQA Section 21091(a)

MCWD asserts that the Commission did not comply with the "mandatory 30-day comment period for its in-lieu environmental document" in violation of CEQA. (MCWD Letter at 11.) MCWD's assertion is wrong and has been directly contradicted by the California Court of Appeal. "[T]he Commission's certified regulatory program is exempted from the notice and comment requirements of Public Resources Code section 21091, subdivision (a)." (*Ross v. Cal. Coastal Com.* (2011) 199 Cal.App.4th 900, 935, emphasis added.) MCWD's unfounded attempt to cast doubt on the *Ross* decision and the Court of Appeal's express holding that the Commission *does not need to comply with the 30-day comment period requirement under CEQA* has no force and flies in the face of long-standing Commission practice.

CEQA section 21080.5(a) permits the Secretary of the Resources Agency ("Secretary") to certify a state administrative agency's regulatory program. If the regulatory program satisfies certain environmental standards and is certified by the Secretary, the program is exempt from CEQA's requirements for the preparation of environmental impact reports, negative declarations, and initial studies. (See Pub. Resources Code § 21080.5(c), (d).) Environmental review documents prepared pursuant to the agency's own regulations are used instead of the documents that would be required by CEQA. (*Id.* § 21080.5(a).) Certification of a regulatory program amounts to a determination that the agency's program includes procedures for environmental review and public comment that are "functionally equivalent" to CEQA compliance. (*Californians for Alternatives to Toxics v Department of Pesticide Regulation* (2006) 136 Cal.App.4th 1049, 1059.)

The Secretary approved the Coastal Commission's certified regulatory program concerning the consideration and granting of CDPs under the Coastal Act on May 22, 1979. (*Ross, supra*, 199 Cal.App.4th at 931; *see also* 14 Cal. Code Regs., § 15251(c).) When the Commission considers an application for a CDP or an appeal of a local government's approval or denial of a CDP, the Commission's staff report serves as the environmental review document ensuring compliance with CEQA. (*See Hines, supra*, 186 Cal.App.4th at 852; *Kaczorowski, supra* 88 Cal.App.4th at 569 [noting that the Commission's "permit appeal procedure is treated as the functional equivalent of the EIR process"]; 14 Cal. Code Regs., § 13057(c)(2).)

The environmental documents of a certified program must be available for review and comment by the public and other agencies "for a reasonable time." (Pub. Resources Code § 21080.5(d)(3)(B), emphasis added.) The Coastal Act Regulations state that staff reports regarding coastal development permit applications and *de novo* hearings on appeals from local governments' permit decisions must be "distributed within a reasonable time to assure adequate notification prior to the scheduled public hearing." (14 Cal. Code Regs., § 13059, emphasis added; *id.* § 13115(b).)

In *Ross*, the Court of Appeal examined the Commission's certified regulatory program and its public review and comment provisions, and held that a 13-day public review period for a

staff report regarding proposed amendments to a local coastal plan was reasonable. (*Ross, supra*, 199 Cal.App.4th at 935-939.) The court stated, “[b]y providing 13 days’ notice of the filing of the staff report, the commission complied with [CEQA].” (*Id.* at 936.) The court stated that the Secretary was the individual authorized to determine whether a regulatory program satisfies the “reasonable time for review and comment” requirement of CEQA section 21080.5(d)(3)(B), and that any challenge to the Secretary’s determination of the public review and comment provisions in the Commission’s certified regulatory program should have been made within 30 days from the date of certification (i.e., in 1979). (*Id.* at 938.)

Here, Commission Staff released the Staff Report for public review on October 31, 2014, 13 days prior to the Commission’s public hearing on the Project at its November 12, 2014, meeting. The notice and review period for Cal-Am’s proposed Project is identical to the time period analyzed in *Ross*; therefore the length of this public review and comment period is reasonable and complies with CEQA.

In a transparent and unpersuasive attempt to undercut the clear holding in *Ross*, MCWD declares that *Ross* was “wrongly decided.” (MCWD Letter at 12.) In doing so, MCWD relies on *Ultramar, Inc. v. South Coast Air Quality Management District* (1993) 17 Cal.App.4th 689, despite the fact that the *Ross* court expressly analyzed and distinguished the *Ultramar* case. Moreover, MCWD ignores key differences between the Coastal Commission’s regulatory program and the issues raised in *Ultramar*.

As the *Ross* court recognized, “Public Resources Code section 21174 provides for the primacy of the Coastal Act over [CEQA’s] statutory provisions.” (*Ross, supra*, 199 Cal.App.4th at 937.) That section of CEQA states:

No provision of this division is a limitation or restriction on the power or authority of any public agency in the enforcement of this division is a limitation or restriction on the power or authority of any public agency in the enforcement or administration of any provision of law which it is specifically permitted or required to enforce or administer, including, but not limited to, the powers and authority granted to the California Coastal Commission pursuant to Division 20 (commencing with Section 30000). To the extent of any inconsistency or conflict between the provisions of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)) and the provisions of this division, *the provisions of Division 20 (commencing with Section 30000) shall control.*

(Pub. Resources Code § 21174, emphasis added.) In other words, “[t]o the extent of any consistency or conflict between the provisions of the . . . Coastal Act . . . and the provisions of [CEQA], the provisions of [the Coastal Act] shall control.” (*Sierra Club v. Cal. Coastal Com.* (2005) 35 Cal.4th 839, 859.)

The Coastal Act Regulations’ requirement that staff reports be distributed within a “reasonable time” in advance of the public hearing on a CDP is part of the Commission’s certified regulatory program and consistent with CEQA section 21080.5(d)(3)(B). Consistent

with *Ross*, here the Commission is acting in compliance with its certified regulatory program, which allows for a period in which to act that differs from the 30-day review period provided in CEQA section 21091(a). (*Ross, supra* 199 Cal.App.4th at 937.)⁹ Accordingly, just as the Court of Appeal held in *Ross*, the 13-day review period for the Staff Report regarding the Project complies with CEQA.

Unlike *Ross*, *Ultramar* did not involve a grant of power similar to Public Resources Code section 21174 and a certified regulatory program that expressly deviates from the 30-day notice timeframe specified in CEQA section 21091(a). *Ultramar* involved the South Coast Air Quality Management District's ("SCAQMD") certified regulatory program. The SCAQMD had adopted "implementation guidelines" that included the CEQA section 21091(a) 30-day period of review for a draft abbreviated environmental assessment. The *Ultramar* court, part of the *same Second Appellate District of the Court of Appeal* that decided *Ross*, determined that the Secretary expected the same rules would apply to EIRs and SCAQMD environmental assessments. (*Ultramar, supra*, 17 Cal.App.4th at 699-703.)¹⁰ Accordingly, as the Court of Appeal correctly determined in *Ross*, *Ultramar's* reasoning is inapplicable here where the issues involve the Coastal Commission's certified regulatory program.

In sum, the Commission complied with CEQA by making the Staff Report available for public review and comment 13 days prior to the public hearing regarding the Project. Contrary to MCWD's assertions, a longer public review and comment period is not required and the Commission's Staff Report does not violate CEQA's noticing and public review requirements.

F. The Commission Is Authorized to Approve the Project Before a State Lands Commission Lease Issues

In order for the Project's slant well to extend beneath state tidelands, the State Lands Commission ("SLC") must first approve a lease.¹¹ MCWD makes several convoluted arguments to try and convince the Coastal Commission that it cannot allow construction on the Project to commence until Cal-Am has obtained the SLC lease. MCWD's arguments are unpersuasive, unsupported, and each without merit. The Commission has the authority under the Coastal Act and Coastal Act Regulations to condition the Project in a manner that allows Cal-Am to start

⁹ Moreover, in determining what is a "reasonable time" for public review and comment, deference must be given to the Commission's interpretation of its own regulations. (*Ross, supra*, 199 Cal.App.4th at 938.) As such, the Commission has wide latitude to determine whether a 13-day public review and comment period is reasonable.

¹⁰ MCWD also cites to *Joy Road Area Forest and Watershed Assn. v. Cal. Dept. of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656. (MCWD Letter at 12.) However, similar to *Ultramar*, *Joy Road* did not involve an express grant of power (i.e., Public Resources Code section 21174) or a certified regulatory program that deviates from the 30-day notice period for EIRs. (*Ross, supra*, 199 Cal.App.4th at 937.)

¹¹ The state, acting through the SLC, may lease tidelands and submerged lands under terms and conditions it determines to be in the best interests of the state. (*Western Oil & Gas Assn. v. State Lands Com.* (1980) 105 Cal.App.3d 554, 563 [citing Pub. Resources Code §§ 6301, 6501.1].)

construction in those areas of the Project site not subject to SLC jurisdiction, and that requires Cal-Am to provide proof of the SLC's lease approval before construction can extend beneath state tidelands. (See Pub. Resources Code § 30607 [Commission can impose reasonable terms and conditions on CDP].)

1. Coastal Act Section 30601.5 Does Not Restrict the Commission from Approving the Project Prior to the SLC's Approval of a Lease

MCWD cites to Coastal Act section 30601.5 to support its claim that the Commission has no authority to issue a CDP until the applicant demonstrates it has a legal interest to use the property. However, that section of the Coastal Act merely states, in relevant part, that "prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval." (Pub. Resources Code § 30601.5.) In contrast to MCWD's assertion, Coastal Act section 30601.5 does not state that prior to issuance of a CDP, the applicant must demonstrate that it has a legal interest to use the property.

Indeed, although the Commission often requires applicants to demonstrate that state or local government entities have granted "at a minimum their preliminary approvals for said development," the Executive Director has the ability to waive the requirement for preliminary approvals where the "project is for a public purpose." (14 Cal. Code Regs., §§ 13052, 13053(a)(1).) Here, the Staff Report acknowledges that the Project has a substantial public purpose: to evaluate the feasibility of slant wells for a potential desalination facility that could result in the reduction of water withdrawals from the Carmel River, benefitting the watershed as well as the federally-listed Central Coast steelhead. (Staff Report at 58.) Accordingly, to enable the expeditious construction of this important Project, the Staff Report is not requiring that the SLC approve a lease prior to issuance of the CDP. By requiring Cal-Am to demonstrate to the Commission that the SLC has approved a lease prior to construction activities extending beneath state tidelands, the Executive Director has waived the requirement for preliminary approvals to be obtained prior to issuance of the CDP, in accordance with his authority pursuant to Coastal Act Regulations section 13053(a)(1).

In imposing conditions of approval on development, the Commission has broad discretion under the Coastal Act and Coastal Act Regulations to establish timing requirements for condition compliance. The Commission can impose conditions that must be satisfied at any time during the life of a project, whether that is during construction and/or operation of a project, prior to the commencement of construction, or even prior to the issuance of the CDP. The Coastal Act Regulations require that any "prior to issuance" conditions (i.e., "conditions that are identified in the permit as conditions that must be completed prior to the issuance of a permit") must be satisfied before the Commission issues a CDP. (14 Cal. Code Regs., § 13158(e).) Here, Commission staff has proposed a condition requiring that Cal-Am demonstrate to the Executive Director that Cal-Am has obtained a lease from the SLC before Cal-Am commences construction beneath state tidelands. Staff is not proposing that Cal-Am demonstrate to the Commission that Cal-Am has obtained a lease from the SLC prior to issuance of the permit. This recommendation, and the Commission's approval of staff's proposed condition, is well within the Commission's authority under the Coastal Act and the Coastal Act Regulations, and is entitled to deference. (See *Reddell v. Cal. Coastal Com.* (2008) 180 Cal.App.4th 956, 965 [deference to the Commission is appropriate because it "possess[es] special familiarity" with the

Coastal Act].) Accordingly, MCWD's argument that the Commission cannot issue a permit prior to the SLC's approval of a lease is without merit.

2. MCWD's Assertions Regarding the Staff Report's Analysis and the SLC's CEQA Review of the Project Are Without Merit

MCWD also argues that the Staff Report's analysis is faulty and lacks substantial evidence because the Staff Report states that Cal-Am expects its lease application to be heard at the SLC in December 2014, and the SLC has not yet completed any review under CEQA. Such a statement in no way renders the Staff Report "faulty," since the date of the SLC hearing on Cal-Am's lease application is irrelevant. All that matters is that prior to commencement of construction beneath state tidelands, Cal-Am must provide to the Executive Director a copy of an approved lease from the SLC. (Staff Report, Condition 1.c.) The Staff Report's imposition of this condition is perfectly reasonable under the circumstances.

In addition, without citing any rationale or evidence to support its argument, MCWD asserts that the SLC cannot rely on CEQA Guidelines section 15253(b) and use the Commission's Staff Report as its environmental document in approving a lease for the Project. MCWD claims that the SLC had previously stated its intent to rely on the City's environmental document for its consideration of Cal-Am's Project, and MCWD cited to an exhibit to its letter to support this claim. (MCWD Letter at 14, Exhibit E.) Notably, the exhibit cited in MCWD's letter *has absolutely nothing to do with Cal-Am's Project*, and instead concerns a proposed project in Seal Beach, approximately 300 miles away. MCWD's argument, and its cite to a letter concerning a Seal Beach project, has no impact on how the SLC plans to handle CEQA compliance for the proposed Project's lease.

Section 15253(b) of the CEQA Guidelines establishes several conditions, which, if satisfied, require a public agency to act as a responsible agency and use the environmental document prepared by an agency that operates under a certified regulatory program. MCWD asserts that those conditions are not present here, but cites no evidence in support of that assertion. To that end, the Coastal Commission's hearing regarding the Project is not the correct forum to make such a claim, because the Commission is acting as the lead agency under its certified regulatory program authority in its consideration of the Project. When the SLC prepares to take action on the Project, it will review the Commission's Staff Report, its own record, and the evidence in the Commission's record, and independently determine whether the section 15253(b) conditions have been met. If the SLC determines those conditions have been met, it must use the Commission's Staff Report as its CEQA document when it decides whether to approve the lease for the Project. (14 Cal. Code Regs., § 15253(b).) If the SLC determines that those conditions have not been met, the SLC will have to "comply with CEQA in the normal manner." (*Id.* § 15253(c)(2).)

3. MCWD's Additional CEQA Arguments Are Baseless

MCWD also argues that if the Commission allows Project construction to occur without prior approval from the SLC, the SLC will be "essentially precommitted to approving the project in the location and manner proposed, even before it has had the opportunity to complete the CEQA process." (MCWD Letter at 15.) Citing to *Save Tara v City of West Hollywood* (2008)

45 Cal.4th 116, MCWD argues that the SLC will feel that it *must* approve the Project because a portion of it is already under construction. MCWD's claim is preposterous.

Under *Save Tara*, an agency may not commit itself to a "definite course of action" regarding a project before fully evaluating its environmental effects. (*Save Tara, supra*, 45 Cal.4th at 142.) Courts look "to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project." (*Id.* at 139.)

The SLC has not committed to anything with respect to the Project, and MCWD's citation to *Save Tara* is inapplicable. MCWD discredits and marginalizes the SLC's authority and discretion under the Public Resources Code to approve leases on or under state tidelands. The SLC is an independent state agency and will undertake what CEQA review it believes is necessary before taking action on the Project. MCWD's accusation is baseless and insulting to both the SLC and its staff.

Finally, MCWD states that if the SLC does not approve the Project, "land-side impacts of the Project will occur for no purpose." (MCWD Letter at 15.) MCWD asserts that the Commission must consider the environmental impacts of such an outcome. But the Commission has already built special conditions into the CDP that would apply even if the SLC does not approve a lease. Commission Staff has proposed 17 special conditions for the Project, including, but not limited to (a) the preparation of an erosion control plan to protect water quality (Special Condition 4); (b) the preparation of a hazardous materials spill prevention and response plan (Special Condition 5); (c) monitoring of beach erosion during the entire duration of the Project (Special Condition 6); (d) preparation of a lighting plan (Special Condition 10); (e) various measures to protect biological resources (Special Conditions 12 through 16); and most significantly here, (f) a limitation requiring that Project-related construction occur *outside* the Western Snowy Plover nesting season, which runs from February 28 to October 1 each year (Special Condition 3.b.) In essence, this means that Project-related construction can only occur during five months of the year, *whether or not the SLC approves a lease for the Project.*

The Project has been conditioned so that Cal-Am can proceed with construction during a limited construction window, but not construct on state tidelands if the SLC has not yet approved a lease. If the SLC approves a lease, construction in the area governed by the lease would be allowed to proceed, but only during the limited construction window permitted under Special Condition 3.b. Accordingly, even if SLC approves a lease, if Cal-Am has not completed construction prior to the end of February, construction activities would be required to "cease mid-year." That does not mean that Cal-Am would abandon the Project. Cal-Am would be required to continue to comply with the remainder of the Special Conditions, all of which serve to protect against potential environmental impacts and impacts to coastal resources. As such, whether SLC approves the lease or not, measures will be in place that protect the environment and coastal resources during any cessation of Project-related construction activities. Therefore, MCWD's argument that the Commission has failed to consider impacts if Project construction "cease[s] mid-year" is without merit.

MCWD also cites to *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412 in an attempt to support its argument. That case is inapposite here and MCWD quotes it out of context. In *Vineyard*, petitioners alleged that an EIR failed to adequately identify and evaluate future water sources for a development. The Court found that while the EIR adequately informed decision makers and the public of a plan for *near-term* provision of water to the development, it failed to do so as to the *long-term* provision and hence failed to disclose the impacts of providing the necessary supplies in the long term. While the EIR identified the intended water sources in general terms, it did not clearly and coherently explain how the long-term demand was likely to be met with those sources, the environmental impacts of exploiting those sources, and how those impacts were to be mitigated. The Court stated:

The ultimate question under CEQA, moreover, is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project. If the uncertainties inherent in long-term land use and water planning make it impossible to confidently identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.

(*Id.* at 434.) The concerns raised in *Vineyard* are not implicated here. First, the Project is only a test slant well project that will be used to determine the feasibility of using this type of well for a future desalination facility. The Project is not a large development required to study how water will be supplied to it on a long-term basis. As such, *Vineyard* is factually inapplicable. In addition, there is no “uncertainty” here. As described above, even if construction is halted due to the SLC’s failure to approve a lease or the beginning of the snowy plover’s nesting season (and construction has not been completed), mitigation measures (including the Commission’s Special Conditions) will be required to be implemented during the period of time the Project is idle. As such, the Staff Report addresses reasonably foreseeable impacts of Project construction and there are no uncertainties that are not disclosed.

Significantly, all of MCWD’s arguments concerning the SLC lease ignore that the test well Project is temporary in nature and will not result in long-term impacts to the environment. The Project is proposed as a two-year test well project, and the Commission has imposed a special condition requiring that “[u]pon project completion, and no later than February 28, 2018, the Permittee shall cut off, cap, and bury the slant well head at least 40 feet below the ground surface, and shall completely remove all other temporary facilities approved by this coastal development permit.” (Staff Report, Special Condition 6.) As such, even if the SLC does not approve the lease, the Commission has established a finite time period for the Project that requires virtually all Project components to be removed from the site within two years – regardless of whether the Project ever operates. In sum, MCWD’s claims about potential impacts and issues resulting from the SLC’s potential denial of the Project are just hyperbole.

G. The Commission Has Identified Feasible Mitigation for the Project's Potential Environmental Impacts

MCWD wrongly asserts that the Project's mitigation and conditions are inadequate and unsupported. MCWD's Letter relies on selective quotes and misreadings of the important Special Conditions recommended in the Staff Report. These Special Conditions require Cal-Am to take specific measures to ensure that potential adverse environmental impacts are adequately mitigated, and support a finding by the Commission that impacts will be mitigated or avoided.

MCWD falsely claims that no protections are adopted for the California legless lizard and coast horned lizard. Based on site-specific biological studies, Cal-Am has developed and agreed to implement measures specifically designed to avoid impacts to these species. In particular, MM BIO-2(d) provides that pre-construction surveys shall be conducted for California legless lizard and coast horned lizard prior to disturbance of any suitable habitat. (Staff Report at Ex. 5, p. 5.) This measure has been incorporated by Cal-Am as part of its proposed Project. (See Staff Report at 58.)

MCWD also argues that the Staff Report relies on Special Conditions that need not be approved or implemented prior to construction. However, MCWD relies on selective quotes and paraphrasing that omits key language from the Special Conditions it claims are inadequate, when the full language of the Special Conditions demonstrates that MCWD's assertions are baseless. For example, MCWD claims that "nothing" in Special Condition 4, which requires the preparation of an erosion control plan, requires that the plan be "reviewed, approved, or implemented before major construction begins." (MCWD Letter at 17.) In reality, Special Condition 4 states:

4. Protection of Water Quality. ***PRIOR TO COMMENCEMENT OF CONSTRUCTION***, the Permittee shall submit an erosion control plan for Executive Director ***review and approval***. The Plan shall include a schedule for the completion of erosion- and sediment control structures, which ***ensures that all such erosion-control structures are in place by mid-November of the year that construction begins and maintained thereafter***. The plan shall identify standard Best Management Practices to be implemented to address both temporary and permanent measures to control erosion and reduce sedimentation. Site monitoring by the applicant's erosion-control specialist shall be undertaken and a followup report shall be prepared that documents the progress and/or completion of required erosion-control measures ***both during and after construction and decommissioning activities***. No synthetic plastic mesh products shall be used in any erosion control materials. ***All plans shall show that sedimentation and erosion control measures are installed prior to any other ground disturbing work.***

(Staff Report at 9-10 [emphasis added].) The plain language of Special Condition 4 expressly requires that the erosion control plan be submitted "for Executive Director review and approval"

before construction commences, and further “ensures that erosion-control structures are in place by mid-November of the year that construction begins and maintained thereafter.” Therefore, in direct contrast to MCWD’s claims, Special Condition 4 adequately ensures that the erosion control plan will be “reviewed, approved, or implemented before major construction begins.”

Likewise, MCWD also misrepresents the plain language of Special Conditions 5, 10,¹² and 15. Contrary to MCWD’s assertions, all of these plans (i.e., the Lighting Plan, Hazardous Materials Spill Prevention and Response Plan, and Restoration Plan) require review, approval, and implementation, and must be in place prior to construction or permit issuance, as applicable. (See Staff Report at 10-15.) For example, Special Condition 5 requires that, “PRIOR TO COMMENCEMENT OF CONSTRUCTION,” Cal-Am must submit “for Executive Director review and approval” a Hazardous Materials Spill Prevention and Response Plan, which Cal-Am must “implement. . . as approved by the Executive Director.” (*Id.* at 10.) Similarly, Special Condition 10 requires Cal-Am to submit, “PRIOR TO PERMIT ISSUANCE,” a Lighting Plan, and requires Cal-Am to implement the Lighting Plan as approved by the Executive Director. (*Id.* at 12.) Finally, Special Condition 15 specifically states that Cal-Am “shall implement [a Restoration] Plan: (1) during and immediately following construction and prior to operation of the test well, and (2) during and immediately following decommissioning activities.” (*Id.* at 15.)

MCWD also argues that certain Special Conditions or mitigation measures cannot feasibly be completed in the proposed timeframe, such as the erosion control plan required by Special Condition 4. There is simply no evidence to support MCWD’s assumption that erosion control measures could not be implemented prior to Project construction. If Special Condition 4 is approved by the Commission, Cal-Am must comply with its requirements, and will ensure that erosion control measures are installed within the required timeframe.

MCWD also takes issue with the incorporation of the mitigation measures set forth in Exhibit 5 as project features. As described in the Staff Report, based on site-specific biological studies, Cal-Am and City of Marina staff developed a number of mitigation measures meant to avoid and minimize potential impacts to coastal resources. Cal-Am has appropriately incorporated several of these measures as part of its project. (See Staff Report at 58, Ex. 5.) Nonetheless, MCWD argues that the incorporation of these measures into the project description—which were carefully developed to reduce or avoid environmental impacts—is improper. To the contrary, CEQA Guidelines Sections 15070(b)(1) and 15126.4(a)(1)(A) specifically permit the incorporation of project design features designed to reduce potential adverse impacts. (See also *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329; *Citizens for Environmental Responsibility v. California*, 2014 Cal.App. LEXIS 283 (Cal. Ct. App. Mar. 26, 2014).) If the Project is approved by the Commission, each of the mitigation measures will become mandatory

¹² MCWD’s Letter refers to “Special Condition 6,” but references a Special Condition that requires the preparation of a Lighting Plan. Special Condition 6 relates to the monitoring and removal of temporary structures, well head burial, and well closure/destruction. (Staff Report at 11.) Therefore, it appears that MCWD intended to refer to Special Condition 10, which requires the preparation of a Lighting Plan prior to permit issuance. (*Id.* at 12-13.)

elements of the project that must be implemented. Therefore, their incorporation into the project description is appropriate and permissible.¹³

Finally, MCWD contends that Special Condition 14, which requires pre-construction surveys for special-status species and wintering snowy plover activity, as well as buffers around suitable habitat or snowy plover nests, results in improper deferral of mitigation. However, requiring precise surveys of special-status species just prior to Project construction—when accurate locations can be identified—is not deferral of mitigation. This is a far more precise method of avoiding impacts to special status species than basing avoidance measures on surveys taken months in advance of construction. The CEQA Guidelines expressly acknowledge that mitigation measures may specify performance standards for mitigating a significant impact that might be accomplished in various ways, and that identifying such performance standards does not constitute deferral. (See CEQA Guidelines § 15126.4(a)(1)(B) [“Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.”].) For example, in *Sacramento Old City Association v. City Council* (1991) 229 Cal.App.3d 1011, the court held that an agency may defer committing to specific mitigation measures when it approves a project if the measures that will be considered subsequently are described and performance criteria are identified. (*Id.* at 1029 [acknowledging that when it is known that mitigation is feasible, but it is impractical to devise specific mitigation measures during the planning process, “the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval.”].)

Here, Special Condition 14 sets forth specific performance criteria for the required biological surveys and buffer and avoidance measures by requiring that, if any active nests are found, avoidance buffers will be established, and a biologist shall coordinate with Cal-Am staff to guide access and activities to avoid impacts to nesting plovers.¹⁴ (Staff Report at 14-15.)

¹³ MCWD also erroneously suggests that certain mitigation measures would require monitoring by the City. To the contrary, monitoring for biological mitigation measures would be conducted by the Project biologist, who would report to the Commission.

¹⁴ Specifically, with respect to the snowy plover, Special Condition 14 requires that: “(a) No more than 14 days before the start of onsite activities or any activities planned for areas previously undisturbed by project activities, the biologist(s) shall conduct a field evaluation of the nature and extent of wintering Western Snowy Plover activity in the project area and shall identify measures needed to ensure construction activities minimize potential effects to the species. Those measures shall be submitted for Executive Director review and approval at least five days before the start of construction activities. The Permittee shall implement the measures as approved by the Executive Director.”; “(b) “Prior to construction or activities planned for areas previously undisturbed by project activities, the approved biologist(s) shall coordinate with construction crews to identify and mark the boundaries of project disturbance, locations of special-status species and suitable habitat, avoidance areas, and access routes. . .”; and “(d) At least once per week during the project operational phase between March 1 and October 1 of any year, the approved biologist(s) shall monitor plover nesting within 500 feet of project activities. If active plover nests are located within 250 feet of the project or access routes, avoidance

Therefore, because it is too early in the planning process to know where wintering snowy plover activity or snowy plover nests may be located at the start of on-site activities, and because specific performance standards are required, Special Condition 14 does not improperly defer the formulation of mitigation for biological impacts.

H. Recirculation of the Staff Report Is Not Required

MCWD asserts that the Commission's certified regulatory program is subject to Public Resources Code section 21092.1, which requires recirculation of an EIR when "significant new information" is added to the EIR after its original release for public review. MCWD's arguments are again misplaced. MCWD cites to no authority holding that CEQA's recirculation provisions even apply to the Coastal Commission's certified regulatory program.

Even if those provisions did apply, which they do not, the CEQA Guidelines describe the types of "significant new information" requiring recirculation of a draft EIR:

These include disclosure of "[a] new significant environmental impact," "[a] substantial increase in the severity of an environmental impact," and the addition of a "feasible project alternative or mitigation measure considerably different from the others previously analyzed." (Guidelines, § 15088.5, subd. (a)(1)–(3).) The Guidelines state that "[n]ew information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect" (Guidelines, § 15088.5, subd. (a).)

(Citizens for a Sustainable Treasure Island v. City and County of San Francisco (2014) 227 Cal.App.4th 1036, 1063.)

As described above, MCWD has not and cannot point to any "new significant environmental impacts" or "substantial increases in the severity of an environmental impact" that would require recirculation. Moreover, MCWD has not and cannot point to any feasible alternative or mitigation measures considerably different than the others analyzed in the Staff Report, and which Cal-Am or the Commission declines to adopt. In sum, MCWD cannot show that the test for recirculation is satisfied here and recirculation of the Staff Report is neither necessary nor required.

buffers shall be established to minimize potential disturbance of nesting activity, and the biologist shall coordinate with and accompany the Permittee's operational staff as necessary during the nesting season to guide access and activities to avoid impacts to nesting plovers. The biologist shall contact the USFWS and CDFW immediately if a nest is found in areas near the wellhead that could be affected by project operations. Operations shall be immediately suspended until the Permittee submits to the Executive Director written authorization to proceed from the USFWS." (Staff Report at 14-15.)

Luster, Tom@Coastal

From: Val Wood <VWood@rmmenvirolaw.com>
Sent: Friday, November 07, 2014 12:56 PM
To: Luster, Tom@Coastal; Craig, Susan@Coastal
Cc: Howard Wilkins III; Jennifer Holman
Subject: Appeal No. A-3-MRA-14-0050
Attachments: Coastal Commission Letter Exhibit C (00274547xB0A85).pdf; Coastal Commission Letter Exhibit A (00274545xB0A85).pdf; Coastal Commission Letter Exhibit B (00274546xB0A85).pdf; Coastal Commission Letter Exhibit G (00274550xB0A85).pdf; Coastal Commission Letter Exhibit D (00274548xB0A85).pdf; Coastal Commission Letter Exhibit E (00274549xB0A85).pdf; Coastal Commission Letter Exhibit F (00274551xB0A85).pdf; Coastal Commission Letter Exhibit E (00274549xB0A85).pdf; California Coastal Commission Letter re. Appeal No. A-3-MRA-14-0050 (00274552xB0A85).pdf

Please see attached. If you have any problems opening these, please let us know.
Hard copies to be sent in US Mail today.
Thank you.
Val.

Regards,

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October 30, 2014

VIA ELECTRONIC MAIL & US MAIL

Susan Craig
Central Coast District Manager
California Coastal Commission
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Re: Appeal by California-American Water Company from September 4, 2014 City of
Marina Action on Coastal Development Permit 2012-05

Dear Ms. Craig,

I am writing on behalf of our client, the Marina Coast Water District, in regards to California-American Water Company's (Cal-Am's) attempt to appeal from the City of Marina's California Environmental Quality Act (CEQA) determination. The City of Marina denied "without prejudice" Cal-Am's proposed project because it concluded that the Initial Study and Mitigated Negative Declaration for the California-American Slant Well Project prepared pursuant to the CEQA was not adequate. Cal-Am appeals from that decision.

There are no grounds for appeal at this time. (*Kaczorowski v. Mendocino Cnty. Bd. of Supervisors* (2001) 88 Cal. App. 4th 564, 569 ["The only grounds for appeal are that the locally approved development does not conform to the standards of a certified LCP or the Coastal Act's access policies. (§ 30603, subd. (b)(1))"]; see also *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 272 ["Once the Coastal Commission has certified the local coastal plan 'as conforming to the policies of the Coastal Act, review authority for development within that portion of the coastal zone passes to the local government.'"]) The City has not acted on Cal-Am's proposed slant test well pursuant to its certified local coastal program (LCP). The City merely denied a permit for the well "without prejudice" pending adequate environmental review. The City ought to be given an opportunity to act on the proposal once an adequate environmental document has been prepared and certified or adopted.

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 2

For this reason, the Coastal Commission ought not to countenance Cal-Am's attempts to leap frog over the City. Such leap-frogging is an anathema to the entire design of the Coastal Act, which contemplates that the City has primary jurisdiction to implement its LCP once the program has been certified by the Commission. (See *Sierra Club v. California Coastal Commission* (2005) 35 Cal.4th 839, 855 fn. 11 ["Coastal Act contains "[p]rovisions for ... the transfer of coastal management responsibilities back to local government [that would] alleviate [] previous problems regarding local control in the planning process".].)

In fact, as I explain below, absent the City's "denial" of the permit under the LCP, the Commission has no *jurisdiction* to hear Cal-Am's appeal. There is simply nothing to appeal. In the parlance of the Commission's regulations, there is no "significant question" as to the proposal's "conformity" with the City's "certified local coastal program" at this time. (Cal. Code Regs., tit. 14, § 13115; accord Pub. Res. Code, § 30625, subd. (b)(2); see also *Hines v. California Coastal Commission* (2010) 186 Cal.App.4th 830, 849 ["A substantial issue is defined as one that presents a 'significant question' as to conformity with the certified local coastal program."].)

A. There Is No "Denial" of the Permit Under the LCP to Support Jurisdiction for an Appeal.

On September 4, 2014, the City declined to issue a coastal development permit to Cal-Am for its proposed facilities. In Resolution No. 2014-103, the City explained that it could not issue a coastal development permit to Cal-Am at that time because environmental review for the project was inadequate:

Based upon the substantial evidence in light of the whole record before the City of Marina, the City Council is unable to find that the project will not have significant effect on the environment.

[¶]

Based upon the above conclusions regarding [the California Environmental Quality Act (CEQA)], the City is unable to approve the Project and therefore denies the Project without prejudice to reconsideration as such time as the appropriate CEQA review is completed.

(Resolution No. 2014-103, dated September 4, 2014, pp. 2-3.) Thus, the City denied the application for a coastal development permit *without prejudice* on the grounds that further environmental review was required *under CEQA*. The Commission's appellate jurisdiction does not extend to a review of a local lead agency's CEQA determinations:

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 3

were it determined that the Commission's finding of no substantial issue constituted an approval of the project within the meaning of CEQA, the Commission still would have been limited to reviewing the conformity of the local government's actions to the certified Local Coastal Program or to the public access policies of the Coastal Act. (§ 30603, subd. (b)(1).) The Coastal Commission lacks jurisdiction to review a local government's compliance with CEQA.

(*Hines, supra*, 186 Cal.App.4th at p. 852, emphasis added.)

Thus, the City should be afforded the opportunity to consider the project on the merits once adequate environmental review has been completed—in as much as the City is the agency with primary authority to issue coastal development permits within the jurisdiction of its land use plan.¹

Through its appeal, Cal-Am asks the Commission to trespass into the City's primary jurisdiction, in effect leapfrogging over it; the Commission should decline to do so. As the Commission acknowledged in *Sierra Club, supra*, 35 Cal.4th at p. 855, it has specific, defined jurisdiction under the Coastal Act. (See also *Burke v. California Coastal Commission* (2008) 168 Cal. App. 4th 1098, 1106 ["courts do not defer to an agency's determination when deciding whether the agency's action lies within the scope of authority delegated to it by the Legislature"].) At issue here is the City's authority to implement its land use plan.

The Coastal Act contemplates that local agencies will be charged with the primary responsibility for implementing the Coastal Act. (Pub. Resources Code, § 30519, subd. (a) ["after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review ... shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program ... applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof."]; see also *Kaczorowski, supra*, 88 Cal.App.4th at p. 569, ["[a]uthority for ensuring compliance with a certified LCP is delegated by the

¹ In its appeal, Cal-Am makes much of the fact that the City's staff recommended that the City find conformity with the Local Coastal Program. (See Cal-Am Appeal, Attachment 2, pp. 4-5.) Staff's recommendation is not a final action supporting appellate review. The City Council has not yet reached the matter, having found the CEQA document inadequate. Cal-Am simply has not exhausted all of its remedies before seeking appeal to the Commission. (Cal. Code Regs. tit. 14, § 13114 [appellate review is proper only after the "appellant has exhausted local appeals" and then only "after the local decision has become final"].) Here, again, there was no final action taken on the permit under the City's certified LCP. The only final decision, if any, was taken on the environmental document, which was deemed inadequate.

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 4

Commission to the unit of local government responsible for implementing the LCP”]; *Sierra Club, supra*, 35 Cal.4th at p. 855, fn. 11 [“Coastal Act contains “[p]rovisions for ... the transfer of coastal management responsibilities back to local government [that would] alleviate [] previous problems regarding local control in the planning process”].) Thus, once the Commission certifies an LCP, “[d]evelopment review authority can no longer be exercised by the Coastal Commission” and is “delegated to the local government that is implementing the local coastal program,” with limited rights of appeal to the Coastal Commission. (*City of Malibu v. California Coastal Commission* (2012) 206 Cal.App.4th 549, 563.) “Thus, after certification of a local coastal program, issuance of coastal development permits is the purview of the local government, not the Coastal Commission. And, after certification of an LCP, the Coastal Act mandates—with the singular, narrow exception delineated in the section 30515 override provision—local control over changes to a local government’s land use policies and development standards.” (*Id.* at p. 556.)

Here, Cal-Am has sought to appeal the City’s denial of its coastal development permit under Public Resources Code section 30603, subdivision (b)(5). That provision does not authorize the Commission to wholesale review a local agency’s exercise of its land-use authority or its implementation of CEQA. Rather, it is expressly limited to appeals from determinations under the Coastal Act:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: [¶]

(5) Any development which constitutes a major public works project or a major energy facility.

(b) [¶] (2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.

(Pub. Res. Code, § 30603, subds. (a)(5), (b)(2), emphasis added; see also *Kaczorowski, supra*, 88 Cal.App.4th at p. 569 [“The only grounds for appeal are that the locally approved development does not conform to the standards of a certified LCP or the Coastal Act’s access policies. (§ 30603, subd. (b)(1))”]; *McAllister, supra*, 147 Cal.App.4th at p. 272 [“Once the Coastal Commission has certified the local coastal plan “as conforming to the policies of the Coastal Act, review authority for development within that portion of the coastal zone passes to the local government.”].)

Section 30603 can only be read as a limitation on the Commission’s appellate jurisdiction to appeals from implementation of the LCP. Any other reading would allow the Commission to trump a local agency’s land use and regulatory actions simply by

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 5

finding that the proposed activity “conforms” with the LCP. The Commission should decline to set such a precedent.

The court’s holding in *Security Nat. Guar., Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 419, affirms this narrow reading of the Commission’s appellate jurisdiction. The court explained that just because “an agency has been granted some authority to act within a given area does not mean that it enjoys plenary authority to act in that area.” Thus, “if the Commission takes action that is inconsistent with, or that simply is not authorized by, the Coastal Act, then its action is void.” (*Ibid.*) In the context of appeals under the Coastal Act, the court explained:

Once the LCP is certified, “the Commission’s role in the permit process for coastal development [is] to hear appeals from decisions by [the local government] to grant or deny permits.” (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1354, fn. 5, 56 Cal.Rptr.3d 591, citing § 30603.) The Commission’s jurisdiction in such appeals, however, is limited. (*City of Half Moon Bay v. Superior Court* (2003) 106 Cal.App.4th 795, 804, 131 Cal.Rptr.2d 213.) As relevant here, the Coastal Act limits the grounds for a CDP appeal “to an allegation that the development does not conform to the standards set forth *in the certified local coastal program*” (§ 30603, subd. (b)(1), italics added.)

(*Id.* at p. 421.)

In sum, the City has not “denied” the permit for a slant test well under the provisions of the LCP. It simply found that the Initial Study and Mitigated Negative Declaration for the California-American Slant Well Project to be inadequate under CEQA. There is therefore no denial upon which to support jurisdiction to support the Commission’s hearing of an appeal.

B. Jurisdiction Over Part of the Project Does Not Convey Jurisdiction Over the Entire Project.

Cal-Am may argue before the Coastal Commission, as it has elsewhere, that because the Commission has primary jurisdiction over elements of the slant test well that are sited below the mean high tide line, it can simply exercise jurisdiction over the entire project. Under this theory, the Commission can remedy any problems that might have occurred during the City’s environmental review during the implementation of its certified regulatory program. In other proceedings, Cal-am has cited *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 271-272, for this proposition.

But the fact the Commission has primary jurisdiction over part of the project’s water side elements under Public Resources Code section 30519, subdivision (b), in no way confers jurisdiction to the landside elements of the project under subdivision (a).

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 6

The Legislature expressly conferred the former on the Commission and the latter on local agencies. (See also *Sierra Club, supra*, 35 Cal.4th at p. 843 [recognizing that a grant of jurisdiction over part of a project does not confer jurisdiction to the Commission over the remainder of the project].) The only way in which the Coastal Act authorizes the Commission to act in such a manner is when both the local agency and the Commission expressly agree to such a consolidated procedure and determine that public participation would not be impaired by such a process:

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.

(Pub. Resources Code, § 30601.3.) That has not occurred here.

McAllister, supra, 147 Cal.App.4th 253, does not enlarge the jurisdictional reach of the Coastal Commission. In that case, *McAllister* objected to Monterey County's approval of a project, arguing that the project was inconsistent with the LCP and that the environmental review was inadequate. *McAllister* appealed the County's decision to the Commission. As provided by law, the Commission heard the appeal de novo (Cal. Code Regs., tit. 14, § 13115, subd. (b)), undertaking its own environmental review under CEQA, and ultimately denying the appeal. At trial, *McAllister* maintained his objections to the county's environmental review. The court concluded, however, that the county's environmental review was not subject to challenge because under de novo review the "County's CEQA decisions ... have been superseded by the Coastal Commission's environmental review." (*McAllister, supra*, 147 Cal.App.4th at p. 294.) The fact that the Commission can exercise de novo review once it has proper jurisdiction does not somehow give it plenary power to make the decision for the local agency in the first instance. (See, e.g., *Hines, supra*, 186 Cal.App.4th at p. 852 [explaining that the Commission may not hear an appeal of a local agency's CEQA determination; once the Commission has appellate jurisdiction, however, the Commission may undertake "de novo review" and prepare "the functional equivalent of an EIR under CEQA"].)

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 7

C. Cal-Am Proposes No Major Public Works Project; Accordingly, the Commission Lacks Jurisdiction.

Not only is there no final agency action sufficient to appeal at this time, the Commission lacks subject matter jurisdiction. Cal-Am proposes no "major public works project," and thus cannot seek an appeal with the Commission under Public Resources Code section 30603, subdivisions (a)(5) and (b)(2).

Cal-Am argues that this "test well" is a major public works project simply by virtue of the fact that it would cost more than \$100,000 to complete. (Cal. Code Regs. tit. 14, § 13012, subd. (a).) That provision requires more than the mere expenditure of funds or else it would encompass virtually all projects. It requires that the expenditure be for a "public works project." Under the Coastal Act, "Public Works" means "All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities." (Pub. Resources Code, § 30114, subd. (a).) The project here proposes none of those things.

The alleged sole purpose of the test slant well is to pump between 1,614 and 4,035 acre/feet of water from the ground per year, test it, and then discharge the water into the ocean. (See, e.g., IS/MND, p. 23.) Discharging groundwater in the ocean is not—in any evident way—a reasonable public use. The well is not proposed to serve anyone. Given this, there is no evidence that the test slant well is a public works project within the meaning of Public Resources Code section 30603, subdivisions (a)(5) and (b)(2).²

In an effort to attempt to "rig" the system, and subvert appropriate local environmental review, Cal-Am has always maintained that the "test slant well" is separate from its proposal to build a Water Supply Project in the future. In this way, it has argued that it need not disclose, even at the most basic levels, the foreseeable environmental impacts of the entire Water Supply Project as part of the environmental review for the test slant well. (See, e.g., IS/MND, p. 6 ["Because no long-term operations are proposed, the potential environmental effects of any long-term operations are not considered in this document."].) Here, Cal-Am maintains precisely the opposite, urging that the test slant well is an essential first phase for the overall Water Supply Project. On this basis, Cal-Am argues that its proposed test slant well—which in itself offers absolutely no public benefits—is in fact a "major public works project." Thus, according to Cal-Am, for the purposes of CEQA review at the City, the test slant well and the Water Supply Project

² In addition, the activity appears to be contrary to Monterey County Water Resources Act, which prohibits water from being exported outside the Salinas Valley Groundwater Basin. (Stats. 1990, ch.52, § 21, West's Ann. Cal. Wat.-Appen. (1990 ed.) ch. 1159 ["no groundwater from that basin may be exported for any use outside the basin"].)

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 8

are entirely separate actions;³ but for the purposes of appellate review here they are one in the same. Cal-Am cannot have it both ways: it should not be allowed to assert contrary positions in this manner in order to manipulate agencies and circumvent the law.

For all of these reasons, the Commission should find that, at this time, “no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.” (Pub. Res. Code, § 30625, subd. (b)(2); see also *Alberstone v. California Coastal Commission* (2008) 169 Cal. App. 4th 859, 863-864 [“It must first be noted that the question here is not whether appellants’ appeal raises any issue but whether it raises a *substantial one*. A substantial issue is defined as one that presents a “significant question” as to conformity with the certified local coastal program”], citing Cal. Code Regs., tit. 14, § 13115.) Of course, once adequate environmental review has been undertaken, and the City acts on the project and makes findings under its LCP, Cal-Am will have an opportunity to appeal to the Commission—if indeed it is dissatisfied with the manner in which the City has implemented the LCP at that time.

We therefore urge the Commission to conclude that there is no “significant question” as to the proposal’s “conformity” with the City’s “certified local coastal program” at this time. In this way, the City of Marina can complete its environmental review for the project and exercise its jurisdiction under the LCP.

³ Such a position is contrary to CEQA, which precludes segmentation of single project for the purposes of analysis. As the Supreme Court explained in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 (*Laurel Heights*), under CEQA an agency must analyze the effects of potential future development in its EIR if such development is: (1) “a reasonably foreseeable consequence of the initial project,” and (2) “will likely change the scope or nature of the initial project or its environmental effects.” (47 Cal.3d at 396.) In that case, the University of California San Francisco (UCSF) had purchased a 354,000 square foot building, but prepared an EIR only for the initial occupation of 100,000 square feet by the School of Pharmacy. (*Id.* at p. 393.) UCSF argued that its future plans to occupy the remainder of the building, not available for ten years, were speculative. (*Id.* at p. 394.) Like the applicant here, UCSF claimed that, because these plans required further approvals that would be evaluated in their own right, the agency could evaluate the impacts of the potential expansion at a later time. (*Ibid.*) The Supreme Court rejected this argument, finding that deferring environmental review to a later point, when “bureaucratic and financial momentum” would make it difficult to deny the expansion, violated CEQA. (*Id.* at pp. 395-96.)

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 9

I understand the staff report will be available soon. Please provide me with a copy of the staff report once it its available and a copy of all public notices issued by the Commission related to Cal-Am's proposal.

As a final matter, I note that the record of the City's actions provided by Cal-Am does not include the transcript of proceedings at the City Council on September 4, 2014. A copy of that transcript is attached.

Thank you for your consideration of these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard Wilkins III", written over a horizontal line.

Howard "Chip" Wilkins III

cc: Tom Luster, Environmental Scientist, CCC
tluster@coastal.ca.gov

Encl.

Exhibit B

TECHNICAL MEMORANDUM

To: Ian Crooks (CAW)
From: Makrom Shatila, P.E.
Date: October 7, 2014
Subject: Additional Documentation

JN: 136410

1. *Approximately how long will it take to construct the proposed test slant well and related facilities?*

The test slant well, twelve (12) monitoring wells, and associated facilities will require approximately 3½ months for construction, beginning November 17, 2014 and completing construction work on February 28, 2015. Construction operations will need to cease by February 28, 2015, due to environmental regulatory restrictions. The slant well drilling, installation, and development will take a majority of the 3½ months to complete. Well development will need to be completed approximately 3 weeks before February 28, 2015 so that the civil contractor can complete the well vault and final connection of the disposal pipeline. Although construction operations will cease on February 28, 2015, it is assumed that the electrical contractor will be able to continue working (pulling cable, connecting cables and control panels, programming, etc.), since this work does not require heavy equipment, only one or two pick-up trucks.

2. *Describe typical construction operations (e.g., how many men, type of equipment, and duration).*

Test Slant Well – To construct the test slant well the following personnel and equipment will be required. Given the minimal space at the well site, the construction activity will include continual movement of equipment and tooling from the staging area to the drill site and back when not needed.

Personnel / Equipment:

- 4-man crew per 12 hour shift, 2 shifts per day.
- DR-40 dual-rotary drill rig;
- Crane and winch truck;
- Truck mounted dog house;
- Forklift and backhoe;
- (2) Pickup trucks;

EXHIBIT 6

- (4) Laborers;
- Cat 225 Excavator;
- Cat 950 Loader;
- 4000 Gallon water truck;
- HDD rig and pipe trailer;
- (2) 10-wheel dump truck;
- (3) 1-Ton crew truck; and
- (2) Pick-up truck.

3. Describe the facilities CAW intends to construct on the respondents' property, including the test well head, underground vault, and any other facilities it intends to install.

Test Slant Well Vault – The test slant well head will be housed in an underground vault as shown in Figure 1 below. The vault is 16 feet long by 6 feet wide. The top of the vault will be completed at existing grade with the dirt access road. The vault will have a three (3) door hatch which is used to access the well pump (i.e. sampling) and also be able to remove the submersible pump, if needed. Ten inch and twelve inch discharge piping will be connected to the well head to dispose of the pumped seawater. The location of the test slant well vault is shown in Exhibit A.

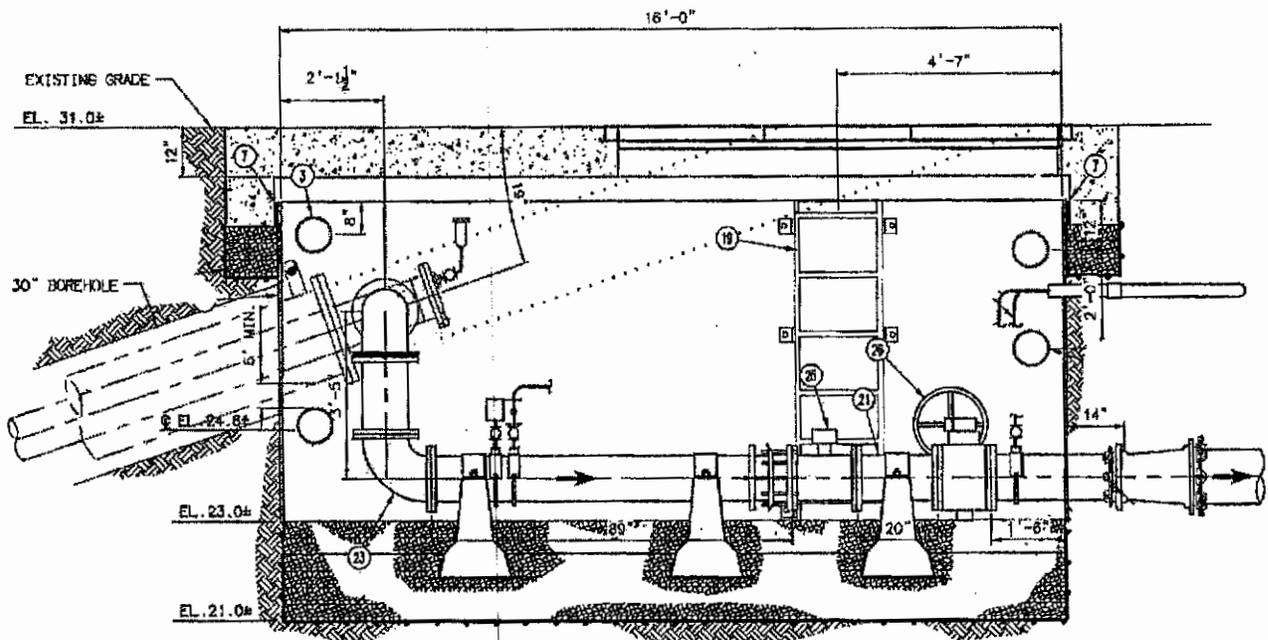


Figure 1: Test Slant Well Vault

Monitoring Wells – As part of the test slant well operations, twelve (12) monitoring wells will be located on the CEMEX site. The monitoring wells will be divided into four (4) clusters consisting of three (3) wells each, as shown in **Figure 3**. One cluster is just west of the test slant well site, south of the outfall easement. Another cluster is just east of the CEMEX buildings, south of the railroad tracks. And the other two clusters are along the dirt access road. The wells are to be located as close to the side of the dirt access road as possible. The four monitoring well cluster locations are shown in **Exhibit A**. Each well will be completed as a standpipe, as shown in **Figure 4**, for easy access to the transducers and to obtain water quality samples.

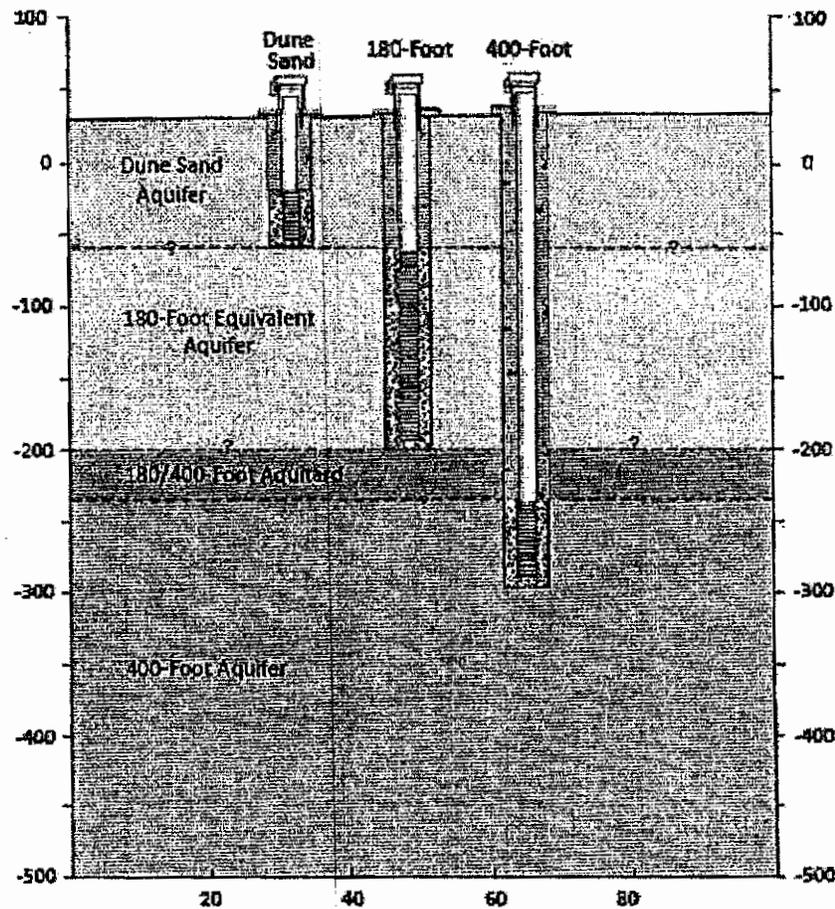


Figure 3: Monitoring Well Cluster (Typ. 4)

Electrical Equipment –

Electrical service needed to operate the test slant well and associated sampling and monitoring devices will be supplied from a new PG&E service pole connection on the CEMEX site. A new transformer will be provided as show in **Figure 6**. In addition a new concrete pad with an electric meter and switchboard will be located near the foot of the power pole as shown in **Figure 6**. The other electrical facilities that would be visible on the surface are four (4) electrical pull boxes that are required approximately every 500 feet to pull the electrical cable from the power source to the test slant well area. **Figure 5** below illustrates what a typical pull box looks like.

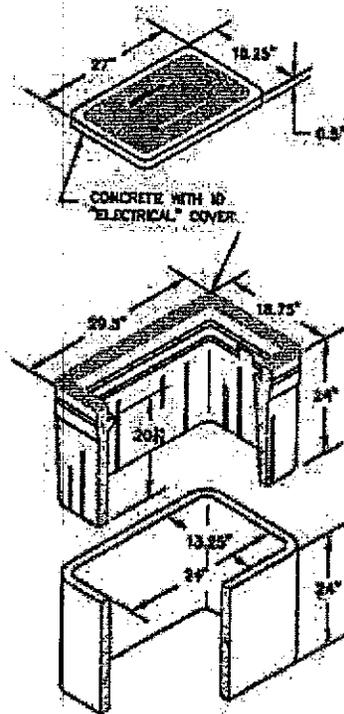


Figure 5: Electric Cable Pull Box (Typ. 4)

Water Quality Sampling and Test Well Control Panel(s) – The other items visible above ground is the sampling panel and control panel. The test slant well requires a control panel to easily operate the well, as shown in **Figure 7** below (right panel). As part of the 1-year water quality testing protocol, the water pumped from the test slant well will be continuously sampled and analyzed using a multi-parameter electrochemical optical water quality sampling system. The system will be mounted on a panel adjacent to the control panel as illustrated in **Figure 7** below (left panel). The two panels will be located behind the disposal pipeline valve vault, as shown in **Figure 7**, on the northerly end of the dirt access road, as illustrated in **Exhibit A**.

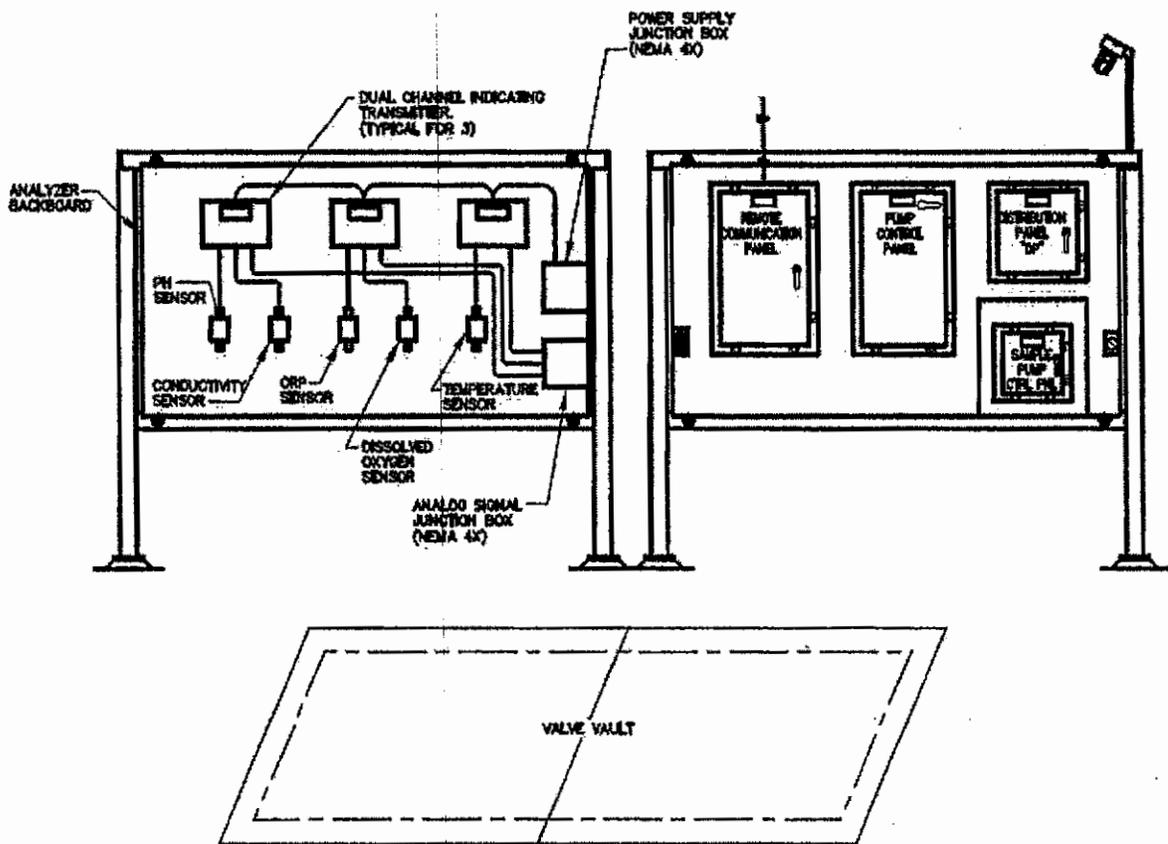


Figure 7: Water Quality Sampling and Control Panels and Location

Monitoring Wells – Well construction permitting is handled the same way for monitoring wells as for the test slant well. Prior to destruction, permits will be obtained from the Monterey County Department of Health. The monitoring well pads and monuments (standpipe) will be removed and the monitoring wells will be perforated and grouted in accordance with standards discussed above and under the oversight of the MCDH inspector. Should CEMEX desire that the 10-20 foot depth below ground surface be cleared of well casing and grout, the PVC casing will be over-drilled using a Hollow-Stem Auger Drilling rig and the upper portion of the excavation will be back-filled with native on-site material.

Civil Facilities (i.e. pipelines, electrical, vaults) – The civil structures including the test slant well vault, valve vault, disposal pipeline, electrical conduit, and pull boxes will be removed by a contractor once the testing period is complete. This work is anticipated to take approximately 1 month to complete assuming standard working days. The disposal pipeline connection to the outfall junction structure will be capped and remain in place (8 feet below ground surface). This connection is anticipated to be used again for the disposal of slant well development water for the full scale project. Once final well development is completed, it is anticipated that a new pressure manhole lid will be fabricated and installed.

Exhibit C



California American Water's Ongoing Borehole Investigation Shows Promising Results for Desalination Project

December 20, 2013 09:06 PM Eastern Standard Time

PACIFIC GROVE, Calif.--(BUSINESS WIRE)--Data being collected from California American Water's ongoing geotechnical borehole investigation shows promising results for the subsurface slant wells it has proposed for the Monterey Peninsula Water Supply Project's desalination plant. The company will post a work plan for the borehole and test well program on its project website, www.watersupplyproject.org. The plan is the result of numerous meetings and analysis by hydrogeologic experts assembled as part of the project's settlement agreement.

"These results are an important part of the hydrogeologic testing and modeling that Cal-Am is performing at the request of Salinas Valley agricultural interests."

Over the last four months, California American Water has drilled eight geotechnical boreholes in three areas along the Monterey coast in its study of preferred sites for a desalination plant subsurface intake. Borehole studies were conducted at Moss Landing, Potrero Road and further south down the coast at property owned by Cemex U.S, Inc.

Boreholes are used to collect deep soil samples to evaluate the geological and water quality aspects of subsurface soil layers. Two of the three sites – Potrero Road and Cemex properties – show highly favorable conditions for locating the subsurface slant wells. The Cemex boreholes indicated an almost continuous layer of sands and gravels to a depth of 240 feet. The Potrero Road boreholes revealed a thick layer of clay at a depth of approximately 140 feet, indicating a separation between the proposed ocean intake zone above from the lower aquifers also known as an aquitard.

"The results thus far are very promising," said California American Water Director of Engineering Rich Svindland. "At the northern site near Potrero Road, we have a nice, deep layer of sand filled with salt water with a well-formed aquitard below, which, if drawn from, would likely avoid impacts to the Salinas Basin. At the Cemex site we have a very thick sand layer below the ocean floor which will work nicely for the subsurface slant well sea water supply. Unfortunately, the Moss Landing sites have not been as promising. There we found intermittent clay layers mixed with silt and fine sand, without enough continuous sand layers to use any type of subsurface intake system efficiently."

The results were welcomed by the Monterey County Farm Bureau, which has been working closely with California American Water in its goal to protect the Salinas River basin.

"We are encouraged by these borehole drilling results, particularly at the Potrero Road site, indicating that the Salinas River groundwater basin may not incur harm from the source water intakes," said Norm Groot, Executive Director of the Monterey County Farm Bureau. "These results are an important part of the hydrogeologic testing and

Although Moss Landing was not one of California American Water's preferred intake locations, the company had agreed to drill boreholes there as part of a settlement agreement to study alternative sites proposed by private developers.

"We agreed to study Moss Landing because we wanted to conclusively demonstrate to the community we have explored all options in our quest for the best potential sites for this project," Svindland said. "Now that we have affirmed sufficient geological conditions, we will install a test slant well under the ocean floor to assure we have suitable water flow and quality for a fully operational desalination plant."

At the same time the test slant well is constructed, additional onshore monitoring wells will be drilled in and around the test slant well site to monitor the well's effects on surrounding groundwater aquifers. Data from the test slant well will provide detailed information on water quality conditions and flow rates at the site, which will be essential for the plant's final design. The North Marina Groundwater Model will be updated using the new data from exploratory borings, monitoring well data and test slant well testing. The updated model will then be used to evaluate future basin conditions in response to full-scale project operations.

"The borehole study so far, appears to clearly address the question of whether we can engineer and build this without impacting the deeper aquifers," said California American Water president Rob MacLean. "From the project's outset, we have been focused on the most expeditious path to regulatory approval and one that is most cost-effective for our customers. These results affirm what our initial studies had projected and should be welcome news to our customers and the area's farming interest whom we have worked very closely since we filed the project's application."

California American Water has proposed a variable sized desalination facility as part of its three-pronged project to address the Monterey Peninsula's impending water supply shortage. The proposal includes aquifer storage recovery and recycled water projects that are presently advancing in planning and development. The desalination facility, however, will be the primary water producer of the three and is an indispensable component of the proposal.

In proposing the facility, California American Water faced several potential legal and environmental roadblocks. The first was concern over environmental impacts to sea life, which the company addressed through a slant well design that will feed water to the plant using slant wells below the ocean floor, thereby avoiding the potential for biological entrainment all together.

The second largest obstacle was posed by agricultural interest over possible seawater intrusion into the Salinas Valley Aquifer, which is a major irrigation source for farmers. California American Water preliminary modeling showed they could potentially draw from the sea water zone above these deeper aquifers. Data from the borehole sites confirmed the anticipated geological conditions on which these findings were based and now provides field data and scientific conclusions that support the company's planned sites.

"The Salinas Valley Water Coalition is pleased that the technical team's work plan has been completed consistent with the settlement agreement," said Salinas Valley Water Coalition President Nancy Isakson. "The coalition relies on science and law as the foundation of their positions and we are pleased that our hydrologic consultants were part of the technical team preparing the work plan. This work plan is the basis by which the data and various hydro-investigations, including the test well results, will be analyzed in order for Cal-Am to prove no harm to the Salinas River Groundwater Basin and its water right holders. The boring's to date appear to be encouraging, but they are one tool in the suite of tools to prove no harm and we look forward to the final report and analyses."

The test well permit is pending review before the City of Marina. California American Water hopes to begin the construction of the well by December of 2014.

For more information on this and other news and updates about this project, please visit the project website at www.watersupplyproject.org.

California American Water's Ongoing Borehole Investigation Shows ... <http://www.businesswire.com/news/home/20131220006150/en/Califo...>

California American Water, a subsidiary of American Water Works Company, Inc. (NYSE:AWK), provides high-quality and reliable water and/or wastewater services to approximately 600,000 people.

Founded in 1886, American Water Works Company is the largest publicly traded U.S. water and wastewater utility company. With headquarters in Voorhees, N.J., the company employs approximately 6,700 dedicated professionals who provide drinking water, wastewater and other related services to an estimated 14 million people in more than 30 states, and parts of Canada. More information can be found by visiting www.amwater.com.

Contacts

California American Water

Catherine Stedman

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catherine.bowie@amwater.com

Exhibit D

Monterey Peninsula Water Supply Project

Progress Report

April 30, 2014



Tests Show Promise for Water Quality and Production

Over the past seven months, California American Water has completed 13 boreholes at sites in Marina, Moss Landing and in between. The boreholes will supply important data needed for the environmental review of the Monterey Peninsula Water Supply Project. The data will also be used to create simulated models that are being run to predict potential impacts, if any, to natural resources.

Boreholes are soil samples that are approximately six inches in diameter and 200 to 300 feet deep, depending on their location. In the course of drilling the boreholes, water quality samples are also taken. The make-up of the soil and water found beneath the surface will help determine if the sites being examined are conducive to directional well drilling, which is the preferred source water intake method for the desalination plant. The soil and water samples will also help determine the composition of existing subsurface conditions and aquifers.

The boreholes were drilled at three main locations – the Cemex property, the preferred project site; Potrero Road near Salinas River State Beach; and Del Mar Fisheries in Moss Landing. Favorable conditions were found at Cemex and Potrero Road. The ground beneath Moss Landing, however, presented a difficult environment for the construction of slant wells,

consisting of large layers of clay mixed with intermittent layers of sand and silt.

Preliminary results from the samples taken at Cemex show an adequately sized top layer aquifer, also called the Shallow Dunes Aquifer, to allow for slant wells to be constructed without going into lower aquifers, which are used for agricultural irrigation. The total dissolved solids found in the water indicate a heavy influence of ocean water, which is also favorable for the project. At Potrero Road, a clear division was found between the upper and lower aquifers that did not exist at the Cemex property. This creates a different, but also favorable environment for drilling. Water samples from the Potrero Road location also indicate a strong influence of ocean water.

In addition to the boreholes, the Monterey Peninsula Water Supply Project Governance Committee is currently examining the possibility of developing a second test well at Potrero Road.

A formal analysis of the borehole data will be released later this year. The City of Marina is currently reviewing California American Water's application to drill a test well at the Cemex site. Final permits from the City and the California Coastal Commission are expected in October, which would allow construction on a test slant well to begin in November of this year.



WE CARE ABOUT WATER. IT'S WHAT WE DO.

Desal Plant and Pipeline Facilities Progress

- The Basis of Design Report for the desalination facility is now complete and under review. Design is scheduled for 30% completion in June of this year and 60% completion in September.
- A value engineering session is planned for the last week of June to evaluate the desal plant design. This process is being led by the project's Governance Committee. Watch for updates on Governance Committee activities and meetings at www.mprwa.org/agenda/governance-committee-meetings.
- The pipeline design is nearly 50% complete, and coordination with local jurisdictions on pipeline routes and impacts continues.
- The terminal reservoir preliminary site layout is complete and will soon be submitted to the City of Seaside for review.

Financing Plan Advances

A public financing bill to fund a major portion of the desalination project took a step forward after being recently approved by the state's Senate Governance and Finance Committee. The bill still needs to be approved by an Assembly Committee before it goes to a full vote on the Senate floor.

The bill, introduced by Sen. Bill Monning last year, utilizes low-interest "water rate relief bonds," which promise to lower the total cost of the water supply project by nearly \$100 million. The bill authorizes the Monterey Peninsula Water Management District to issue bonds to finance a portion of the project as authorized by the settlement agreement reached between the parties to the CPUC's proceeding on the MPWSP last year. The expected cost savings come by shifting some of the project's expense from corporate debt/equity funding to the traditionally less-expensive public bond financing.

The bill enjoys wide-ranging support from the Farm Bureau and Sierra Club to the Monterey Peninsula Business Coalition, and is expected to have smooth passage through the legislature.

Carmel-by-the-Sea Mayor and Vice President of the Monterey Peninsula Regional Water Authority, Jason Burnett testified at the committee meeting, providing detailed accounts of the ratepayer savings he expects to see, should the bill pass. Monterey Peninsula Water Management District General Manager Dave Stoldt testified on the particulars of the financing mechanism. California American Water director of External Affairs Kevin Tilden also testified about the bill's benefits.

Water Project's Public Outreach Expands

The Water Supply Project's public outreach campaign to bring the public up to date on the progress made thus far and expected in the near future is now in full swing.

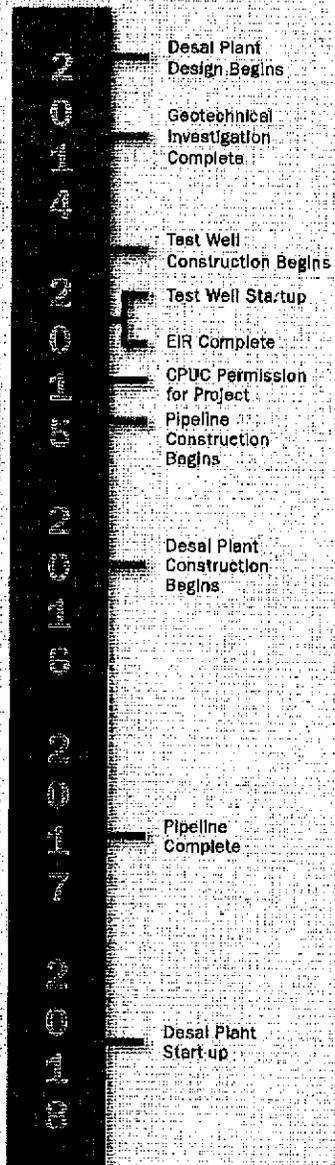
The campaign includes a series of mailers to California American Water customers that contain general project timelines with major milestones accomplished and those still to be achieved. An informational brochure is also in the works that will provide customers with a general synopsis of the regulatory and operational history that necessitated the project, including briefings on the Carmel River's history as a water source, relevant environmental regulations, and summaries of the project's three distinct components. Also included in the campaign are a series of television and radio announcements broadcasted locally that serve to educate the public on the project's progress.

The educational campaign is meant to provide residents with a continuous update on the Water Supply Project as it unfolds, including projected cost and major milestones.

"With a project of this size, cost and importance, the public deserves to be well informed at every turn," said California American Water president Rob MacLean. "This is perhaps the single most important project for the Monterey Peninsula in more than a century. The public outreach we do is to ensure everyone is apprised of the progress we are making together with the community to bring this historic project online."

California American Water will continue its public education campaign until the project is completed.

Timeline of Progress Toward a Water Supply Solution



About the Project

The Monterey Peninsula is facing a severe water supply problem. That's because the State Water Resources Control Board (SWRCB) has ordered California American Water to significantly reduce its pumping of water from the Carmel River. This order coupled with pumping restrictions in other parts of the county means that nearly 70% of the Monterey Peninsula community's water supply must be replaced.

Since 2004, the company has pursued a multi-source solution to the Peninsula's water needs, which includes desalination. In 2010, the California Public Utilities Commission (CPUC), which regulates private utilities, approved a joint project with local Monterey County public agencies, termed the Regional Project, to solve the area's water shortage. However, California American Water withdrew from that project in January 2012 because it faced serious legal and financial challenges that prevented it from advancing.

After examining 11 potential alternatives to the Regional Project in October 2011, California American Water filed an application for the Monterey Peninsula Water Supply Project.

The current project is comprised of three elements:

- Desalination
- Aquifer Storage and Recovery (ASR)
- Groundwater Replenishment (GWR)

This multi-faceted approach brings numerous advantages over a single-source solution. For one, it will enable California American Water to build a smaller desalination plant, which will be less expensive and produce a smaller environmental footprint than a larger plant. Secondly, this strategy will build in redundancy that enables the water system to continue to provide water should one component become temporarily unavailable.

Desalination

The Monterey Peninsula Water Supply Project will consist of sub-surface slant intake wells, the desalination plant, and related facilities including source water pipelines, product water pipelines and brine disposal facilities. Depending on the availability of water from the GWR project, the desalination plant will be sized at either 10,750 acre-feet per year (afy) or 7,200 afy.

California American Water has secured a 46-acre parcel of land located off of Charles Benson Road in Marina as the site for the proposed desalination plant. California American Water is also working to secure permanent easements for locations to host its slant intake wells.

California American Water will be using a series of slant wells located west of the sand dunes in North Marina to draw ocean water. The slant wells will be up to 1,000 feet long. The final layout and configuration will be based on the results of additional groundwater modeling that will be completed.

In addition to the plant and its intake wells, various other pipeline, storage and pump facilities will need to be constructed to ultimately deliver water to customers.

Aquifer Storage and Recovery

California American Water will expand its current ASR project – a partnership with the Monterey Peninsula Water Management District – which captures excess winter flows from the Carmel River for storage in the Seaside Aquifer and withdrawal during the dry summer months. Winter flows are considered excess only when they exceed what is needed to protect the river's threatened population of steelhead.



For the Monterey Peninsula Water Supply Project, the company plans to construct two additional ASR wells that will increase capacity of the program and allow the desalination plant to be smaller than would be needed without the wells.

Groundwater Replenishment

The proposed GWR project recycles wastewater through an advanced treatment process. The resulting highly purified drinking water will be injected into the Seaside groundwater basin. A new advanced wastewater treatment plant will be constructed for the project in addition to a number of supporting facilities. The project is expected to be online by the end of 2016.

Source water for this project will be put through an additional three-step treatment and purification process of microfiltration, reverse osmosis and oxidation with ultraviolet light and hydrogen peroxide — all commonly used in numerous industries and food manufacturing.

The first step in the treatment process is microfiltration, in which treated wastewater is pushed through a filter with highly fine pores. The second step is reverse osmosis, which pushes water through semi-permeable membranes under high pressure. Reverse osmosis is commonly used to remove salts from seawater for human consumption. The third stage of the proposed advanced water treatment facility is an insurance step to remove any molecules that may have slipped through. This is done by oxidizing the water with hydrogen peroxide in the presence of ultraviolet light. Together, these break apart any chemical bonds that may be present. This three-step process ensures complete water disinfection and purity.

The resulting purified water would be pH-adjusted and piped to the aquifer recharge area in Seaside where it is planned to be either injected into the groundwater or deeper into the aquifer itself.

Budget: Major Portions of the Project

Subsurface Intake System and Supply Return Facilities: \$51M (3% spent to date)

Desalination Plant: \$25M (3% spent to date)

Pipeline Facilities: \$13M (Approximately 3% spent to date)

Pre-Construction Costs**: \$8M (Approximately 60% spent to date)

* Note pre-construction costs are included in the \$277M project total. Further breakdown of the above components will occur after the CPUC issues a Certificate of Public Convenience and Necessity permit for the MWSF.

** These figures include financing and some contingency costs, and therefore differ from the capital costs listed in the statements.

Timeline

The Desalination Project is expected to be completed in 2018. Below is a timeline chart depicting the major components of the project and their expected delivery dates.

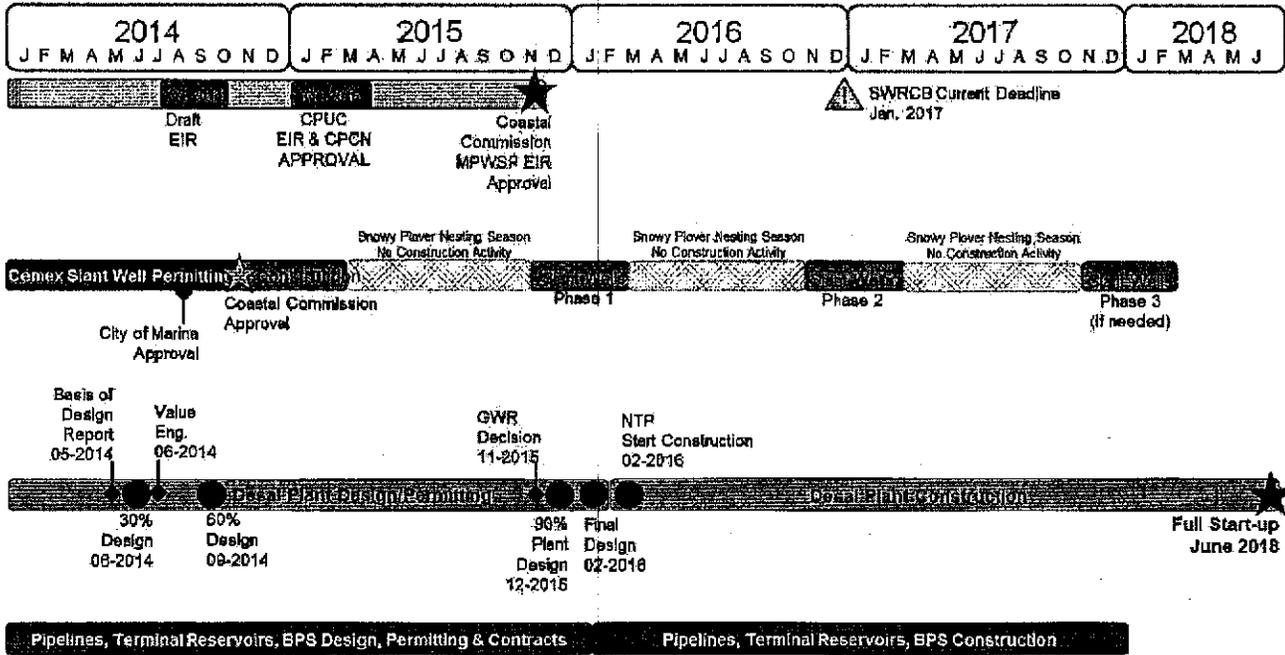


Exhibit E

CALIFORNIA STATE
LANDS COMMISSION

Established in 1948

EXECUTIVE OFFICE
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202JENNIFER LUGGESI, Executive Officer
(916) 574-1800 Fax (916) 574-1210
California Relay Service TDD Phone 1-800-735-2928
Voice Phone 1-800-735-2922

August 11, 2014

File Ref: W 26609

Dr. Charles Lester
Executive Director
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105RE: Proposed Seal Beach Title Settlement and Land Exchange with
Bay City Partners

Dear Dr. Lester:

The purpose of this letter is to update you on the status on the proposed Seal Beach title settlement and land exchange negotiations with Bay City Partners (BCP) involving property located adjacent to the San Gabriel River and commonly known as the former DWP site. State Lands Commission (SLC) staff has reached a tentative agreement with BCP for an agreement that involves exchanging the current public trust easement parcel for a parcel located along the San Gabriel River and a monetary payment into the Kapiloff Land Bank Fund. (Public Resources Code sections 6307 and 8600 *et al*). All moneys received by the Kapiloff Land Bank Fund pursuant to a title settlement and land exchange agreement are subject to a statutory trust that requires the money be spent to acquire interests in land which is beneficial for public trust purposes. Please note that while SLC staff and Bay City Partners have reached a tentative agreement, the proposed title settlement and land exchange would need to be approved by the State Lands Commission at a properly noticed public meeting.

One complication that has arisen during the negotiations of the proposed agreement is that there is disagreement regarding the use by the SLC of the statutory exemption from California Environmental Quality Act (CEQA). Generally, land exchange and boundary line agreements with the SLC are statutorily exempt from CEQA review pursuant to PRC 21080.11¹. Recently, the San Francisco County Superior Court found that the use of this exemption did not apply to a settlement and land exchange where there was no "dispute" as to title or boundaries. While that case is currently on appeal to the First District Court of Appeal and SLC staff remains confident that the statutory exemption will ultimately be determined to be appropriate,

¹ PRC section 21080.11 is entitled "[e]xemption from CEQA for State Lands Commission settlements" and states "[t]his division shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements."

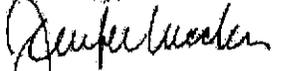
Dr. Charles Lester
August 11, 2014
Page 2

out of an abundance of caution SLC staff believes that it is in the best interest of the state to rely on other environmental review to comply with CEQA.

Two alternatives remain: 1) Rely on the City of Seal Beach certified EIR for the proposed project; or, 2) Rely on an approved Coastal Development Permit (CDP) for the project by the California Coastal Commission. The City of Seal Beach certified an EIR for the BCP's proposed project on July 25, 2012. However, the project reviewed in the EIR did not include the proposed title settlement and land exchange and termination of the public trust easement on a portion of the project planned to be developed with residential housing. The second option would be for the SLC to rely on an approved CDP for the project as a CEQA substitute by a Responsible Agency pursuant Title 14, California Code of Regulations section 15253. As such SLC staff does not object to the Coastal Commission acting first on the CDP application.

I hope this provides some additional explanation on the status of the proposed title settlement and land exchange involving the subject property. I am happy to discuss in more detail at your convenience.

Sincerely,



JENNIFER LUCCHESI
Executive Officer

Exhibit G

Exhibit G1

proposal.

Burnett, whose water authority authored the letter, said he hopes to have all the settling parties sign, though he's not sure that can be accomplished.

At least one supervisor, Jane Parker who represents the Marina area, indicated she may not vote to approve the support letter. She agrees with the council majority's call for more extensive environmental review, particularly given the potential for putting the Marina Coast Water District's water supply at risk.

Peninsula water activist George Riley, who signed the settlement agreement on behalf of Citizens for Public Water, said he requested a few changes to the letter before he would consider signing it. Burnett said he is circulating the letter.

Riley has been arguing for expanding the criteria for determining the feasibility of the slant well intake method beyond simply whether it will work. He wants to include how much it could cost and how much risk it entails. He said slant well technology is largely unproven in the U.S.

Riley received a warning from Cal Am alleging that he was violating the settlement agreement and should immediately stop his criticism. Riley, who responded to Cal Am by promising to continue his criticism, said he has sent a letter to the Coastal Commission making his case and arguing the Peninsula is being used as a "guinea pig" to see if slant wells will work.

Jim Johnson can be reached at 726-4348.

Exhibit G2

Cal Am official alleges project critic violated pact

By Jim Johnson jjohnson@montereyherald.com @JimJohnsonMCH on Twitter

Updated: 09/29/2014 08:09:32 AM PDT

MontereyHerald.com

MONTEREY >> Monterey Peninsula water activist George Riley has been warned by a California American Water official that he is violating an agreement on the company's proposed desalination project.

In a letter to Riley dated Sept. 23, Cal Am engineering manager Ian Crooks alleges Riley's recent comments on the project, specifically related to slant wells aimed at feeding a proposed desal plant, represent a breach of a project settlement agreement Riley signed on behalf of Citizens For Public Water in summer 2013 along with Cal Am and more than a dozen other parties.

Crooks argued Riley's comments at local water board meetings and in a blog post made it clear he had "unilaterally determined that slant wells are not feasible." He added that Riley had "specifically challenged the use of slant wells," and "took steps seeking to obstruct and even prevent the actions set forth in the Agreement as necessary to determine the feasibility of using slant wells."

The agreement, according to Crooks, requires Riley to support Cal Am's efforts to determine the feasibility of slant wells through a test well program at the Cemex sand mining plant in north Marina, and only raise questions after the test well data are available.

"I just don't think (Riley's comments are) in the spirit of the agreement," Crooks said.

Crooks demanded Riley "immediately stop" violating the agreement, and "take reasonable steps to cure your breaches" in the next 30 days.

Riley, now also the managing director of Public Water Now, rejected Crooks' assertions. He argued he is not necessarily opposed to slant wells but merely raised questions regarding what criteria are being used to determine the feasibility of an unproven technology. He has suggested slant well feasibility criteria should not be limited to technical aspects but also cost, time and the availability of other intake options.

"I'm not saying no to slant wells; I'm saying when is enough, enough," Riley said, noting that project conditions have changed since the agreement was signed, including an 11-month project delay tied to environmental review of the slant wells proposal and progress made by two other desal projects — DeepWater Desal and the People's Moss Landing Desal Project. "It sounds like I'm asking questions they don't want asked.

"What's the correction they want, to shut up? I'm not going to shut up."

Crooks said the letter was sent to all parties to the agreement and all those involved with the state Public Utilities Commission review of the desal project. He said he has not yet

contemplated what would be an appropriate cure for Riley's breaches, suggesting that could be up to all the settling parties, and said no legal action is planned.

Cal Am spokeswoman Catherine Stedman said the "hope is (Riley) will get back in line with what he agreed to."

Carmel Mayor Jason Burnett, who serves as president of the Peninsula water authority, said he understands the frustration with the test well program delays, after Marina city officials rejected Cal Am's bid for a permit. He also said he would "encourage" Riley to consider whether he still supports the terms of the settlement agreement.

In the letter, Crooks argued Riley breached the agreements with his comments at a Sept. 11 Peninsula water authority board meeting and a Sept. 15 Peninsula water management district board meeting, as well as a commentary posted on the Monterey Bay Partisan website.

Crooks cited four sections of the agreement including Section 17.1, which included a promise to support all provisions of the settlement, and not oppose permitting and entitlement efforts.

Jim Johnson can be reached at 726-4348.

Exhibit G3

CITIZENS FOR PUBLIC WATER

% George T. Riley
1198 Castro Road
Monterey CA 93940

October 19, 2014

Ian Crooks
Engineering Manager
California-American Water Company
511 Forest Lodge Rd, Suite 100
Pacific Grove CA 93950

Dear Mr Crooks,

I received your formal letter dated September 23, 2014, wherein you accused me with breach of the Large Settlement Agreement (A.12-04-019). You have charged that I have "unilaterally determined that slant wells are not feasible." You have further stated that I "...seek to prevent the installation of the test well..."

I deny the accusation that I am in breach of the Settlement Agreement. I deny that my comments and my actions have interfered with permitting. And I reject your charges cited above.

When the Settlement Agreement (SA) was being drafted, in the spring of 2013, I was one of several parties who questioned the proof needed to support source water for slant wells. Specifically those discussions were over the lack of water rights for taking some portion from the Salinas Basin. The SA inclusion of a commitment for a detailed hydro-geological analysis was to determine the composition in order to clearly define the amounts of sea water and brackish water. I still support that effort.

However new realities have emerged since early 2013 when the SA was being drafted and signed. I cite them here in order to give context to comments I have made, and which I expect to continue to make. If these realities are not true, then I may need to be corrected, and I will modify my comments. However to the extent I believe them to be true, I will continue to comment.

1. At least two EIR study delays have occurred. Cal Am has now fallen about 11 months behind its intended schedule.
2. Bore hole data suggests there is no uninterrupted aquitard separating the perched aquifer from the established, intruded and protected 180 foot aquifer. This creates a litigation risk that is higher than when the SA was being drafted 18 months ago.
3. The two private entrepreneurial efforts for a publicly owned desal have gained traction and schedule appeal. This is noteworthy since the Mayors Water Authority consultant reported in January 2013 that Cal Am had the distinct schedule advantage. This schedule advantage trumped the general cost comparisons. It is my opinion that Cal Am's original schedule advantage may no longer exist, and that it now needs to be reviewed to reconsider cost comparisons. I have been asking for such a review at the TAC and the Mayors Authority for

several months.

4. The State Water Resources Control Board very recently released to the public its new draft guidelines for ocean intakes (July 3, 2014). In it, the SWRCB advises entities seeking to pump ocean water to consider subsurface intakes first, if feasible. Four criteria are listed: site, design, technology and mitigation. These criteria are site specific. I began to question the need for additional criteria beyond the four that are site specific; for example costs, timing and comparative options. My questions largely relate to these facts and opinions: a) there is no known operational slant well that can be used for comparison purposes; b) the technique for a slant well is acknowledged to be largely experimental, and therefore more risky; c) all life cycle costs are guesses without actual histories to draw upon; d) I fear an argument to justify additional investments so as to 'not waste' prior investments; e) the CDO deadline is forcing tunnel vision without looking at comparative costs of other Cal Am options or other desal options. As a consequence, I am raising questions of runaway slant well costs, and what schedule issues and options ought to be revisited.
5. There is a "schedule compression" that now exists between the time scheduled for the first test well data collection and the decisions expected to be made by the CPUC and the CA Coastal Commission. The intended 18 months for full analysis is not in the schedule. CPUC and CCC decisions are scheduled before any extended data collection and analysis. The 'full analysis' time is reduced to only a few months; clearly not 18 months as originally suggested to all parties. If there is no time set aside for full data collection, for full analysis, and for full review of all factors related to going forward, then I believe "if feasible" is essentially meaningless. The schedule compression makes a sham of "if feasible". I realize that the CPUC is aggressively pushing the schedule, largely related to the CDO deadlines. But we all know that the December 31, 2016 date is lost. Now is the time, and more than ever it is relevant, to look at what options exist for a practical water supply. Now more than ever we need to step away from the over-hyped fears of rationing, and the unknown risk, amount and impact of fines, and calmly look at the options and their timing and costs.
6. Another reason for my raising such questions is the statement by Cal Am that there is a fully functioning production slant well in operation in Europe. When I asked for specifics, none has been offered. I have asked this question several times over the last 2 months, and still no answer. I want to find out if the Cal Am statement is true.
7. Furthermore, if there is going to be a dispute over water rights, it will come after sufficient test well data is available. Is that after 4 months, or after 18 months, or after production starts? I am aware that there is a five year window to cite harm in a water rights issue. It is fairly common knowledge that Cal Am may argue that a 'physical solution' may trump the water rights law. That will probably require litigation, thus adding more time delay to the CDO question, and probably add to fines and costs for delivery. Thus these are two additional factors that suggest caution – the 5-year "harm" window; and the discussed "physical solution". Even more reason to be asking questions now rather than later.
8. I also continue to do research. I discovered the American Water Works growth strategy, called "tuck ins", that focuses on communities of 10,000 customers or less. I pointed this out in several public ways, including the Monterey Bay Partisan website.

Now back to your charge that I am in breach of the SA. I treat your letter as a soft form of a SLAPP

suit, intending to intimidate or censor me. You refer to comments before the Mayors Authority and the Water Management District, neither of which are in the permit track for the test well. You did not quote me. You did not summarize my comments. You did not show evidence of the impact of my comments. You have not identified any permit or easement hearing that I even participated in.

We met to discuss this on October 3rd. The meeting included Catherine Stedman of Cal Am. No facts to support the charge were presented. We made no agreements. We discussed what is to happen going forward. You indicated that it will be up to the other parties to determine any follow up.

In conclusion, I want to remind you that I will continue to look at ways to support a water supply at the lowest possible cost, and on a schedule that meets local needs. And I will continue to seek reasonable discussions of a fast track that may have higher risk and cost, and may have unintended consequences. In my opinion, the pressures of the compressed schedule are driving out rational discussions. This is my focus these days.

I await any further action by you or others.

Sincerely,

/s/ George T. Riley

George T. Riley

Founder, Citizens for Public Water

SLAPP: Strategic Lawsuit Against Public Participation
Email copy to all parties to the Settlement Agreement (A12-04-019)

Click here to go to
original staff report

W14a & 15a

Addendum

Energy, Ocean Resources & Federal Consistency

For Wednesday, November 12, 2014

Item W14a & 15a

A-3-MRA-14-0050/9-14-1735

- Ex Parte Communications
- Correspondence

W 14a & W 15a

A-3-MRA-14-0050 / 9-14-1735

California-American Water Company

- **EX PARTE COMMUNICATIONS**

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project: Cal Am slant test well

Date and time of receipt of communication: November 10, 2014 10:00 a.m.

Location of communication: Santa Barbara

Type of communication (letter, facsimile, etc.): telecon

Person(s) initiating communication: Jason Burnett Mayor of Carmel 831 238 0009

Speaking as Carmel's mayor, but primarily as President of the Monterey Peninsula Regional Water Authority. Cal Am gets most of its water from the Carmel River, and the balance from the Seaside basin. Does not have permits, so pumping from the river is illegal per the SWRCB. They have been working on new water supply, State Board has imposed a CDO to stop by January 2017. The six peninsula cities are speaking with one voice. They have already conserved maximum, using 50-60 gallons a day. It is water to benefit the Carmel River, steelhead, RLF. So this is primarily a project for the environmental benefits. The last two years have been a remarkable consensus and progress, they entered into settlement discussions with 15 other parties, signed an agreement last summer, including PCL, Landwatch, Surfrider, Sierra Club and three ag groups Farm Bureau, Salinas Valley Water Coalition, Monterey County Water Resources Agency, which focuses on ag issues. Unanimous on Supervisors, Mayors, ratepayer advocates at PUC all agreed. Advocating a portfolio approach.

In recognition of policy preference, they are *only* pursuing subsurface intake. They did an extensive analysis. In terms of viability the test well will help confirm the feasibility, that is the purpose. There is a commitment to form a hydrogeologist working group to work on these technical issues, appointed by various interests. The test well itself is at an agreed to site with all the permitting agencies, because it is already disturbed, avoids plover nesting areas, and so forth.

They appreciate and support the staff report and agree.

The test well is within the City limits. Their staff recommendation was to grant the permit with a mitigated negative declaration, on a 3/2 vote said an EIR was required. This is a test, PCL agreed as did others that an MND is appropriate. Marina is served by a separate, public water district, the Marina Coast District. Marina citizens would be at risk if the CDO went into force. The MCD is in litigation with CalAm because of a previous failed project, trying to recoup \$18m in stranded costs. The previous project was continued at the CCC because of allegations of wrongdoing, and subsequently resulted in convictions in someone working for Marina Coast, and also worked for the County Resources Agency. The Commission did continue the item.

They are not in competition for the seaside basin water. They may want to build a desal plant at a future date, and want to keep their options open. He believes they have more flexibility because they have access to groundwater in Salinas Valley and they do not.

The other opponent is the Ag Land Trust. They are a great organization but he thinks they are mistaken. They lease their land for artichokes, they get water from a water recycling project, they want the option of returning to their own wells. The staff report includes conditions for monitoring, and if the wells go down or become saline, the test would stop. They don't know today whether production wells would make sense. There is an EIR in progress with the PUC as lead and there is a large amount of focus on the groundwater question, determining what sort of modeling/questions need to be addressed. They have received permission for bore holes, and expect that EIR will be done early 2015, and the full project with EIR will come to the Commission late summer or early fall of 2015.

It comes down to a broad consensus that the test is needed to understand the hydrology, and being done in a way that is consistent with Coastal Act goals to protect resources. The test well itself would have a minimal impact and is adequately conditioned. He himself would not authorize the full project today, the test well would gather the very information that they need to make that determination.

Jana Zimmer 11/10/14

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication: 11:30 AM 11/6/14

Location of communication: EMAIL TO COMMISSIONER
(If communication was sent by mail or
facsimile, indicate the means of transmission.)

Identity of person(s) initiating communication: SUSAN JORDAN

Identity of person(s) receiving communication: STEVE KINSEY

Name or description of project: CAL-AM TEST WELL CDP

Description of content of communication:

(If communication included written material, attach a copy of the complete text of
the written material.)

THE WRITER EXPRESSED SUPPORT FOR THE APPLICATION,
CITING ITS STATUS AS A COASTAL DEPENDENT INDUSTRIAL
USE. SHE ALSO COMMENTED FAVORABLY ON THE
APPLICANT'S COMMUNITY OUTREACH, CHOSEN TECHNOLOGY,
AND CONTRASTED THE APPLICANT'S APPROACH WITH
POSEIDON'S ACTIONS IN HUNTINGTON BEACH.

11/6/14
Date

Steve Kinsey
Signature of Commissioner

DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

Appeal No. A-3-MRA-14-0050 (California-American Water Company, Marina) Appeal by California-American Water Co. of City of Marina decision denying permit for construction, operation, and decommissioning of slant test well, up to 4 monitoring well clusters, and related infrastructure at CEMEX sand mining plant, Lapis Road, Marina, Monterey County. (TL-SF)

Date and time of receipt of communication:

November 5, 2014 at 10:00am

Location of communication:

San Diego

Type of communication:

Teleconference

Person(s) in attendance at time of communication:

Mayor Jason Burnett, City of Carmel by the Sea

Person(s) receiving communication:

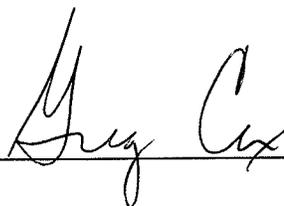
Greg Cox, and staff Greg Murphy

Detailed substantive description of the content of communication:

I spoke with Mayor Jason Burnett from the City of Carmel by the Sea, acting in his capacity as President of the Monterey Peninsula Water Authority, regarding his support for approval of a slant test well at the disturbed Cemex sand mining plant in Marina, CA. Mayor Burnett described that the agencies are under order to find new sources of water that do not include drawing from the Carmel River or the Seaside Water Basin, and that residents have maxed out their conservation efforts by reducing consumption to 60 gallons of water per resident per day. This proposed slant well, he said, which uses the preferred sub-surface intake system, will help gather important data to determine if a moderately sized desalination plant is feasible and able to provide much needed water to this area. He said numerous environmental, business and agricultural organizations support the project, and he encourages the commission's support of staff's recommendation.

Date: 11/5/14

Signature of Commissioner: _____



DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project:

W14a. Appeal No. A-3-MRA-14-0050 (California-American Water Company, Marina) Appeal by California-American Water Co. of City of Marina decision denying permit for construction, operation, and decommissioning of slant test well, up to 4 monitoring well clusters, and related infrastructure at CEMEX sand mining plant, Lapis Road, Marina, Monterey County. (TL-SF)

W15a. Application No. 9-14-1735 (California-American Water Company, Marina) Application of California-American Water Co. for permit to construct, operate, and decommission test slant well at CEMEX sand mining facility on Monterey Bay shoreline, Marina, Monterey County. (TL-SF)

Date and time of receipt of communication:

November 4, 2014 at 2:00pm

Location of communication: Phone

Type of communication: Teleconference

Person(s) in attendance at time of communication: Ian Crooks, Susan McCabe, Anne Blemker

Person(s) receiving communication: Wendy Mitchell

Detailed substantive description of the content of communication:

I received a briefing from the Applicant's representatives in which they described the project background, explained the local regulatory process at the City of Marina, and went through a briefing booklet that was previously provided to staff. The representatives described the proposed seawater desalination test slant well project and CalAm's need find a source of water to replace water previously pumped from the Carmel River. In response to environmental concerns, the SWRCB ordered Cal Am to reduce pumping from the Carmel River by December 31, 2016. Cal Am was directed by the CPUC to pursue a desalination water supply alternative. Cal Am proposed the Monterey Peninsula Water Supply Project (MPWSP), which consists of 6,250 acre-feet per year (AFY) desalinated seawater, Aquifer Storage and Recovery, and 3,500 AFY of recycled water (GWR). (If GWR proves not viable, the desal plant would increase to 9,750 AFY.) The MPWSP seawater source is proposed to come from slant wells, which reduce impacts to marine life and groundwater supplies brought by open ocean intakes or traditional vertical wells. As described by the representatives, the proposed test well facility is located on a disturbed sand mining operation site and would avoid impacts to ESHA. The representatives explained that the MPWSP is being evaluated by the CPUC in a separate EIR from the test slant well project. The MPWSP will come back to the CCC for consideration at a later date.

The representatives stated that the Applicant is continuing to work cooperatively with CCC staff to address timing requirements in the special conditions. The Applicant requests the Commission approve the project.

Date: 11/4/14

Signature of Commissioner: Wendy Mitchell

TEST SLANT WELL PROJECT

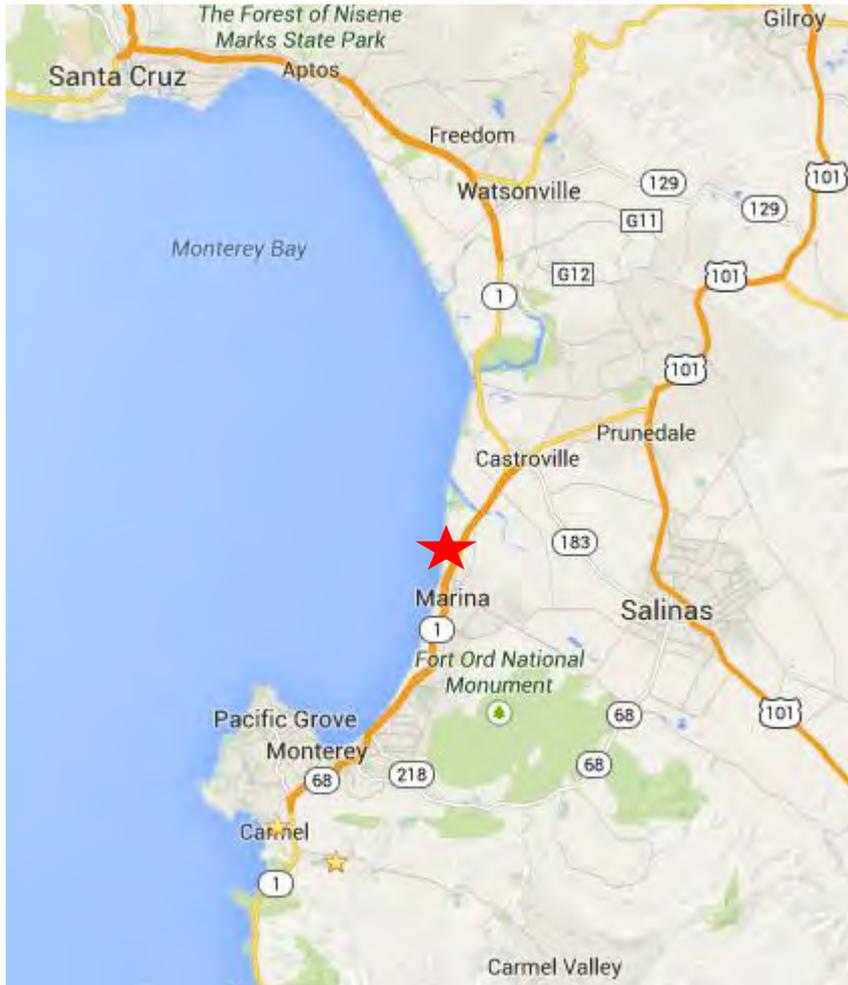


CALIFORNIA
AMERICAN WATER

Background Introduction

- Carmel River is Monterey Peninsula's main water source and home to threatened species
- In response to environmental concerns, SWRCB ordered Cal Am to reduce pumping from Carmel River by December 31, 2006
- Cal Am directed by CPUC to pursue a desalination water supply alternative
- Cal Am proposed the Monterey Peninsula Water Supply Project (MPWSP) which consists of 6,250 acre-feet per year (AFY) desalinated seawater, Aquifer Storage and Recovery, and 3,500 AFY of recycled water (GWR). If GWR proves not viable, desal plant increases to 9,750 AFY
- MPWSP seawater source is proposed to come from slant wells which reduce impacts to marine life and groundwater supplies brought by open ocean intakes or traditional vertical wells
- MPWSP is being evaluated by California Public Utilities Commission in a separate EIR from test slant well project, test slant well is separate project for testing and data gathering purposes
- Strong conservation measures have brought average residential water consumption to 60 gallons per person per day, lowest in California, further cuts to consumption are limited and pending water supply reductions will have severe economic impacts

Project Purpose (Test Slant Well)



CEMEX Test Slant Well Location Map

Test slant well project will gather data and evaluate feasibility of subsurface slant wells at CEMEX site

- Subsurface intakes are preferred method of seawater intake by coastal regulators
- Subsurface intakes require research to establish a location with ample water supply and acceptable water quality that will not impact inland groundwater supplies

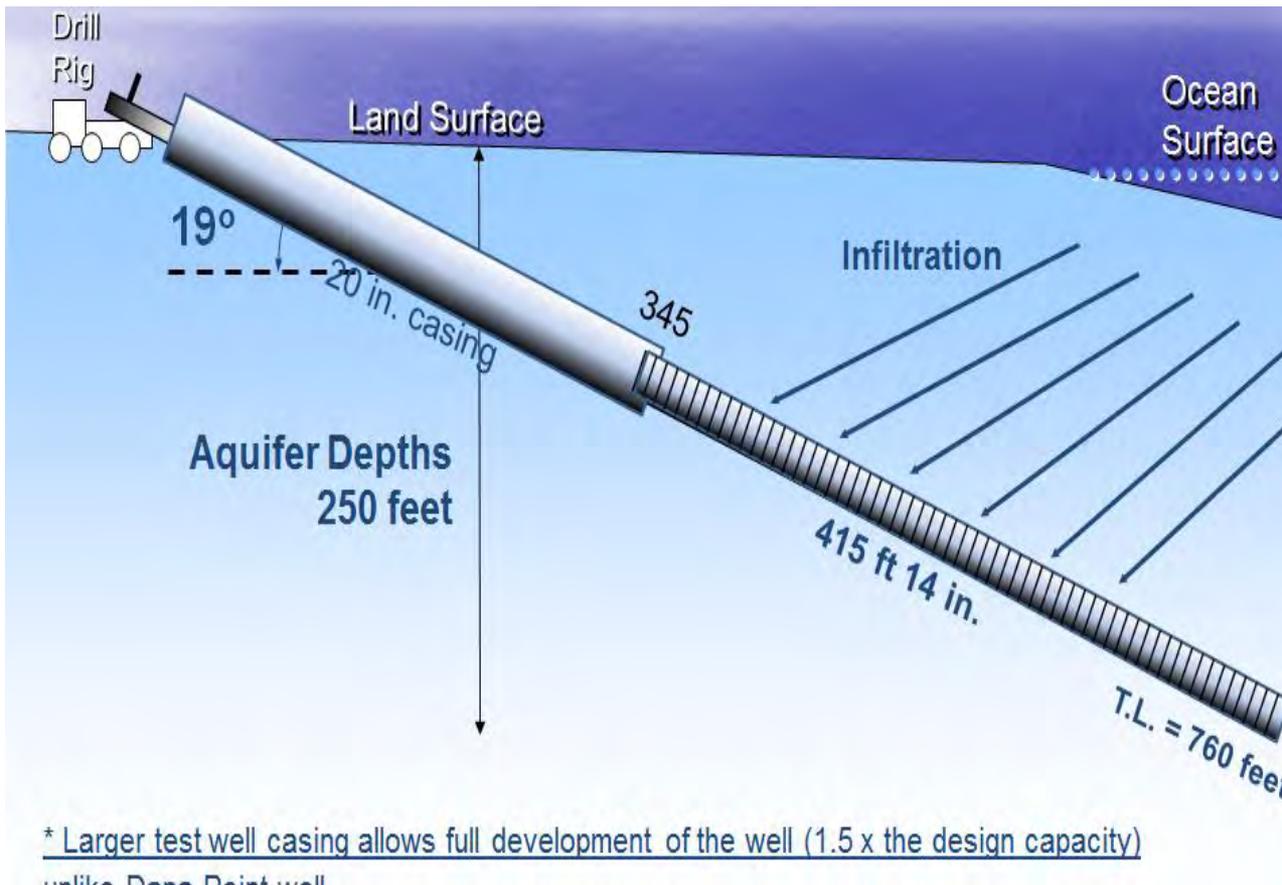


Project Description

- Located on 400-acre CEMEX active sand mining site in City of Marina, in a disturbed area of property
- Slant well drilled underground for approximately 760 feet at a 19 degree angle
- 20-inch diameter casing and 14-inch well screen extending from 50 feet to 250 feet below ground level designed to pump 2,500 gallons per minute
- Slant well water will be routinely sampled and simply returned to ocean in its nature state through an existing ocean outfall
- Existing outfall is owned and used by Monterey Regional Water Pollution Control Authority (MRWPCA)
- 4 Monitoring Well Clusters to monitor inland groundwater impacts and further develop groundwater model
- Operate for up to 24 months



Project Cross Section & Data Collection



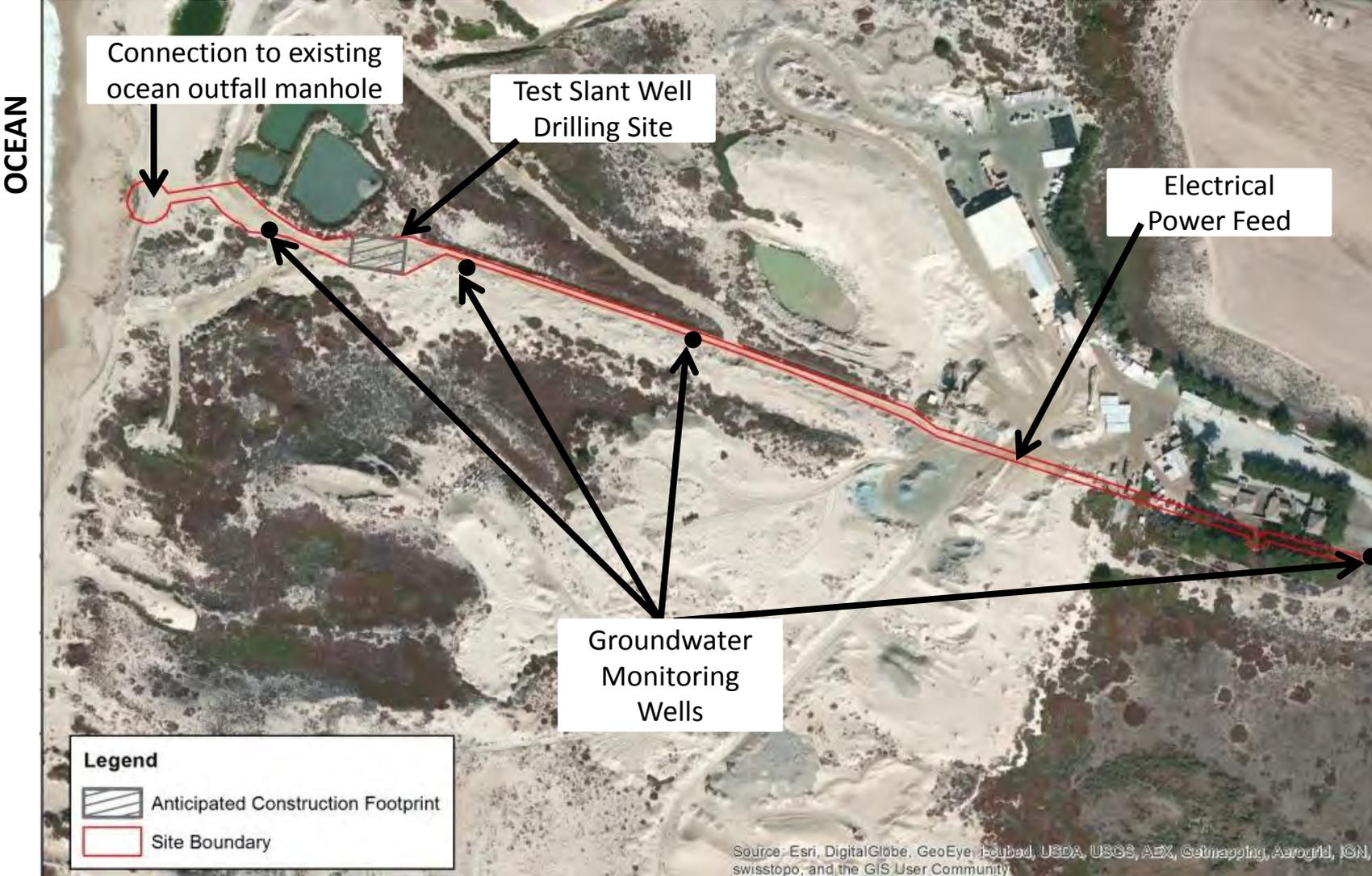
Cross Section View of Test Slant Well

Valuable data obtained from project:

1. Water quantity
2. Water quality
3. Geologic information
4. Inland groundwater aquifer impacts
5. Feasibility of Slant Wells at this site

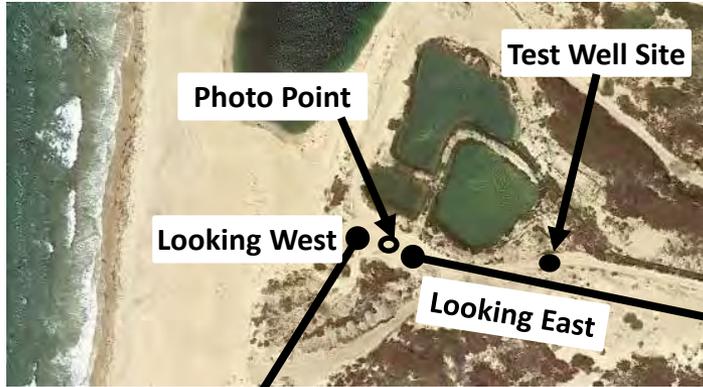


Project Site Overview



Map of Test Slant Well Project Site

Project Site Photos (1 of 3)



Project Site Photo of CalAm Borehole Drilling Showing Areas of Existing Disturbance. (2014)



Project Site Photo Showing Areas of Existing Disturbance. (2013)

Project Site Photos (2 of 3)



Cemex site access road looking east showing areas of existing disturbance. (2013)

Cal Am's prior borehole location and proposed location for Monitoring Well Cluster



Cemex site access road looking west showing areas of existing disturbance. (2013)

Project Site Photos (3 of 3)



Cemex access road showing activity and existing disturbance along south side.
(2013)



Project Advantages

- **Location:**
Cal Am conducted substantial stakeholder engagement and site feasibility studies including alternative locations
- **Cemex Site Advantages:**
 - Disturbed Site: Located at an active sand mining operation and would not cause substantial disturbance
 - Existing Infrastructure: Electrical infrastructure, access roads, and MRWPCA outfall
- **Temporary:**
2 years or less of operation
- **Completed Studies:**
 - Borehole Studies: Results establish further understanding of geologic conditions at site
 - Environmental Studies:
 - Cultural Resources Assessment
 - Biological Resources Assessment
 - Historical Assessment
 - Initial Study & Mitigated Negative Declaration
 - Federal Environmental Review (NEPA)
 - FONSI – findings of no significant impact
 - Wetland Delineation
- **Findings:**
No significant impacts found to resources or environment



Project Schedule

- **Timeline is critical - construction must be complete before March 1, 2015 to avoid Snowy Plover nesting season**
- **November 2014 to January 2015:**
 - Drill / Install / Develop One (1) Test Slant Well and Twelve (12) Monitoring Wells
 - Civil Construction Including Electrical Conduit, Disposal Pipeline, Valve Vault, etc.
- **January 2015 to February 2015:**
 - Install Test Slant Well Vault and Complete all Electrical Work
 - Test Slant Well Start-up and Testing
- **March 2015 to Late 2016:**
 - Slant Well Pumping, Sampling and Monitoring

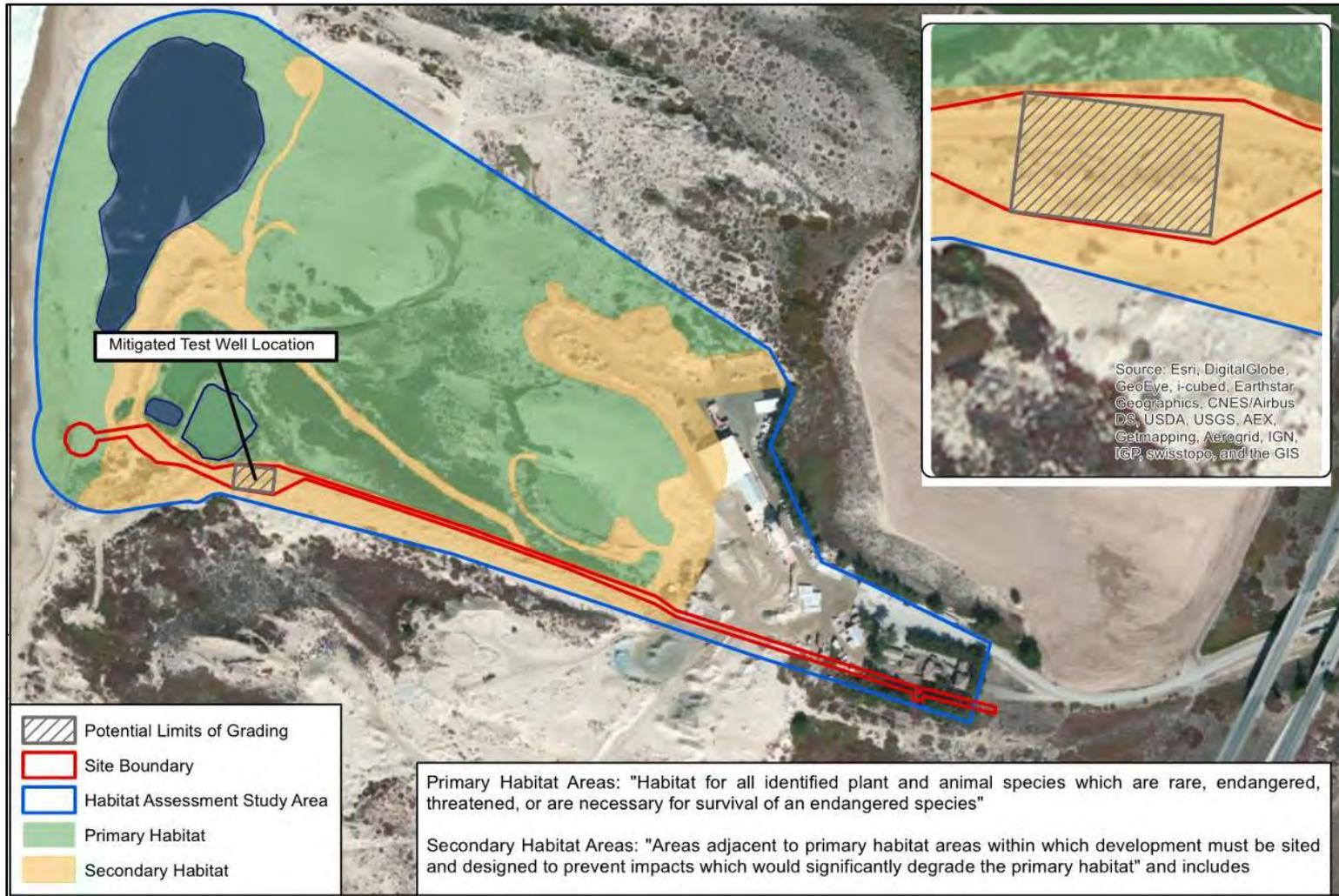


Biological Mitigation

- Located to avoid biological resources and Snowy Plover nesting season
- Located within area of continual and substantial disturbance – specifically, areas currently used for sand mining operations and stockpiling
- Mitigation Management and Restoration Plan includes:
 - Biological Monitoring & Survey from prior, during, and after construction and decommissioning
 - Replanting site as necessary
 - Hazard Spill Prevention Plan
 - Lighting Plan to reduce night time construction light disturbance



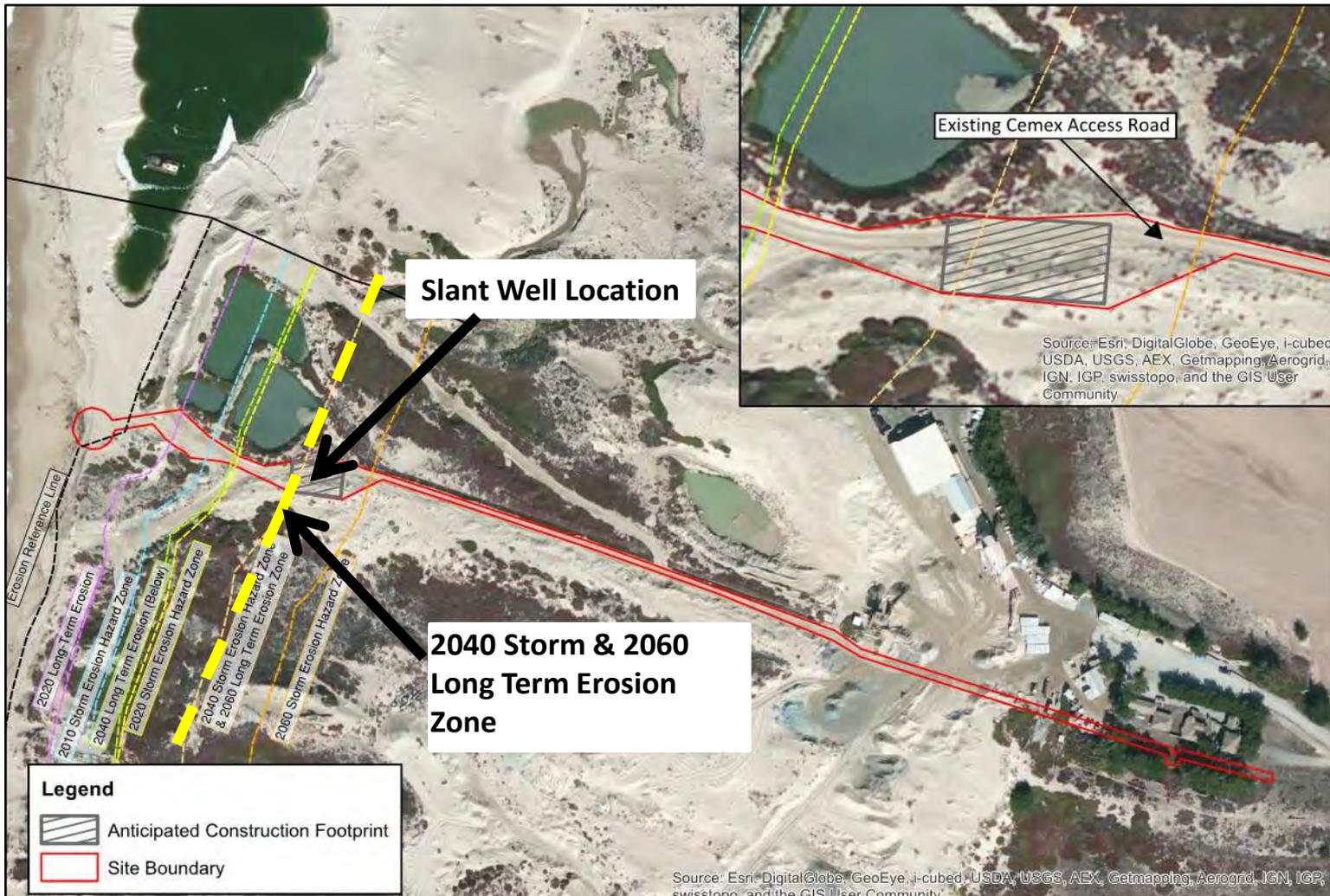
ESHA Avoidance



Project Site Map with Primary and Secondary Habitat Delineation

Coastal Erosion Hazards Mitigation

- Test Well Site is located to avoid 2040 storm and 2060 long term erosion zones



Site Map showing projected Coastal Hazard Zones through 2060

Appeal of City of Marina Decision

- Marina City Council denied test slant well CDP application on a 3-2 vote based on desire for additional CEQA review and did not make findings as to conformity with LCP or Coastal Act policies
- City's Planning Department, legal counsel, outside independent CEQA consultant, and Sierra Club determined that no additional environmental review was needed
- City's Planning Department Staff recommended approval, and outside independent CEQA consultant found that project is consistent with Marina LCP and in no way restricts coastal access
- Cal Am appealed City's action under appropriate Section 30603(a) of Coastal Act as this project constitutes a "major public works project" which is defined in Cal. Admin Code Section 13012(b) as project costing more \$100,000. This project is over \$6m



Community Support

Test slant well project is supported by a broad coalition of local governments and environmental organizations

Organization Support

1. Surfrider Foundation
2. Sierra Club
3. Planning and Conservation League Foundation
4. LandWatch Monterey County
5. Salinas Valley Water Coalition
6. Monterey County Farm Bureau
7. Carmel River Steelhead Association
8. Carmel River Watershed Conservancy
9. Citizens for Public Water
10. City of Pacific Grove
11. Coalition of Peninsula Businesses
12. County of Monterey
13. CPUC Division of Ratepayer Advocates
14. Monterey Peninsula Regional Water Authority
15. Monterey Peninsula Water Management District
16. Monterey Regional Water Pollution Control Agency

Regulatory Support

1. Project awarded \$1m grant from Cal. Department of Water Resources
2. U.S. Fish and Wildlife
3. Cal. Department of Fish and Wildlife
4. Monterey Bay National Marina Sanctuary
5. Monterey County Water Resources Agency
6. State Water Resources Control Board



Conclusion

- Consistent with LCP and Coastal Act Provisions
 - Protects Snowy Plover and other biological resources
 - ESHA, majority of work located in secondary habitat
 - Mitigation management and restoration plan
- Project's IS/MND prepared by City of Marina found Project is in compliance with LCP and consistent with current use at site (industrial sand mining operation)
- Located in currently used and disturbed areas of sand mining operation
- Awarded \$1m grant from Cal. Department of Water Resources to help determine viability of slant wells for California
- Supported by broad array of environment organizations and regulatory agencies
- We request Commission approve the project

W 14a & W 15a

A-3-MRA-14-0050 / 9-14-1735

California-American Water Company

- **CORRESPONDENCE**



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

NOV 07 2014

The Honorable Steve Kinsey, Chair and
Commissioners
California Coastal Commission
Attn: Mr. Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Appeal No. A-3MRA-14-0050 and Application No. 9-14-1735 (California-
American Water Company, Marina)

Dear Chair Kinsey:

On behalf of the State Water Resources Control Board (State Water Board), I write to encourage the Coastal Commission to grant the California-American Water Company's (Cal-Am) application for a coastal development permit to construct, operate, and decommission a test slant well at the CEMEX sand mining facility in the City of Marina in Monterey County.

The State Water Board has a strong interest in this matter, as its Order WR 2009-0060 requires Cal-Am to cease its illegal diversions from the Carmel River on or before December 31, 2016. Cal-Am's development of an alternate supply of water for its customers will greatly facilitate its ability to comply with the order.

A coastal development permit would allow Cal-Am to construct a test well necessary to complete environmental review for its proposed Monterey Peninsula Water Supply Project. The proposed project includes a desalination plant that would produce desalinated water to supplant Cal-Am's illegal diversions from the Carmel River. As part of related California Public Utilities Commission proceedings, the State Water Board had identified the need for further test wells, such as that pending before the Coastal Commission, as a necessary component of the project's environmental review. The coastal development permit for a test slant well is a critical component of evaluating that project.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | www.waterboards.ca.gov

The Honorable Steve Kinsey, Chair and
Commissioners

- 2 -

NOV 07 2014

The State Water Board urges the Commission to adopt its staff's recommendation and to allow development of the test slant well to proceed.

Sincerely,

A handwritten signature in black ink that reads "Thomas Howard". The signature is written in a cursive style with a large initial "T" and a long, sweeping underline.

Thomas Howard
Executive Director

D.J. Moore
Direct Dial: +1.213.891.7758
dj.moore@lw.com

355 South Grand Avenue
Los Angeles, California 90071-1560
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www.lw.com

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File No. 055604-0000

LATHAM & WATKINS LLP

November 7, 2014

**Agenda Items
W14a & 15a**

VIA EMAIL AND FEDEX

Chair Kinsey and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Re: Appeal No. A-3-MRA-14-0050 & Application No. 9-14-1735:
(California-American Water Company Test Well Project)

Dear Chair Kinsey and Honorable Commissioners:

On behalf of California-American Water Company (“Cal-Am”), we write regarding the Commission’s consideration of Cal-Am’s (1) appeal of the City of Marina’s denial of Cal-Am’s Coastal Development Permit (“CDP”) application to construct, operate, and decommission a temporary test slant well at the CEMEX sand mining facility (the “Project”); and (2) CDP application for that portion of the Project in the Commission’s retained jurisdiction. The Commission will consider the appeal and CDP application at its November 12, 2014, meeting.

Cal-Am supports the recommendations of Commission staff in the Staff Report, and appreciates the detailed analysis of the Project that the Staff Report presents. Consistent with Commission staff’s recommendation, **as proposed, conditioned, and analyzed in the Staff Report, the Project will be consistent with all applicable Coastal Act and City of Marina Local Coastal Program (“LCP”) policies.**

In addition, Cal-Am has reviewed several opposition letters that have been submitted to the Commission and/or Commission staff regarding the Project. Attached as **Attachment A** is a detailed response to those letters. As explained in detail in Attachment A:

- The City of Marina’s denial of the Project’s CDP constituted a **final action that is legally appealable to the Commission** under Coastal Act section 30603;
- The Commission’s **jurisdiction over the entire Project is proper** – including the portion of the Project in the Commission’s retained jurisdiction and the portion of the Project initially subject to the City of Marina’s Local Coastal Program (which Cal-Am properly appealed to the Commission following the City’s CDP denial);

These materials have been provided to the Coastal Commission Staff

LATHAM & WATKINS^{LLP}

- **The Project is a major public works project** under Coastal Act section 30114 and Coastal Act Regulations section 13012;
- The Project **does not violate the 1996 Annexation Agreement** between the Monterey County Water Resources Agency and Monterey Coast Water District;
- The State Water Resources Control Board has confirmed that **Cal-Am may develop water rights to pump groundwater from the Project site;**
- The Project would not significantly impact groundwater supplies or agricultural lands and **therefore is fully consistent with Coastal Act policies requiring that development not impair agricultural viability;** and
- The Project's proposed slant wells are a **preferred desalination intake methodology.**

We appreciate the opportunity to respond to the comments submitted by Project opponents, and we look forward to the Commission's consideration of Cal-Am's appeal and CDP application at the November 12 meeting.

Very truly yours,


Duncan Joseph Moore
of LATHAM & WATKINS LLP

cc: Andrew Homer, California-American Water Company
Tom Luster, California Coastal Commission

Attachments

LA3876739.5

These materials have been provided to the Coastal Commission Staff

ATTACHMENT A

CALIFORNIA-AMERICAN WATER COMPANY RESPONSES TO OPPOSITION COMMENTS

Appeal No. A-3-MRA-14-0050

Application No. 9-14-1735

Agenda Items W14a & 15a

California American Water Company (“Cal-Am”) submits the following responses to various opposition comments received in advance of the California Coastal Commission’s (“Commission”) consideration of Cal-Am’s (1) appeal of the City of Marina’s (“City”) denial of Cal-Am’s Coastal Development Permit (“CDP”) application to construct, operate, and decommission a temporary test slant well at the CEMEX sand mining facility (the “Project”); and (2) CDP application for that portion of the Project in the Commission’s retained jurisdiction.

I. THE COMMISSION HAS JURISDICTION TO HEAR CAL-AM’S APPEAL

A. The City’s Denial of Cal-Am’s Coastal Development Permit Application is a Final Action

Ag Land Trust and the Marina Coast Water District (“MCWD”) claim that the City’s denial of the CDP for the Project is not a “final” action. To that end, MCWD asserts that because the denial of the CDP is not “final,” Cal-Am’s appeal is an unlawful appeal of the City’s decision regarding environmental review of the Project under the California Environmental Quality Act (“CEQA”). These contentions are red herrings, without legal foundation and wholly lack merit.

As described in the Commission’s Staff Report for its November 12, 2014, meeting (the “Staff Report”), on July 10, 2014, the City Planning Department declined to approve or disapprove the Project’s CDP, and declined to certify the Mitigated Negative Declaration (“MND”) that the City prepared as the Project’s environmental document under CEQA. Cal-Am appealed that decision to the City Council. On September 4, 2014, the City denied the CDP and declined to certify the MND. (Staff Report at 24.) On September 12, 2014, the Commission received the City’s Final Local Action Notice (“FLAN”) from the City.¹ (Staff Report at 24.) The FLAN states, in relevant part, that “on September 4, 2014, the City of Marina City Council adopted Resolution No. 2014-103, . . . *denying Coastal Development Permit CDP 2012-05, for the California American Water Slant Test Well Project.*” (Emphasis added.) As described below, the FLAN’s plain text and the City’s submission of the FLAN to the Commission conclusively demonstrate that the City took a final action denying the CDP. Nothing more is required.

Contrary to the assertions of Ag Land Trust and the MCWD, nothing in the Marina Municipal Code establishes procedures for a denial of a CDP “without prejudice.” Chapter

¹ The City’s FLAN is attached hereto as Exhibit A. Pursuant to Coastal Commission Regulations section 13331, “[w]ithin five (5) working days of the approval or denial of a coastal development permit. . . a local government shall notify the commission and any person requesting such notification in writing of the final local action.” (14 Cal. Code Regs., § 13331.)

These materials have been provided to Coastal Commission Staff

17.41 of the Marina Municipal Code addresses permits for coastal zoning, and Section 17.41.090 governs procedures for CDPs. Section 17.41.090.D.3. requires that “[w]ithin five days of any *final* city council action on an appeal of a coastal permit the city shall notify . . . the State Coastal Commission.” (Emphasis added.) Moreover, Section 17.41.090.F.3 states that “[a]ppeals to the Coastal Commission must follow at least *one local action on the application.*” (Emphasis added.) The City followed the procedures in its Code and the Coastal Act by taking final action on Cal-Am’s CDP application, and then notifying the Coastal Commission that its denial of the CDP was a final action in the FLAN. (*See also* Public Resources Code § 30603(d) [“A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.”].) The City’s actions demonstrate that the City determined that the denial of Cal-Am’s proposed CDP was a final decision, making it subject to Coastal Commission review on appeal.

In sum, and contrary to MCWD’s contentions, the rules are quite simple. Because the City denied the CDP and filed a FLAN with the Coastal Commission, the City’s denial is appropriately considered a final action that may be appealed to the Commission.²

1. MCWD’s Interpretation Leads to Absurd Results

MCWD argues that the decision is not final because the City should be afforded the opportunity to consider the Project on the merits once adequate CEQA review has been completed by the City. Such an interpretation would lead to absurd results and frustrate the purpose of Coastal Act section 30603. MCWD’s interpretation would mean that a City could hold a major public works project that it opposes hostage from Commission review on appeal simply because the City believes its own CEQA review is inadequate.

The plain language of the Coastal Act *unconditionally* allows local denials of major public works projects to be appealed to the Commission, so long as the appeal alleges that the major public works project conforms to the certified Local Coastal Program (“LCP”) and Coastal Act policies regarding public access. (Public Resources Code §§ 30603(a)(5), 30603(b)(2).) Nothing in the Coastal Act states that such a denial is not appealable if the local agency determines it has not complied with CEQA in considering the project.

However, the interpretation offered by MCWD would create an endless loop where a hostile local agency could hold a permit for a major public works project hostage forever. More specifically, if a local agency wanted to deny a major public works project, it could simply require the preparation of an EIR (as the City has attempted to do here), find its own EIR inadequate, deny the project “without prejudice,” and be able to frustrate the purpose of the Coastal Act by trapping the applicant into returning over-and-over to be denied. Such an

² MCWD also argues that Cal-Am has not exhausted all of its administrative remedies. (*See* Letter from Howard “Chip” Wilkins III, on behalf of MCWD, to Susan Craig, California Coastal Commission, dated October 30, 2014 (“MCWD Letter”), at 3, fn. 2.) That is incorrect. As demonstrated above, the City Council’s denial of the CDP and issuance of the FLAN demonstrates that the City took final action on the Project. Accordingly, Cal-Am’s appeal to the City Council satisfied the exhaustion doctrine.

interpretation of the Coastal Act would allow a local agency to prevent a major public works project that is locally, regionally, and nationally important from ever being permitted.

This is an absurd result that cannot have been intended by the Legislature when it approved the Coastal Act, and, more importantly, violates the plain language of the statute.³ “Interpretations that lead to absurd results or render words surplusage are to be avoided.” (*Tuolumne Jobs & Small Business Alliance v. Superior Court*, 59 Cal.4th 1029, 1037 (2014).) Accordingly, MCWD’s assertions are without merit.

2. The Commission is Not Trespassing into the City’s Jurisdiction

MCWD also claims that Cal-Am has asked the Commission to “trespass into the City’s primary jurisdiction.” That, too, is incorrect. First, the Coastal Act expressly provides that the City’s denial of the CDP for the Project is appealable to the Coastal Commission. (Public Resources Code §§ 30603(a)(5), 30603(b)(2).) Here, the City denied the CDP, and Cal-Am appealed to the Commission on the grounds that the Project—a major public works project—conforms to the standards set forth in the certified LCP and the public access policies set forth in the Coastal Act. (*See* Public Resources Code § 30603(b)(2); Staff Report, Attachment 11.)

Second, it is the Coastal Commission, not the City, which has ultimate authority over the interpretation of the Coastal Act and LCPs:

Under the Coastal Act’s legislative scheme . . . , the LCP and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. . . . The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the state’s Coastal Act. In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government.

(*Charles A. Pratt Construction Co., Inc. v. Cal. Coastal Com.*, 162 Cal.App.4th 1068, 1075 (2008) (*Pratt*)). While Coastal Act Section 30603 may limit the reach of the Commission’s appellate review to specific projects, “the Legislature made the Commission, not the [local agency], the final word on the interpretation of the LCP.” (*Pratt*, 162 Cal.App.4th at 1078.) As such, MCWD’s assertions that the Commission has no jurisdiction have no merit.

³ *See* Cal. Pub. Res. Code § 30603(a) [“After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: . . . (5) Any development which constitutes a major public works project or a major energy facility.”], (b)(2) [“The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.”].

B. The Commission’s Assertion of Jurisdiction Over the Entire Project is Appropriate

Similarly, MCWD asserts that the Commission’s jurisdiction over the entire Project is improper. To the contrary, the Commission may appropriately assert jurisdiction over the entire Project. First, as described in the Staff Report, the Project site is entirely within the coastal zone. (Staff Report at 21.) Second, the City’s decision regarding the portions of the Project site that are landward of the mean high tide line is the subject of Cal-Am’s CDP appeal, which is appropriately within the Commission’s jurisdiction as a major public works project pursuant to Coastal Act section 30603(a)(5). Third, the portions of the Project site that are seaward of the mean high tide line are within the Commission’s retained jurisdiction.

In addition, the Commission should assert jurisdiction over the entire Project to ensure that the City’s decision on the CDP is supported by substantial evidence. Under the Coastal Act, once a FLAN is sent to the Commission and an appeal is timely filed, the Commission must determine whether there is a substantial issue with respect to the project’s conformity to the applicable LCP. (*See* Public Resources Code § 30625(b)(2); 14 Cal. Code Regs., § 13114.) Here, however, in denying the CDP, the City did not assess the Project’s conformity with the LCP, which it must do when it denies a local CDP. (*See Jamieson v. City Council of the City of Carpinteria*, 204 Cal. App. 4th 755, 763-64 (2012) [denial of CDP must be supported with substantial evidence showing inconsistency with LCP].) Therefore, notwithstanding the Commission’s clear statutory ability to accept jurisdiction over Cal-Am’s appeal of the City’s CDP denial, the Commission should find a substantial issue because of the lack of substantial evidence in the City’s record demonstrating that the Project is inconsistent with the LCP. Once the Commission finds a substantial issue, it holds a *de novo* hearing on the local CDP application. (14 Cal. Code Regs., § 13115(b).) Accordingly, the Commission’s jurisdiction over the entire Project is proper.

C. The Test Well Project is a Major Public Works Project

The MCWD also asserts that the Project does not constitute a “major public works” project. The Project, however, squarely falls within the Coastal Act’s definition of a “major public works,” and therefore the City’s CDP denial is appealable to the Commission.

Coastal Act section 30603(a)(5) provides that appeals may be filed for local government decisions to approve or deny proposed major public works projects. Coastal Act section 30114(a) defines “public works” as including: “All *production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.*” (Emphasis added.) In turn, the Coastal Act Regulations define “major public works” as facilities that cost more than \$100,000, with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index. (14 Cal. Code Regs., § 13012.)

As described in the Staff Report, Commission Staff has appropriately determined that the Project is a major public works project pursuant to Coastal Act Section 30114(a). (Staff Report

at 23-24.) Cal-Am is subject to the jurisdiction of the Public Utilities Commission,⁴ the proposed Project involves the production, transmission, and recovery of water, and the Project costs are greater than Coastal Act Regulations section 13012's minimum requirement. (*Id.* at 24.) Pursuant to the above-referenced provisions of the Coastal Act and the Commission's regulations, the City's action was therefore a denial of a major public works project and Cal-Am has the right under the Coastal Act to appeal the City's denial to the Commission.

MCWD argues that “[d]ischarging groundwater into the ocean is not—in any evident way—a reasonable public use. This well is not proposed to serve anyone.” (MCWD Letter at 7.)⁵ That is incorrect. Cal-Am is under an Order from the State Water Resources Control Board to significantly reduce withdrawals from the Carmel River within the next two years. Substantial effort has gone into studying proposed water supply options that would accomplish the Order's requirements. As the Staff Report notes, “[t]he currently proposed test well is meant to provide data for a possible desalination facility that is the subject of extensive environmental and public interest review by the California Public Utilities Commission and is the subject of a Settlement Agreement *among more than a dozen local governments and public interest groups.*” (Staff Report at 3-4, emphasis added.) Moreover, the Staff Report explains the detailed history over the past 15-20 years leading to the Project. (Staff Report at 19-21.) Those facts demonstrate that the Project has an important public purpose – determining the feasibility of a type of well that could be used in a potential future desalination facility that would provide water to the public. Nevertheless, a project need not show it has a “reasonable public use” to qualify a major public works project under the Coastal Act. Accordingly, MCWD's arguments are contrary to the Coastal Act's plain text and have no support.

II. THE PROJECT DOES NOT VIOLATE THE 1996 ANNEXATION AGREEMENT

Ag Land Trust asserts that the Project would violate a 1996 annexation agreement between the Monterey County Water Resources Agency (“MCWRA”) and MCWD, owners of Armstrong Ranch, and owners of the CEMEX property (formerly the Lonestar property) (“Annexation Agreement”). For the reasons explained below, however, the Project is unaffected by the Annexation Agreement, which is not applicable or relevant to the Project.

The Annexation Agreement establishes certain terms and conditions of annexation of certain properties in the Marina area if they are ultimately added into Zone 2 and 2A of the

⁴ Cal-Am is an investor-owned water utility regulated by the Public Utilities Commission.

⁵ In addition, MCWD argues that the Project's discharge of groundwater is contrary to Section 21 of the Monterey County Water Resources Act. (MCWD Letter, at 7, fn. 2.) MCWD misinterprets the Agency Act. The Project has been proposed consistent with the Agency Act. Section 21 of the Agency Act is qualified by the statement “for the purpose of preserving [the] balance [in the Salinas Valley Groundwater Basin (SVGB) resulting from the Agency's projects to balance extraction and recharge].” The Project would, in a worst case scenario, incidentally extract relatively small quantities of contaminated brackish water from the SVGB without negatively affecting the balance of recharge and extraction of basin groundwater - and possibly it will improve that balance. As such, MCWD's assertion is without merit.

MCWRA, including the Lonestar property that is now owned by CEMEX (the “Lonestar Property”). The annexation of the Lonestar Property into Zone 2 and 2A has not occurred. Several conditions of the Annexation Agreement, including payment of annexation fees and annual assessments due upon annexation, have not been satisfied. As the Annexation Agreement explains, the actual annexation “will not take effect until the Lonestar Property has been approved for prior or concurrent annexation into MCWD. When such approval has been obtained, Lonestar shall notify MCWRA, and the MCWRA Board of Supervisors shall declare by resolution the effective date of the annexation.” (Annexation Agreement, ¶ 7.3.) Thus, the annexation contemplated in the Annexation Agreement has not occurred, and, therefore, the provisions of the Annexation Agreement do not apply.

Even if annexation has occurred, which it has not, the commitment in the Annexation Agreement by Lonestar/CEMEX to limit groundwater pumping applies only as a limit on groundwater extracted by the Lonestar Property owner to be used on the Lonestar Property. The Annexation Agreement does not purport to limit the otherwise lawful development of seawater and contaminated brackish groundwater from the Lonestar Property.⁶ In fact, the Annexation Agreement only limits the owner’s withdrawal and use of groundwater on the Lonestar Property or MCWD’s in-lieu withdrawal which “shall be used only to provide water to the Lonestar property.” (Annexation Agreement, ¶¶ 7.2, 5.1.1.3.) On the other hand, Cal-Am proposes to extract seawater from proposed slant wells and potentially small amounts of brackish groundwater, which is expected to be unusable by other users, and proposes to extract the water *from* the Monterey Bay by way of the Lonestar Property, not for use *on* the Lonestar Property.⁷

The Annexation Agreement only establishes the contractual rights of the parties to complete annexation of the specified lands. Thus, with respect to the Lonestar Property, the limit on groundwater extraction simply establishes the water use demand on the Lonestar Property so that the MCWRA and MCWD can plan for and agree to serve the Lonestar Property upon annexation. The groundwater extraction limit was not intended to be a limitation on the rights or ability of third parties to access the property for purposes of developing seawater and incidental pumping of brackish, contaminated waters that are not suitable for agricultural, industrial or other beneficial uses without significant desalination treatment. In addition, the limitation should not be construed to constrain CEMEX rights to grant access to third parties for such projects.

⁶ Cal-Am acknowledges that such pumping is subject to the legal framework comprising California’s groundwater laws, described in the State Water Resources Control Board’s (“State Board”) Final Review of California American Water Company’s Monterey Peninsula Water Supply Project, dated July 31, 2013, which is on file with the Commission. (“State Board Report”). In addition, to the extent that such pumping extracts groundwater from the Salinas Valley Groundwater Basin, that pumping must be consistent with the Monterey County Water Resources Agency Act. The Project has been designed to comply with these legal requirements.

⁷ An email from Ms. Molly Erickson contends that no CEMEX representative is listed on the list of speakers attached as Attachment 1A to Cal-Am’s appeal. To the contrary, Bruce Steubing of Benchmark Resources appeared on behalf of CEMEX, and is listed as appearing in that capacity in the “Representing” column of Attachment 1A.

In fact, MCWRA’s current General Manager, and the General Manager at the time of execution of the Annexation Agreement, concur that the Annexation Agreement was not intended to limit potential development of seawater and brackish water from slant wells located on the CEMEX property. (See Declaration of David Chardavoyne, ¶ 10 [“The limitation is specific to groundwater use on the Cemex property, and is not relevant to the rights of third parties to access the property for purposes of extracting seawater and incidental amounts of brackish groundwater from the property for a non-overlying use.”], attached hereto as Exhibit B; Declaration of Michael Armstrong, ¶ 8 [“The Annexation Agreement did not in any way contemplate or limit the extraction or use of seawater from the Marina area to supply a desalination project.”], attached hereto as Exhibit C.)⁸ Indeed, MCWRA does not interpret Cal-Am’s Project to be inconsistent with, or to violate, the Annexation Agreement. (See Declaration of David Chardavoyne, ¶ 11.)

Cal-Am is not proposing to receive water service from the agencies on the property or to exercise the landowner’s water right. Therefore, the Annexation Agreement does not apply to the Project.

III. CAL-AM CAN DEVELOP WATER RIGHTS TO PUMP GROUNDWATER FROM THE SITE

Ag Land Trust argues that Cal-Am lacks water rights for the Project and that the test well would violate the “Doctrine of Overlying Correlative Rights.” Ag Land Trust’s argument reflects a misunderstanding of basic California groundwater law. Indeed, when asked by the California Public Utilities Commission to render an opinion on water rights for the full-scale Monterey Peninsula Water Supply Project, the State Board concluded that Cal-Am could develop water rights for the Monterey Peninsula Water Supply Project. (State Board Report at 47.) Specifically, the State Board concluded that Cal-Am may develop appropriative water rights to contaminated brackish groundwater, as “surplus” or “developed” groundwater, if Cal-Am establishes that the Project will not cause injury to other users. (*Id.* at 42.) The State Board found: “Since seawater intrusion occurs in this area, this water developed. . . is likely new water that is “surplus” to the current needs of other users in the Basin. Based on the information available, it is unlikely any injury would occur by the lowering of the groundwater levels in this region.” (*Id.* at 48.) Thus, the test well is expected to produce additional technical information to confirm that Cal-Am can legally extract water from the Salinas Valley Groundwater Basin near or beneath Monterey Bay without violating groundwater rights or injuring other groundwater users. (*Id.* at 47 [“So long as overlying users are protected from injury, appropriation of water. . . should be possible.”]), 49 [“Cal-Am could legally pump from the Basin by developing a new water supply through desalination and showing the developed water is surplus to the existing supply.”].)

Ag Land Trust further asserts that the test well would constitute a “waste of water” in violation of Article X, section 2 of the California Constitution. Ag Land Trust ignores the fact that the test well would not result in a “waste” of water that would otherwise be put to beneficial

⁸ The Declarations of Mr. Chardavoyne and Mr. Armstrong were filed in *California-American Water Company v. Lonestar California, Inc.*, Monterey County Superior Court Case No. M129303.

use. As described in the State Board Report, “if, after excluding all present and potential reasonable beneficial uses, there is water wasted or unused or not put to any beneficial uses, ‘the supply. . . may be said to be ample for all, a surplus or excess exists. . . and the appropriator may take the surplus or excess. . .’” (State Board Report at 35 [citations omitted].) The water that would be drawn by the test wells “is substantially degraded by seawater intrusion and other natural factors.” (*Id.*) Therefore, water from the proposed test well would not be put to any other beneficial use, and the Project would not result in an improper “waste” of water. Indeed, the Project would provide valuable information to support the State’s policy that water resources be put to beneficial use to the greatest extent possible by investigating whether brackish, contaminated waters could be extracted without harming other water users and treated for future, potable use.

IV. THE PROJECT WOULD NOT SIGNIFICANTLY IMPACT AGRICULTURAL LANDS

Ag Land Trust argues that the Project will impact groundwater supply and surrounding farmland.”⁹ To the contrary, all of the technical data in the Commission’s record supports the conclusion that the Project will not have significant effects on groundwater elevation and conditions in the Salinas Valley Groundwater Basin, and will not adversely affect any nearby operating wells.

As described in the Staff Report, the amount of water that the Project would withdraw is expected to result in an insignificant effect on coastal agriculture. The total water withdrawal for the test well would be approximately 4,000 acre-feet per year over the two-year test period, most of which is expected to be seawater or seawater-intruded groundwater from the subseafloor. This amount of extraction represents only about 0.1 percent of the 180/400-Foot Sub-Basin’s groundwater storage. (Staff Report at 50-51.)

Additionally, the Staff Report describes how Cal-Am has modeled the expected “cone of depression,” which is the area in which groundwater levels may be lowered due to the Project’s water withdrawal, to extend to approximately 2,500 feet from the proposed test well. (Staff Report at 51.) The drawdown within this cone is expected to be only approximately four inches. The closest operational agricultural wells are approximately 5,000 feet from the test well, and are therefore not expected to be significantly affected by the well tests. (*Id.*)

Despite the unlikelihood of any impacts to operating wells, Cal-Am has incorporated the following mitigation measure to ensure that no significant impact would occur:

⁹ See Letter from William P. Parkin, Ag Land Trust, to Steve Kinsey, California Coastal Commission, dated October 29, 2014, at 1. Ag Land Trust also asserts that the Project would impact resources protected by the North Monterey County LCP, but cites absolutely no facts in support of its assertion. (*Id.* at p. 7.) In any event, the Project is located within the City of Marina, and so is subject to the City’s certified LCP. No aspect of the Project would occur in areas governed by the North Monterey County LCP. As such, Ag Land Trust’s citation to that LCP is irrelevant.

A drawdown of 1 foot above natural fluctuations on groundwater levels shall be considered a significant adverse effect on water supply. If pumping activities reflect a drawdown of 1 foot or greater on any adjacent well, compensatory mitigation shall be required. Feasible mitigation shall include consultation with the affected water user and implementation of compensatory mitigation measures, including monetary compensation (i.e., for increased pumping costs or for upgraded wells), or provision of replacement water from alternative sources. If compensation or other remediation is found to be unfeasible, pumping activities shall be adjusted so that no more than 1 foot of drawdown on usable water sources would result.

(Staff Report at 51.) In addition, the Staff Report recommends including Special Condition 11, which would require Cal-Am to conduct monitoring during all pumping activities and to record all drawdown levels and changes in salinity in nearby inland wells. Special Condition 11 also requires that Cal-Am cease its pump tests if monitoring shows a drawdown of nearby wells of one foot or more or shows an increase of more than two parts per thousand of salinity. (*Id.*; see also Declaration of David Chardavoyne, ¶ 16.)

For these reasons, the Staff Report appropriately concludes that, “[g]iven the relatively small amount of water to be pumped, the distance to other active wells, and the above mitigation measure, the project is not expected to adversely affect coastal agriculture.” Therefore, Commission Staff has determined that the Project, as conditioned, would be carried out in a manner that is supportive of coastal agriculture and would be consistent with the LCP. (Staff Report at 51.)

V. OTHER OBJECTIONS TO THE PROJECT LACK MERIT

A. The MND Addressed the Aquitard Beneath the Dune Sand Aquifer and Potential Impacts to the 180-Foot Aquifer

Water Plus contends that no aquitard exists beneath the Dune Sand Aquifer, precluding the development of a desalination well at the Project site. The MND, however, provides clarification regarding the existence of an aquitard at the Project site:

[T]he Salinas Valley Aquitard is known to thin out as it approaches the ocean in some areas and recent exploratory borings taken at the CEMEX site indicate a lack of the confining layer at that location. The aquifer material that underlies the Dune Sand Aquifer at the project site is hydrostratigraphically equivalent to the 180-Foot Aquifer of the Salinas Valley (consisting of similar bodies of rock), though the geologic materials encountered in borings at the CEMEX site were formed in a different depositional environment. However, the sediments at the CEMEX site are located at similar elevations as those of the 180-Foot Aquifer; therefore, the unit is referred to as the 180-Foot equivalent aquifer (180-FTE), which

assumes that, although geologically different, the two are hydraulically connected. The 180-FTE at the project site generally ranges from approximately 50 to 200 feet [below mean sea level].

(MND at 112.)

Further, the Project's impacts on the 180-Foot Aquifer are expected to be de minimis. The 180-Foot Aquifer is already subject to highly intruded sea water because groundwater pumping from the 180-Foot Aquifer exceeds nature recharge. (MND at 112.) The MND notes that, "[i]n MCWRA's latest groundwater management plan (2006), an estimated 25,000 acres of land overlies water that has degraded to 500 mg/L chloride." (*Id.* at 113.) This highly saline water has limited or no beneficial use without treatment to remove the salt. In addition, to the extent that the Project pulls water from the 180-Foot Aquifer, any draws would be extremely low, as the Project is projected to draw up to 97 percent of its water from Monterey Bay. (State Board Report at 35.) Accordingly, and contrary to Water Plus' claims, the analysis in the MND and in the Commission's record fully supports the development of the test well Project at the proposed site.

B. Subsurface Intake Wells, Including Slant Wells, Are the Preferred Desalination Intake Methodology

Water Plus and Public Water Now erroneously claim that slant wells are not feasible or would be prohibitively expensive. Water Plus and Public Water Now ignore that subsurface intake wells, including slant wells, are the preferred desalination intake methodology for multiple state agencies with permitting and/or other regulatory authority over desalination projects, including the Coastal Commission, State Water Resources Control Board, and the National Oceanic and Atmospheric Administration ("NOAA"). In fact, the Monterey Bay National Marine Sanctuary, a part of the NOAA, has created *Guidelines for Desalination Plants in the Monterey Bay National Marine Sanctuary*, which clearly and unconditionally state that desalination project proponents "should investigate the feasibility of using subsurface intakes [including slant wells] as an alternative to traditional [i.e., open ocean] intake methods."¹⁰ That is exactly what the Project proposes to do. Put another way, the purpose of the Project is to confirm the feasibility of slant wells for a desalination project, including the cost of such wells, and share that information with those agencies and the public. In addition, the Department of Water Resources recently awarded Cal-Am a \$1,000,000 grant to partially fund the Project, indicating that it "look[s] forward to working with [Cal-Am] to achieve a successful [slant test well] project in furtherance of water desalination as a viable water supply to meet California's needs."¹¹

¹⁰ NOAA, Monterey Bay National Marine Sanctuary, *Guidelines for Desalination Plants in the Monterey Bay National Marine Sanctuary*, at 6 (on file with the Commission).

¹¹ Letter from Richard A. Mills, Department of Water Resources, to Richard C. Svindland, California American Water, Sept. 3, 2014 (on file with the Commission).

EXHIBIT A



September 11, 2014

Mike Watson
Coastal Planner for County of Monterey
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

BY CERTIFIED MAIL

RE: Notice of Final Local Action, California American Water Slant Test Well Project

Dear Mr. Watson:

At a continued Public Hearing on September 4, 2014, the City of Marina City Council adopted Resolution No. 2014-103, on appeal disapproving a mitigated Negative Declaration and denying Coastal Development Permit CDP 2012-05, for the California American Water Slant Test Well Project located at CEMEX's Lapis Road property (APN's 203-100-001 & 203-011-019).

As described in the staff report dated August 28, 2014, within twenty-one (21) days of the final City Council action on a Coastal Development Permit within the appeal zone, an appeal of such decision may be filed by an aggrieved party with the State Coastal Commission or an appeal may be filed by the State Coastal Commission. Therefore, within the appeal zone, twenty-one (21) days must lapse from the date of a local decision on a Coastal Permit before such action can be deemed final. After this twenty-one (21) day period expires, the Coastal Permit/Notice of Permit Decision may be issued to the applicant.

Attached are the following materials provided to and received by the City Council for the September 4, 2014 Public Hearing:

- City Council Resolution No. 2014-103
- Staff report dated August 28, 2014 with draft Resolution;
- Exhibit A – Draft Initial Study and Mitigated Negative Declaration
- Exhibit B – Amended Mitigation Monitoring and Reporting Plan
- Exhibit C – Errata
- Exhibit D – Comment Letters with Responses from 30 day public review period
- Exhibit E – Correspondence June 17, 2014 through July 10, 2014
- Exhibit F – Correspondence Since July 10, 2014
- Correspondence from City Council meeting – September 3, 2014 –

An on demand video record of the meeting, which started on September 3, 2014 and was continued to September 4, 2014, can be viewed at AMPMedia.org.

Please inform the City of Marina when and where an appeal of this project will be conducted.

Sincerely,

A handwritten signature in black ink that reads "Szymanis". The signature is written in a cursive style with a large, prominent initial "S".

Theresa Szymanis, AICP CTP
Planning Services Manager
Community Development Department

Cc: City Attorney
Christine di Iorio, Community Development Director

EXHIBIT B

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6 Fax: (831) 751-2331
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8 ALLEN MATKINS LECK GAMBLE
9 MALLORY & NATSIS LLP
10 K. ERIK FRIESS (BAR NO. 149721)
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17 nshantar@allenmatkins.com

18 Attorneys for Plaintiff
19 CALIFORNIA-AMERICAN WATER COMPANY

20 SUPERIOR COURT OF CALIFORNIA
21 COUNTY OF MONTEREY

22 CALIFORNIA-AMERICAN WATER
23 COMPANY, a California water
24 corporation,

25 Plaintiff,

26 v.

27 LONESTAR CALIFORNIA, INC., a
28 Delaware corporation; CEMEX, INC., a
Louisiana corporation; CEMEX
CONSTRUCTION MATERIALS PACIFIC,
LLC, a Delaware limited liability company;
RMC PACIFIC MATERIALS, LLC, a
Delaware limited liability company; Does 1
through 50, inclusive, and all persons
unknown claiming an interest in the
Subject Property,

Defendants.

Case No. M129303

Date: October 31, 2014

Time: 9:00 a.m.

Dept: 15

**DECLARATION OF DAVID
CHARDAVOYNE (MCWRA GENERAL
MANAGER) IN SUPPORT OF
OPPOSITIONS TO MOTIONS TO
INTERVENE OF MARINA COAST
WATER DISTRICT**

1 I, David E. Chardavoyne, declare as follows:

2 1. I am the current General Manager of the Monterey County Water Resources
3 Agency ("MCWRA"), a position I have held since April 1, 2013. I have personal
4 knowledge of the facts set forth in this Declaration and, if called as a witness, could and
5 would testify competently to such facts under oath.

6 2. MCWRA is a water and flood control agency created by the State of
7 California, with jurisdiction coextensive with Monterey County, governed by MCWRA's
8 Board of Supervisors. MCWRA is the entity with jurisdiction and responsibility for
9 managing and protecting the Salinas River Groundwater Basin.

10 3. MCWRA has been involved in the development of California-American
11 Water Company ("CalAm's") Monterey Peninsula Water Supply Project ("Water Supply
12 Project" or "MPWSP"), and has an agreement with CalAm to ensure the development
13 and implementation of a corresponding monitoring and reporting program. CalAm's
14 MPWSP includes measures to mitigate any potential impacts that the project may have
15 on the Salinas River Groundwater Basin, and MCWRA will ensure full implementation
16 of a monitoring, reporting and mitigation program for both the slant test well and the
17 MPWSP.

18 **A. The Annexation Agreement Has No Relationship To The Test Well**
19 **Proposed By CalAm.**

20 4. In my capacity as General Manager of MCWRA, I have reviewed and am
21 familiar with the March 1996 *Annexation Agreement and Groundwater Mitigation Framework*
22 *for Marina Area Lands* ("Annexation Agreement") attached to the Complaint in
23 Intervention submitted by Marina Coast Water District ("MCWD").

24 5. The Annexation Agreement is a contractual agreement by and among
25 MCWRA, the City of Marina ("City"), the MCWD, the J.G. Armstrong Family Members
26 ("Armstrong"), and RMC Lonestar ("Lonestar"). On information and belief, Cemex, Inc.
27 and its affiliates that are the named defendants in this lawsuit (collectively, "Cemex") are
28

1 the successors in interest to Lonestar.

2 6. CalAm is not a party to the Annexation Agreement.

3 7. The purpose of the Annexation Agreement was to ensure access to usable
4 groundwater from the Salinas River Groundwater Basin to certain parties, i.e., MCWD,
5 Armstrong and Lonestar. In exchange, those parties agreed to pay their proportionate
6 share for the benefits of the MCWRA Zone 2 and 2A Projects that augment the usable
7 groundwater supply in the Salinas River Groundwater Basin.

8 8. The Annexation Agreement did not contemplate the extraction and use of
9 non-potable seawater or brackish water for use as part of a desalination project or
10 otherwise.

11 9. The potential annexation of the Cemex property that is addressed in the
12 Annexation Agreement has not occurred because multiple conditions precedent are
13 unfulfilled. For example, neither Lonestar nor Cemex has (1) requested annexation to
14 MCWRA, or (2) paid the required annexation fees to MCWRA. In addition, the
15 annexation has not been approved by the Monterey County Board of Supervisors. And,
16 as Lonestar's successor in interest, Cemex has never indicated to MCWRA that it intends
17 to request annexation under the Annexation Agreement.

18 10. The 500 acre-foot per year limitation described in the Annexation
19 Agreement is a limitation applicable to Cemex's pumping of groundwater from the
20 Salinas River Groundwater Basin for use on the Lonestar/Cemex property. The
21 limitation is specific to groundwater use *on* the Cemex property, and is not relevant to
22 the rights of third parties to access the property for purposes of extracting seawater and
23 incidental amounts of brackish groundwater from the property for a non-overlying use.

24 11. MCWRA does not interpret the Test Slant Well project proposed by CalAm
25 to be inconsistent with, or to violate, the Annexation Agreement..

26 12. The Annexation Agreement includes remedies and dispute resolution
27 procedures that would be the required and appropriate means to address any grievances
28

1 under the Annexation Agreement. No party to the Annexation Agreement has requested
2 a remedy or instituted the dispute resolution procedures available under the Annexation
3 Agreement.

4 13. As an indispensable party to the Annexation Agreement, MCWRA does not
5 view the Annexation Agreement or any of the rights, responsibilities, and obligations it
6 establishes as an impediment to CalAm's completion of the Test Slant Well project or the
7 overall MPWSP in any way.

8 **B. MCWRA Will Monitor The Test Well To Ensure The Well Will Not**
9 **Cause Any Material Impacts On The Salinas River Groundwater Basin.**

10 14. CalAm is proposing to develop a test well on the Cemex property to assess
11 the feasibility of slant well technology and to facilitate hydrogeologic assessment of the
12 potential effects of a full scale desalination project in the Marina area to meet the water
13 supply needs of the Monterey Peninsula. The slant test well and the full scale project are
14 within the jurisdiction of MCWRA and are designed to draw seawater from underneath
15 the Monterey Bay to source the wells and desalination project.

16 15. Preliminary analyses indicates that at times, particularly during start-up,
17 the well could draw some brackish groundwater from the immediate vicinity of the well
18 and inland of the mean high tide line.

19 ///

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21 ///

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24 ///

25 ///

26 ///

27 ///

28

EXHIBIT C

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17 nshantar@allenmatkins.com

18 Attorneys for Plaintiff
19 CALIFORNIA-AMERICAN WATER COMPANY

20 SUPERIOR COURT OF CALIFORNIA
21 COUNTY OF MONTEREY

22 CALIFORNIA-AMERICAN WATER
23 COMPANY, a California water
24 corporation,

25 Plaintiff,

26 v.

27 LONESTAR CALIFORNIA, INC., a
28 Delaware corporation; CEMEX, INC., a
Louisiana corporation; CEMEX
CONSTRUCTION MATERIALS PACIFIC,
LLC, a Delaware limited liability company;
RMC PACIFIC MATERIALS, LLC, a
Delaware limited liability company; Does 1
through 50, inclusive, and all persons
unknown claiming an interest in the
Subject Property,

Defendants.

Case Nos.

Date: October 31, 2014

Time: 9:00 a.m.

Dept: 15

**DECLARATION OF MICHAEL D.
ARMSTRONG (FORMER MCWD
GENERAL MANAGER) IN SUPPORT OF
OPPOSITIONS TO MOTIONS TO
INTERVENE OF MARINA COAST
WATER DISTRICT**

1 I, Michael D. Armstrong, declare as follows:

2 1. I am an individual residing in the County of Monterey, City of Pacific
3 Grove, California. I make this declaration in support of California-American Water
4 Company's ("CalAm's") Oppositions to the Motions to Intervene Filed by the Marina
5 Coast Water District. I have personal knowledge of the facts set forth in this declaration
6 and if called as a witness, could and would testify thereto competently under oath.

7 2. From 1996 to 2000, I was the General Manager of the Monterey County
8 Water Resource Agency ("MCWRA"). After I left that position, I was the General
9 Manager of Marina Coast Water District from 2000 to 2006.

10 3. The MCWRA is a water and flood control agency created by the State of
11 California, with jurisdiction coextensive with Monterey County, and is governed by an
12 appointed Board of Directors and by the Monterey County Board of Supervisors. The
13 MCWRA is the agency responsible for, among other things, managing the Salinas Valley
14 Groundwater Basin to address issues of salt water intrusion into the Basin. The Marina
15 Coast Water District is a limited purpose special district which provides water service to
16 customers in Marina and the former Fort Ord. Marina Coast Water District has no
17 managerial or oversight authority in the Salinas Valley Groundwater Basin.

18 4. In my capacity as General Manager for the MCWRA, one of my
19 responsibilities was negotiating, drafting, and securing the execution of that certain
20 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands
21 dated as of March 1996 ("Annexation Agreement"). I was also designated as the initial
22 Administrator of the Annexation Agreement for the MCWRA, pursuant to Section 16 of
23 the Annexation Agreement. As such, I am intimately familiar with the purposes and
24 intent of that agreement, including each of the terms therein, as of the date the parties
25 entered into the agreement.

26 5. The purpose of the Annexation Agreement was to establish the framework
27 for the annexation of two private properties (the Lonestar property, which is the current
28 Cemex property, and the Armstrong property) and the Marina Coast Water District into

1 Zone 2 and 2A of the MCWRA.

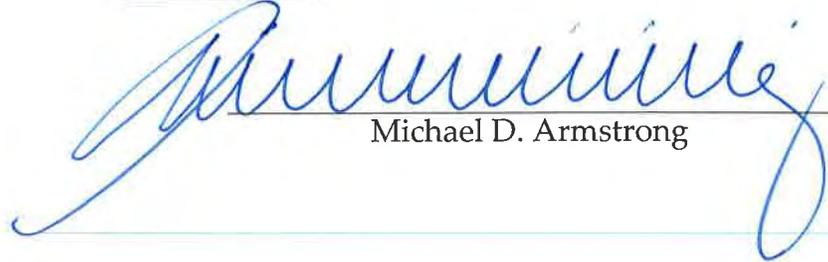
2 6. The fundamental intent of the Annexation Agreement was to provide the
3 right to the use of a defined amount of groundwater from the Salinas Valley
4 Groundwater Basin to Marina Coast Water District, Armstrong, and Lonestar. In
5 exchange, those parties agreed to pay their proportionate share for the benefits of the
6 MCWRA Zone 2 and 2A Projects that augment the groundwater supply in the Salinas
7 Valley Groundwater Basin.

8 7. The agreement does not purport nor was it intended to create any legal or
9 equitable interest by any of the parties in the property of any of the other parties.

10 8. The Annexation Agreement did not in any way contemplate or limit the
11 extraction or use of seawater from the Marina area to supply a desalination project.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed on October 14, 2014, at Marina, California.

15
16 
17 Michael D. Armstrong

Luster, Tom@Coastal

From: Val Wood <VWood@rmmenvirolaw.com>
Sent: Friday, November 07, 2014 12:56 PM
To: Luster, Tom@Coastal; Craig, Susan@Coastal
Cc: Howard Wilkins III; Jennifer Holman
Subject: Appeal No. A-3-MRA-14-0050
Attachments: Coastal Commission Letter Exhibit C (00274547xB0A85).pdf; Coastal Commission Letter Exhibit A (00274545xB0A85).pdf; Coastal Commission Letter Exhibit B (00274546xB0A85).pdf; Coastal Commission Letter Exhibit G (00274550xB0A85).pdf; Coastal Commission Letter Exhibit D (00274548xB0A85).pdf; Coastal Commission Letter Exhibit E (00274549xB0A85).pdf; Coastal Commission Letter Exhibit F (00274551xB0A85).pdf; Coastal Commission Letter Exhibit E (00274549xB0A85).pdf; California Coastal Commission Letter re. Appeal No. A-3-MRA-14-0050 (00274552xB0A85).pdf

Please see attached. If you have any problems opening these, please let us know.
Hard copies to be sent in US Mail today.
Thank you.
Val.

Regards,

Valorie Wood

Legal Assistant

Jennifer S. Holman and Elizabeth Sarine

Robert M. Sawyer, of Counsel and Brian J. Plant, of Counsel

RMM

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Please consider the environment before printing this email.

Luster, Tom@Coastal

From: Larry Parrish <lparrish@toast.net>
Sent: Friday, November 07, 2014 9:37 AM
To: Luster, Tom@Coastal
Subject: November 12, 2014 Hearing at Half Moon Bay

Agenda items 14(a), 15(a)
Larry Parrish

Dear Chairman Steve Kinsey and fellow Coastal Commissioners:

I am writing in regard to your upcoming hearing on Nov. 12 in Half Moon Bay. I strongly recommend that you deny both the Appeal (No. A-3-MRA-14-0050) from California-American Water Company (Cal-Am), and also the Coastal Permit Application (No.9-14-1735) also from Cal-Am. Here are my reasons for denial, and they apply to both the appeal and the application.

1. Not in Cal-Am district:

The proposed site at the Cemex facility is in Marina, California, which is NOT being served by Cal-Am. This is in fact a blatant attempt to invade and intrude into another water district that is being served by a public (not private) water purveyor, namely the Marina Coast Water District (MCWD), a public agency. Not only is this an infringement into MCWD's territorial boundaries, but MCWD has it's own plans for development of the very same site at the Cemex property for it's own use for a desalination (desal) plant in the future, albeit without a specific date for that process to begin. No doubt, you have probably read MCWD's objections first hand.

2. No Water Rights:

Cal-Am does NOT have any rights to water at the Cemex site, nor to the property, nor any other right that would allow for development of either a slant well, or a desal. facility. Cemex itself has denied Cal-Am permission to use their property for a slant well test or any other future use for that matter. Cal-Am simply has no legal claim to use that site for anything whatsoever. And even if they did have permission from Cemex, the most water that can be obtained legally from that site, according to a prior written legal agreement, is 500 acre feet (AF) per year. Cal-Ams' proposed slant well would use several thousand AF per year, not to mention the production capacity of the final desal. plant, which would total tens of thousands of AF/yr..

3. Unproven technology:

Currently there are exactly ZERO slant wells in operation in the United States for the production and/or extraction of water - desalinated or otherwise. This is a totally unproven and unsubstantiated technology. However, there have been other attempts at implementation of this type of well technology. Right across the Monterey Bay from Marina is Santa Cruz, and the Santa Cruz Water District made an attempt at implementation of slant well technology, but to no avail. They (SCWD) determined, after several years of study, that slant wells are "NOT FEASIBLE". End of discussion. Also, down at Doheny Beach in Dana Point the South Coast Water District has installed a slant well, and the results were inconclusive and with several unresolved problems, including unacceptable variations in salinity of the extracted water, and sand clogging the screens. That well has been shut down and the project is not expected to be completed until 2027, at the earliest, if at all.

4. No local support:

When I say "local", I am referring to Marina. The City of Marina Planning Commission did NOT approve the permit for the slant well at the Cemex site. The Marina City Council voted to DENY the permit for the slant

well. And the MCWD has vehemently objected to the permit being granted, for many other reasons of their own that I assume you have previously heard or read in communications from MCWD or from prior testimony and/or documentation.

5. Not just a test well:

Cal-Am, and many others, in testimony given at the September 3, 2014 Marina City Council meeting, and elsewhere, have repeatedly stated that "it's only a test well". Well, this is basically a half truth, at best. In Cal-Am's very own appeal to the Coastal Commission (SECTION II, Item 2.: Brief description of development being appealed:) Cal-Am states, and I quote, "it is possible that California-American Water Company would apply for an additional Coastal Development Permit to convert it (the slant well) to a production well.". Obviously, that is the avenue Cal-Am will choose to take - to use that well, at that site, for the intake for their desal. project. Cal-Am even says so. And it's blatantly obvious that that is their desire, because if there was a different site available for the project, wouldn't Cal-Am have to construct ANOTHER test well at that other site? The answer is YES! Every site has it's own specific geological and hydrological characteristics and challenges, and no two sites are the same. What might work at one site, may not work at another. Obviously! If Cal-Am had a site, or actually owned a site, the situation would be different - BUT THEY DON'T.

6. A HUGE cost (and waste) of money to Monterey District ratepayers:

The Monterey Peninsula area ratepayers, served by Cal-Am Water, have effectively been punished financially for many years - by Cal-Am's failures to develop a new water source, by Cal-Am's incompetence, by Cal-Am's avaricious business model, and probably most of all by the stellar efforts of ratepayers to conserve water due to the threats from the State Water Resources Control Board via CDO 95-10. The more we conserve - the higher price we pay for our water. Currently, we are using very near the least amount of water per person in the State of California - and we're paying the highest rates for that water. What a payoff for conscientiousness. Whatever happened to the law of supply and demand? Lower demand (usage) should equal lower prices, should it not?

Basically, we've had enough and we're sick and tired of Cal-Am's extensive list of failures that we always have to end up paying for. And this slant well boondoggle is just one more giant failure in the making, which we will undoubtedly have to pay for. Just the other day we heard that the price for the test slant well has jumped from \$4 million to \$6 million. OVERNIGHT. And the bottom line is - everyone knows (including Cal-Am) that the slant well won't work. The geology won't work, they have no water rights, there is no aquatard which would prevent the well from drawing water from Salinas River aquifers, and the practically guaranteed lawsuits that will emanate from the Salinas Valley agriculture community et al. must certainly be considered. And that's just a few reasons why this well will not work - no doubt you will hear many others.

CONCLUSION:

Again, I strongly urge you to DENY both the appeal and the application at the proposed Cemex site. You've read my reasons - there are countless others. It's simply the wrong project at the wrong site by the wrong entity. Instead, please direct Cal-Am to move their aspirations northward to the area of Moss Landing. There are better sites, more willing agencies, more agreeable partnerships in the offing, and a much, much greater opportunity for success in their pursuit of a desal. project. Thank you for your time and consideration.

Sincerely,
Larry Parrish
Carmel, CA
831 622-7455

Luster, Tom@Coastal

From: Markey, Kristi A. x7576 <MarkeyKA@co.monterey.ca.us>
Sent: Friday, November 07, 2014 3:01 PM
To: Luster, Tom@Coastal
Subject: Comments on Appeal No. A-3-MRA-14-0050
Attachments: Condition proposed by staff.webarchive; Salt Water Intrusion 180 aquifer - reduced-2 copy.pdf

Dear Mr. Luster,

Monterey County Supervisor Jane Parker submits the following in regards to California American Water Company's appeal for a permit to conduct pumping tests for a desalination plant (A-3-MRA-14-0050). This appeal is scheduled to be heard at next week's meeting of the Coastal Commission. Regrettably, Supervisor Parker cannot attend in person, but hopes that due consideration may be given to this request to modify a proposed condition. The following is Supervisor Parker's message:

The Salinas Valley aquifer is in overdraft and has suffered significant salt water intrusion over many decades. The Water Resources Agency of Monterey County has wrestled with this problem and initiated projects to protect the aquifer, but the salt water intrusion has continued to march inland, and currently threatens the water supplies of regional communities. (See attached salt water intrusion map created by WRA)

For this reason, the pumping proposed by California American Water must be carefully monitored to avoid further damaging the aquifer. The question is how this can be accomplished. As a Supervisor for this area, I have spoken with hydrologists about the pattern of intrusion and potential effects of pumping. It is possible that pumping would cause increased salt water intrusion outside the 5,000 foot distance of the Cal Am's proposed monitoring wells, due to the geology of the land creating greater opportunity for sea water to flow inland further north of where the monitoring wells are planned. In other words, the area of the monitoring wells may be too small. I would suggest that Monterey County Water Resources Agency be given authority to halt pumping if there is evidence either via the monitoring wells or from wells outside the monitored zone that the pumping is damaging the aquifer. Perhaps a hearing could be held before the Commission if there is a dispute about halting the pumping. Such authority would need to be added to the condition. Additionally, in order for WRA to obtain the data from Cal Am's monitoring wells, I believe the condition would need to state a requirement that the data be provided to WRA weekly or monthly.

While creating new water projects is vitally important, protecting our existing water supply is equally important and must be given proper weight in your deliberations.

Finally, I wish to state that I am writing this letter as an individual Supervisor and am not representing the County or any other agency in sending these remarks. Thank you for your time and service to the State of California,

Submitted on behalf of Monterey County Supervisor Jane Parker Kristi Markey, Chief of Staff
(831) 883-7576

Luster, Tom@Coastal

From: MJDelPiero@aol.com
Sent: Monday, November 10, 2014 7:09 AM
To: sarahcoastalcom@yahoo.com; zimmerccc@gmail.com; mmclureccc@co.del-norte.ca.us; cgroom@smcgov.org; Gregcoastal@sdcounty.ca.gov; Luster, Tom@Coastal; Luster, Tom@Coastal; virginia.jameson@gmail.com
Subject: Objection to Cal-Am appeal/application for test slant well
Attachments: BoardofDirectors.pdf; Maps.pdf; NoticeofObjection.pdf; Oppositioncorrespondence.pdf

TO: The California Coastal Commission (Please Distribute/Forward This to All Members and Staff)

FROM: Monterey County Agricultural and Historic Lands Conservancy (THE AG LAND TRUST)

RE: Opposition to Proposed California American Water Company Appeal/Application to Acquire a Well Site to Violate Mandatory Policies of the Certified Local Coastal Plan and to Prescriptively "Take" Groundwater from the Overdrafted Salinas Valley Groundwater Basin and our Farm

Herewith enclosed, please accept this notice/letter of opposition to the appeal/application by the California American Water Company, along with the herewith attached EXHIBITS A, B, AND C.

Notice of Objection to proposed Cal-Am "test" slant well (11 pages)

Exhibit A - Board of Directors bios.

Exhibit B - Maps (showing induced seawater intrusion area and undisclosed A.L.T. wells)

Exhibit C - Prior objections correspondence (2006 - present)

The flawed Cal-Am appeal/application proposes to directly violate multiple mandatory Local Coastal Plan policies and state groundwater rights laws, and proposes an illegal "taking" of private property/groundwater rights, to economically benefit the privately held California American Water Company at the expense of the Ag Land Trust.

The application even fails to identify one of our agricultural groundwater wells on our farm property (the "Big Well"), which is the closest to the so-called Cal-Am "test well" and which will be the first to be permanently and irreparably contaminated by Cal-Am's illegal conduct. The proposed environmental review is incomplete and flawed.

No Coastal Commission staff review of these reasonably anticipated, immitigable adverse impacts on our protected coastal agricultural groundwater resources and farmland has been conducted or presented to the Commission in anticipation of this appeal hearing. The failure to even identify these unmitigated adverse impacts in the staff report, we assume, is because the Commission staff has relied exclusively on the flawed (by omission) Cal-Am appeal/application that has tried to "downplay" its intended "taking" of our groundwater supplies and its adverse environmental effects on our prime farmland. Coastal Commission staff has not contacted our Aq Land Trust in spite of our prior correspondence (see Exhibit C).

We anticipate presenting testimony pursuant to our attached Letter of Opposition and Exhibits at your Wednesday meeting in Half Moon Bay.

Please distribute our full comments and all attachments to each and all commissioners prior to the day of the meeting so that they may fully understand and consider the potential consequences of their actions.

Most Respectfully, Marc Del Piero, Director

Exhibit 1 – Ag Land Trust Exhibits -

Board of Directors bios.



Ag Land Trust Board of Directors

President Aaron Johnson

Mr. Johnson is a partner of the law firm Partner at L+G, LLP Attorneys At Law. With over 15 years of practice specializing in representing major agricultural business enterprises on the Central Coast, he has extensive real property, transactional, and litigation experience, particularly related to agricultural business and mineral rights.

Vice President David Gill

Co-owner and Founder of Rio Farms, Mr. Gill oversees current operations of over 14,500 acres of specialty vegetable crop production. He is a past president of the Western Growers Association of California. Mr. Gill is recognized nationally as an expert in California agricultural production and management systems.

Treasurer Louis Frizzell

Mr. Frizzell is a Certified Public Accountant and Certified Financial Planner who provides accounting and financial planning services to many of the largest agri-business enterprises in Central California. He joined the Board of Directors in 2007, and has served as Treasurer since that time, helping to manage the Ag Land Trust's finances, including serving as the chief liaison for audits.

Secretary Kellie Morgantini

Ms. Morgantini is an attorney, a founding member of the Board of Directors, and the decendent of a century old farming family in Monterey County. She formerly served as the Director of Planning for the City of Greenfield, and served in the coastal planning unit for the County of Monterey. She is currently the Executive Director of Legal Services for Seniors, Inc. of Monterey County.

Managing Director Sherwood Darington

A founding member of the Ag Land Trust and currently serving as Managing Director, Mr. Darington is a retired Vice-President of Bank of America specializing in agricultural finance and lending for Central California. His family has lived in Monterey County for over 150 years. Mr. Darington is a Licensed Certified Appraiser, specializing in

agricultural properties and currently the Public Member on the Local Agency Formation Commission of Monterey County.

Member Ed DeMars

A founding member of the Ag Land Trust Board of Directors, he served as the first Planning Director of Monterey County (33years). Additionally, he co-founded both the Big Sur Land Trust and the Elkhorn Slough Foundation.

Member Richard Nutter

Recognized throughout California as an expert in the areas of cultivated agriculture, pesticide regulations, and agricultural groundwater supply and quality protection, Mr. Nutter served as the President of the California Agricultural Commissioners Association. He served with distinction on NOAA's Monterey Bay National Marine Sanctuary advisory council for over a decade addressing coastal land use and water quality policies and protection strategies. Mr. Nutter served as Agricultural Commissioner for Monterey County from 1971 to 1998 (27 years). Mr. Nutter is now a partner at Agricultural Services Certified Organic, Inc., a company providing technical expertise to organic agri-business concerns throughout California.

Member Marc Del Piero

Mr. Del Piero, a Founder and the first President of the Ag Land Trust, is an attorney specializing in environmental and water law issues. He served formerly as the attorney member and Vice-Chair of the California State Water Resources Control Board (SWRCB 1992-1999), and is recognized throughout California as an expert in the areas of groundwater rights and the "public trust doctrine". From 1981-1992, he served on the Monterey County Board of Supervisors and co-authored the North Monterey County Local Coastal Plan that established the first mandatory groundwater protection policies within the coastal zone of Monterey County. An adjunct professor of water law at Santa Clara University School of Law from 1992-2011, he has represented public water agencies throughout California. For eight years, he represented the California Environmental Protection Agency on NOAA's Monterey Bay National Marine Sanctuary advisory council. He is best known for having produced the SWRCB Decision 1631 (The Mono Lake Decision - 1995) that ordered the Los Angeles Department of Water and Power to reduce its diversions and to restore the eco-systems of the lake and its tributary streams.

Member Virginia Jameson

Formerly the Associate Director of the Ag Land Trust, Ms. Jameson is recognized as an expert in multi-national agricultural production, international business, and "fair trade" issues. She holds a master's degree from American University in international economics and has formerly worked for both governmental agricultural organizations and NGO's both in Central America and in Monterey County.

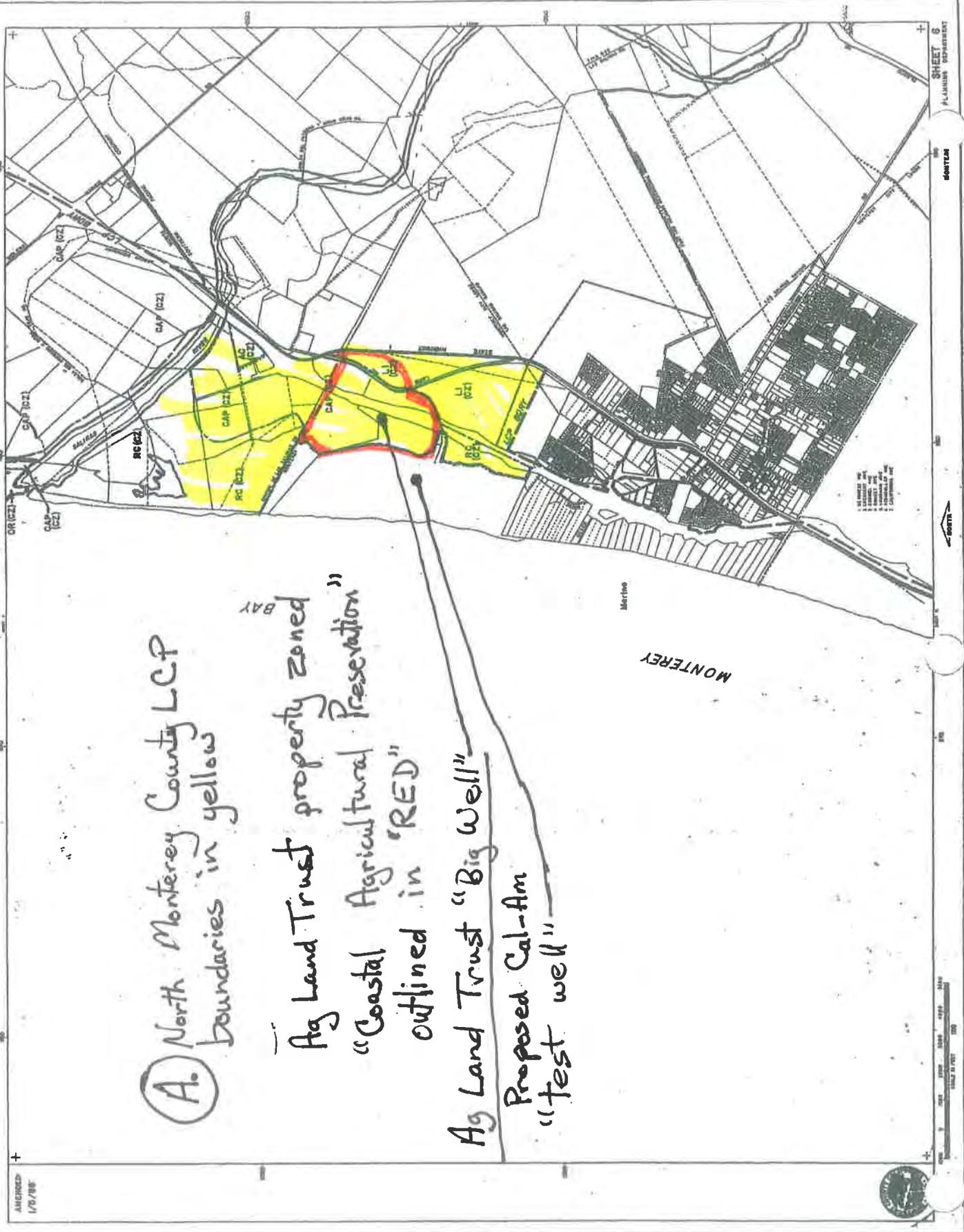
Exhibit 2 – Ag Land Trust Exhibits

Maps

- A. Map of North Monterey County LCP area (yellow) and Ag Land Trust farm (Armstrong Ranch zoned “Coastal Agricultural Preserve” CAP) outlined in RED. Proposed Cal-Am “test well” site shown in black. Ag Land Trust “Big Well” shown in black.
- B. Ag Land Trust Armstrong Ranch in YELLOW; early proposed alternate seawater wells locations by Cal-Am
- C. Cal-Am map that misrepresents the proposed location of the “test well” and the “drawdown” contours of the “cone of depression” from the “test well”. Map fails to identify Ag Land Trust “Big Well” west of Highway 1 and within cone of depression and subject to seawater contamination from Cal-Am’s proposed pumping.
- D. Cal-Am map with notation of corrected location for “test well” and location of Ag Land Trust “Big Well”. Adjusted “cone of depression” covers 75% of the Ag Land Trust property and shows seawater intrusion into “Big Well”.
- E. Cal-Am map that falsely indicated Ag Land Trust property as within the designated “Project Area”. Insert is not to scale.

A.

North Monterey County LCP
SECTION 6 OF THE ZONING PLAN OF THE COUNTY OF MONTEREY



A. North Monterey County LCP boundaries in yellow

Ag Land Trust property zoned "Coastal Agricultural Preservation" outlined in "RED"

Ag Land Trust "Big Well" Proposed Cal-Am "test well"

(B)



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

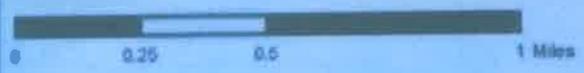
Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

C.

-  Project Area
-  CEMEX Parcel Boundary
-  -0.2 ft. Drawdown Contours after 6-Months of Pumping Test Slant Well at 2,500 GPM
-  Wells



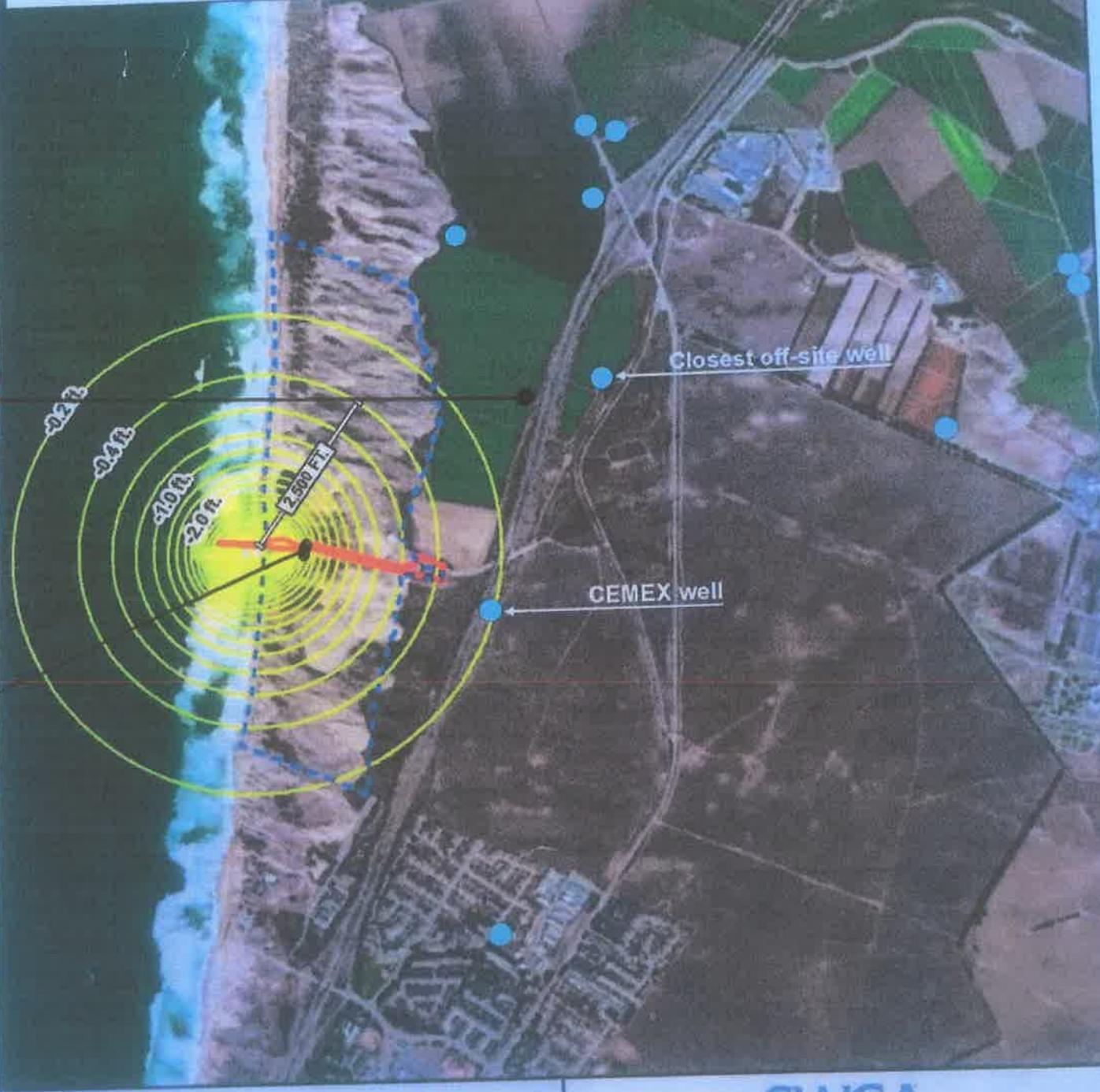
Source: GEOSCIENCE Support Services, Inc.
Basemap: ESRI, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX,
Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

SWCA
ENVIRONMENTAL CONSULTANTS

**Drawdown Contours Map
California American Water
Slant Test Well Project**

(D.) Corrected Map

- Project Area
- CEMEX Parcel Boundary
- 0.2 ft. Drawdown Contours after 6-Months of Pumping Test Slant Well at 2,500 GPM
- Wells

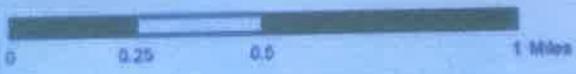


AgLand Trust "Big Well"

Actual Well Site for Cal-Am Test

Closest off-site well

CEMEX well



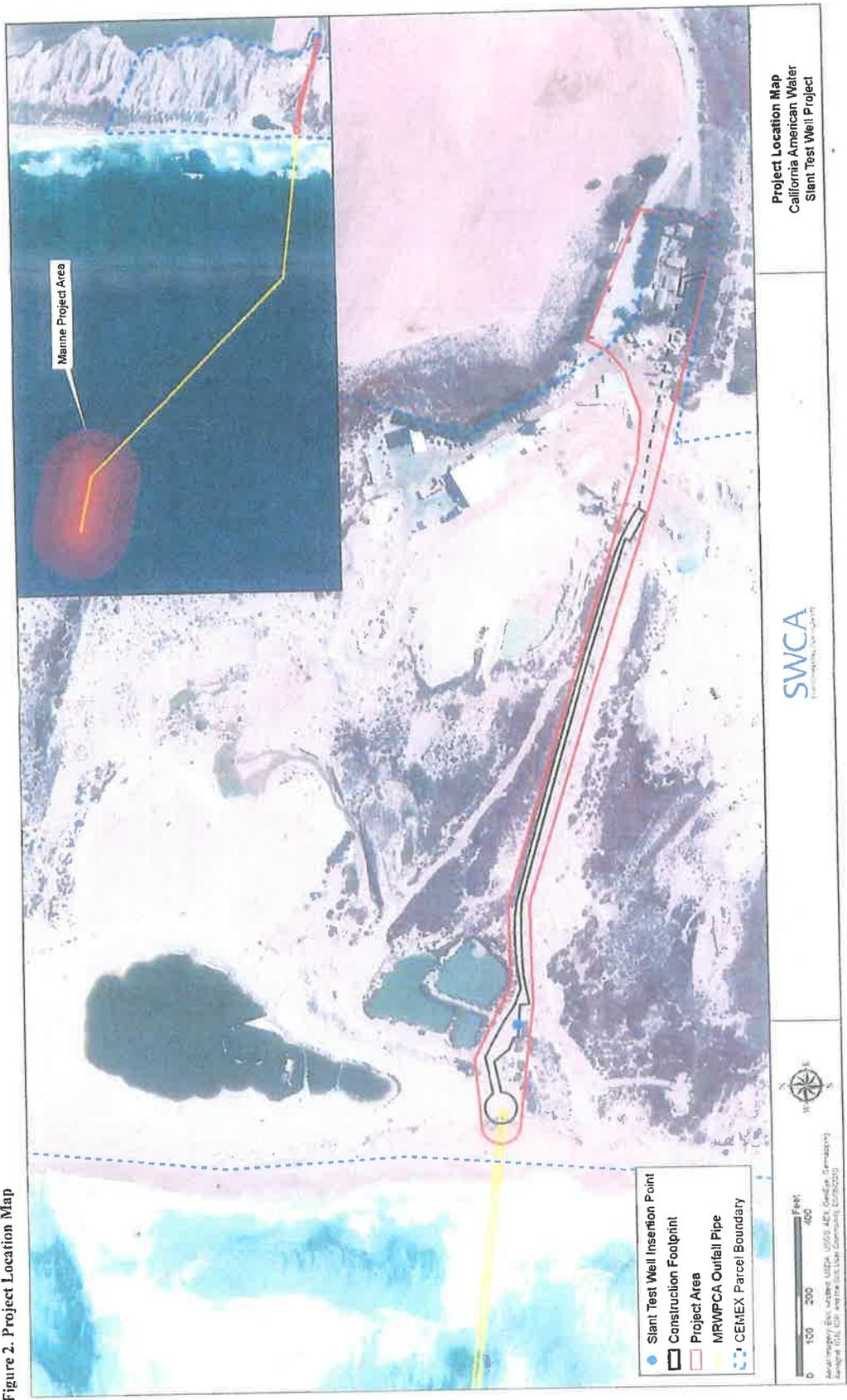
SWCA
ENVIRONMENTAL CONSULTANTS

Drawdown Contours Map
California American Water
Slant Test Well Project

Source: GEOSCIENCE Support Services, Inc.
Bavemap, ESRI, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX,
Getmapping, Aerogrid, IGN, IGR, swisstopo, and the GIS User Community

E.

Figure 2. Project Location Map



A-3-MRA-14-0050 / 9-14-1735
EXHIBIT 2



www.AgLandTrust.org
Location: 1263 Padre Drive | Salinas, CA
Mail Address: P.O. Box 1731 | Salinas, CA 93902
Tel.: 831.422.5868

12 NOVEMBER 2014

AGENDA ITEM 14 – copies provided to staff

TO: The California Coastal Commission

RE: Opposition to Proposed California American Water Company (Cal-Am) Appeal/Application to Acquire a Well Site to Violate Mandatory Policies of the Certified Local Coastal Plan and to Prescriptively Take Groundwater from the Overdrafted Salinas Valley Groundwater Basin

The Ag Land Trust is strongly objecting to the subject appeal and application because Cal-Am and the commission staff are asking the Commission to participate in an illegal project that violates an unprecedented number of coastal protection policies and state laws. The Coastal Commission, if it follows their wrongful advice, will be taking an “ultra vires” act and approving an illegal “test well” which violates CEQA, which fails to address the cumulative adverse impacts of the project as a whole, and which will result in an unlawful “taking” of groundwater rights from the Ag Land Trust and other rights holders.

We are writing this correspondence to you based upon our collective professional experience of over 80 years working in Monterey County on county groundwater rights and legal issues, California Coastal Act issues, agricultural water supply and water quality issues, potable water supplies and public health issues, and based upon our technical expertise in the areas of California groundwater rights law, agricultural regulatory and water supply issues, and environmental and public health issues related to potable groundwater supplies.

The Ag Land Trust of Monterey County (the Monterey County Agricultural and Historic Lands Conservancy) is a 501(c)(3) NON-PROFIT CORPORATION organized in 1984 for the purposes of owning, protecting, and permanently preserving prime and productive agricultural lands in Monterey County and within the California Coastal Zone. It is now the largest and most successful farmland preservation trust in the State of California, and it owns, either “in fee” or through permanent conservation easements, over 25,000 acres of prime farmlands and productive coastal agricultural lands throughout Monterey County and the Central Coast of the state. (**See attached Board of Directors roster – Exhibit 1**). Further, and of more particular importance, The Ag Land Trust has been the farmland conservancy that the California Coastal Commission has sought out to accept the dedications of prime and productive coastal farmlands in Monterey and San Mateo Counties as mitigations for the Coastal Commission’s issuance of development permits within those Local Coastal Planning areas.

The Ag Land Trust owns, in fee, the prime and productive coastal farmland (the Armstrong Ranch), and all of the overlying percolated groundwater rights thereunder, that is located immediately adjacent to (within 50 yards of) the California American Water Company’s (Cal-Am) proposed well site on the CEMEX

The Ag Land Trust is a 501 (c)(3) non profit organization.
Donations are welcome and tax deductible.

property. Our ranch was acquired with grant funds from the State of California and the United States (USDA) expressly to preserve its protected and irreplaceable prime and productive coastal farmland from development. We have over 160 acres under cultivation and use our potable groundwater wells for irrigation water.

Our property is in the unincorporated area of Monterey County. Our ranch lies within, and is subject to, the policies and regulations of the certified North Monterey County Local Coastal Plan area. Cal-Am has publicly stated that the huge cone of depression that will be created by its' massive proposed test well, and the excessive duration (two (2) years) of Cal-Am's intended proposed pumping, will result in the contamination of our wells and the unlawful "taking" of our potable groundwater from beneath our property in direct violation of the certified policies protecting our farmland in the North Monterey County Local Coastal Plan (NMCLCP – certified 1982). The appeal/application and the commission's staff analysis are fatally flawed because they have ignored the test well's immitigable operational and environmental violations and failed to address conflicts with the NMCLCP policies that Cal-Am's own documents have disclosed. **The proposed "test well" appeal/application directly violates the following policies/mandates of the certified North Monterey County Local Coastal Plan that the Coastal Commission is required to uphold and enforce:**

"NMCLCP 2.5.1 Key Policy

The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.

NMCLCP 2.5.3 Specific Policies

A. Water Supply

1. The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.

2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.

3. The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources."

Cal-Am's proposed illegal pumping and then its "wasting/dumping" of our protected potable groundwater resources will result in significant cumulative adverse impacts, immitigable permanent damage, a continuing nuisance, and irreversible seawater intrusion into the potable groundwater resources and

aquifers that belong to and which underlie the Ag Land Trust's Armstrong Ranch. Further, it will cause irreparable damage to our protected prime coastal farmlands in violation of our certified Local Coastal Plan. Cal-Am has no groundwater rights in the Salinas Valley and the North Monterey County Local Coastal Plan area and, pursuant to California groundwater rights law, is flatly prohibited from acquiring such rights in an overdrafted basin. **Importantly, Cal-Am's proposal, and Commission staff's recommendations directly violate the new mandates of Governor Brown's groundwater legislation that specifically identifies (and prohibits) "significant and unreasonable seawater intrusion" as an "Undesirable Result" that must be avoided in the management of potable groundwater basins, and specifically in the Salinas Valley. (See AB 1739 (Dickinson); SB1168 (Pavley); and SB 1319 (Pavley) signed by Governor Brown in October, 2014). The express legislative intent of these important pieces of legislation, in part, includes "respecting overlying and other proprietary rights to groundwater" by rights holders like the Ag Land Trust as against parties like Cal-Am (a junior, non-overlying, would-be prescriptive appropriator). Further, Cal-Am's proposed "test well", and its operation recommended by Commission staff, directly violates the new definition of "GROUNDWATER SUSTAINABILITY" as embodied in Governor Brown's new legislation.**

By this letter, the Board of Directors of the Ag Land Trust unanimously objects to the proposed coastal permit appeal and the application to the Commission initiated by the California American Water Company (Cal-Am) for a well site on the CEMEX property for Cal-Am's stated and prohibited reasons of wrongfully extracting potable groundwater from the overdrafted Salinas Valley Groundwater basin and our property. A significant portion of the groundwater that Cal-Am has expressly indicated it intends to wrongful "take" with its proposed "test well", without providing compensation for their resultant irreparable damage to our potable groundwater aquifers, belongs to the Ag Land Trust **(See attached Exhibit 2 - MAPS - by Cal-Am showing its' "drawdown" of groundwater by Cal-Am's well pumping on the adjacent Ag Land Trust property; Exhibit Map showing Ag Land Trust property in yellow right next to the proposed "test well"; Exhibit Maps (two copies - original and corrected) of Cal-Am maps misrepresenting the actual location of the proposed "test well" site, misrepresenting the actual impact area of Cal-Am's well pumping "cone of depression"; and failing to identify the closest agricultural well on the Ag Land Trust property which is in the "cone of depression" area.)**.

Cal-Am has been denied the prerequisite permits for a ground water well twice by both the City of Marina Planning Commission and the City Council of the City of Marina due, in part, to Cal-Am's failure to produce even one shred of evidence that it has any legal property or water right to pump groundwater from the overdrafted Salinas Valley Groundwater Basin, or that it can overcome its intended express violations of the farmland and groundwater protection policies of the certified North Monterey County Local Coastal Plan (NMCLCP). Unfortunately, these direct violations of existing mandatory NMCLCP protection policies are ignored in your staff report, in spite of the woefully inadequate condition that groundwater within 5000 feet of the well site be monitored for seawater intrusion. Further, there is no evidence produced by Cal-Am or the Commission's staff that the CEMEX well site is entitled to enough groundwater to satisfy Cal-Am's uncontrolled demand even if Cal-Am is successful in acquiring the well permit, and your staff has failed to disclose this issue for public review.

UNDER CALIFORNIA GROUNDWATER RIGHTS LAW, ACQUISITION OF A SURFACE WELL SITE DOES NOT RESULT IN THE ACQUISITION OF WATER RIGHTS TO PUMP GROUNDWATER FROM THE UNDERLYING OVERDRAFTED PERCOLATED GROUNDWATER BASIN. The over-drafted aquifers that are proposed to be exploited and contaminated by Cal-Am's self-serving pumping and dumping are required to be used by the NMCLCP "to protect groundwater supplies for coastal priority agricultural uses". **Has Cal-Am or the Commission staff explained how their proposed project does not violate the mandate to prevent adverse cumulative impacts upon coastal zone groundwater**

resources (North County LCP Sec. 2.5.3 (A) (3))? We can find no reference or consideration of this issue in your staff report. Moreover, the proposed appeal by Cal-Am, which is now being pushed by staff, directly violates the mandates of the certified North Monterey County Local Coastal Plan Sections 2.5.1, and 2.5.2.3, and 2.5.3.A.1-3; and 2.5.3.A.1.6, and 2.6.1; and 2.6.2.1; and 2.6.2.2; and 2.6.2.6. The impacts of the Cal-Am test well, by Cal-Am's own filings, will directly violate these policies in spite of the failure to have evaluated these significant and immitigable adverse impacts. We object to these obvious failures to comply with these mandated coastal protection policies and CEQA.

The Ag Land Trust objects to the Cal-Am appeal and application because Cal-Am, by omission, seeks to deceive the Commission as to its actual intent in pursuing the acquisition of the proposed "test well". Further, Cal-Am knows, but has failed to disclose to the Commission, that it intends to wrongfully and surreptitiously contaminate a potable groundwater aquifer and "take" the real property rights and the potable water rights of the Ag Land Trust, without compensation and in violation of over 100 years of California groundwater rights law. Cal-Am has been advised of this concern for at least eight (8) years by the Ag Land Trust. **(Exhibit 3 - See attached letters of objection from the Ag Land Trust).** Cal-Am intends to, and has admitted, that it intends to pump water from beneath the Ag Land Trust's property over the objection of the Trust since 2006. **(See Exhibit 2 - attached Cal-Am pumping map).**

Although our objections are not limited to those enumerated herein, The Ag Land Trust further objects to the Cal-Am proposal to use the CEMEX well site for the following reasons:

1. Cal-Am's assertions that it intends to pump seawater from the proposed "test well" is untrue. Cal-Am has conducted water quality sampling that already shows that its proposed extended pumping of that test well will intentionally and significantly draw water from "fresh", potable aquifers (180 ft. and 400 ft.) that underlie the Ag Land Trust property, and aggravate seawater intrusion below the Ag Land Trust property, thereby implementing a wrongful, uncompensated "taking" of our real property (aquifer storage and our well water) rights for Cal-Am's financial benefit. Cal-Am has disclosed this information to the City of Marina City Council. Moreover, Cal-Am has indicated that it intends to not use, but intends to "dump" the water it pumps from its "test well", including our potable water, back into the ocean, thereby constituting a prohibited "waste of water" and a direct violation of Article X, Sec.2 of the Constitution of California and the Doctrine of Reasonable Use (Peabody v. Vallejo 2 Cal. 2nd 351-371 (1935)). "The use of groundwater is a legally protected property right." (See Peabody). Cal-Am intends to do this to intentionally contaminate the aquifer and our wells so that it can avoid the legal penalties and financial consequences of its plan to illegally, prescriptively, and permanently take control of the groundwater aquifers underlying the Ag Land Trust's productive farmland for Cal-Am's sole economic benefit. Moreover, the granting of this appeal and the issuance of a permit by the Commission, now that this intended violation of the law has been disclosed, will likely expose the Coastal Commission to nuisance claims and "vicarious liability" for the taking of our groundwater rights, and the resultant damages flowing therefrom, along with Cal-Am (See Aransas v. Shaw 756 F.3rd 801 (2014)). Further, granting Cal-Am's appeal will directly violate Governor Brown's landmark groundwater legislative package that prohibits the taking of other parties' groundwater rights and prohibits the intentional contamination of identified potable groundwater supplies.

2. The Salinas Valley groundwater basin has been identified as being in overdraft by the California Department of Water Resources, the California Coastal Commission, and the Monterey County Water Resources Agency (MCWRA) for over 60 years. The sole source of recharge to the aquifer is rainfall and water percolated into the Salinas River from water supply projects paid for, pursuant to Proposition 218 requirements and provisions of the California Constitution, by overlying land owners (assesses) within the basin, including the Ag Land Trust. The overlying water rights holders have paid tens of millions of dollars to protect and restore their groundwater supplies. Cal-Am has not paid anything to protect and preserve the aquifers, and has acquired no groundwater rights in the basin or from those projects.

3. The overdraft was initially identified in Monterey County studies of the basin in the 1960's and 1970's, and has been repeatedly identified by more recent MCWRA hydrologic and hydro-geologic studies (U.S. ARCORPS, 1980; Anderson-Nichols, 1980-81; Fugro, 1995; Montgomery-Watson, 1998). The universally identified remedy for seawater intrusion specified in these studies is the reduction of well pumping near the coast. Further, the overdraft in the North County aquifers has been publicly acknowledged for decades by both the Monterey County Board of Supervisors and the California Coastal Commission in the certified "North County Local Coastal Plan" (1982), the "Monterey County General Plan" (1984 and 2010) and the "North County Area Plan" (1984). The Ag Land Trust and all other land owners within the basin have spent millions of dollars over the last sixty years to build water projects to reverse and remedy the overdraft and recharge the aquifers. Cal-Am has not spent anything to protect the groundwater resources of the Salinas Valley. Unfortunately, Cal-Am, in its continuing wrongful pursuit of "taking" other people's water rights, has failed to disclose to the Commission how it intends to violate the laws of groundwater rights that govern the basin. Moreover, Cal-Am and Commission staff, without any evidence to back up their assertions, now asks the Commission to blindly ignore 50 years of detailed hydro-geologic and engineering studies by independent, impartial public agencies, and asks the Commission to rely on Cal-Am's "voo doo hydrology" that its "test well" pumping results will not aggravate seawater intrusion in the Salinas Valley or "take" our potable water resources and water rights.

4. California law holds that, in an overdrafted percolated groundwater basin, there is no groundwater available for junior appropriators to take outside of the basin. In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies (Katz v. Walkinshaw 141 Cal. 116 (1902)). In an over-drafted basin, there is no surplus water available for new, junior "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. The clear, expansive, and often re-stated law controlling groundwater rights in an over-drafted basin has been reiterated by California courts for over a century (Katz v. Walkinshaw, 141 Cal. 116; Burr v. Maclay 160 Cal. 268; Pasadena v. Alhambra 33 Cal. 2nd 908; City of Barstow v. Mojave 23 Cal. 4th 1224 (2000)). This is the situation in the over-drafted Salinas Valley percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Salinas aquifers. Cal-Am is a junior appropriator that has

no rights to groundwater in the Salinas Valley, and can't get any. Moreover, Cal-Am's unsubstantiated assertions that it needs to drill a test well to satisfy the SWRCB ignores the fact that Cal-Am's actual intent and conduct is aimed at avoiding the SWRCB Cease and Desist order on the Carmel River (that has resulted from its constant illegal diversions of water over the past twenty years) by creating an even greater illegal diversion of "other peoples" groundwater from the overdrafted Salinas Valley. Cal-Am's shameless propensity to violate both the requirements of California water law and the water rights of other innocent property owners is legend, and is the reason that the SWRCB issued its enforcement SWRCB Order 95-10 and the Cease and Desist order against Cal Am.

5. Further, it is important for the Commission to know that the SWRCB is specifically prohibited by the Porter-Cologne Act (1967) from having any jurisdictional authority of non-adjudicated percolated groundwater basins like the Salinas Valley. Moreover, neither the CPUC, nor the Coastal Commission, nor the SWRCB can grant groundwater rights to Cal-Am. Such an approval would be a direct violation of California groundwater rights law. The SWRCB cannot, and has no authority to, order the installation of slant wells so that Cal-Am can wrongfully take other people's water and water rights without a full judicial adjudication of the entirety of the Salinas Valley groundwater basin among all landowners and existing water rights holders therein. Cal-Am's request for a test well site seeks to hide by omission the irrefutable legal impediments to its planned illegal taking of groundwater.
6. The Cal-Am desalination plant, and its proposed test wells and the appeal to which we object, are illegal and directly violate existing Monterey County Code Section 10.72.010 et seq (adopted by the Board of Supervisors in 1989) which states in part:

Chapter 10.72 - DESALINIZATION TREATMENT FACILITY (NMC LCP)

Sec. 10.72.010 - Permits required.

No person, firm, water utility, association, corporation, organization, or partnership, or any city, county, district, or any department or agency of the State shall commence construction of or operate any Desalination Treatment Facility (which is defined as a facility which removes or reduces salts from water to a level that meets drinking water standards and/or irrigation purposes) without first securing a permit to construct and a permit to operate said facility. Such permits shall be obtained from the Director of Environmental Health of the County of Monterey, or his or her designee, prior to securing any building permit.

Sec. 10.72.030 - Operation permit process.

All applicants for an operation permit as required by Section 10.72.010 shall:

- A. Provide proof of financial capability and commitment to the operation, continuing maintenance replacement, repairs, periodic noise studies and sound analyses, and emergency contingencies of said facility. Such proof shall be in the form approved by County Counsel, such as a bond, a letter of credit, or other suitable security including stream of income. For regional desalinization projects undertaken by any public agency, such proof shall be consistent with financial market requirements for similar capital projects.
- B. **Provide assurances that each facility will be owned and operated by a public entity.**

Cal-Am, by its own admission is not a "public entity", as defined under the Monterey County Code and the California Government Code. Cal-Am is a privately owned, for-profit corporation which is a regulated private company and taxed as a private company by the Internal Revenue Service. Further, the California Public Utilities Commission's power of eminent domain, which Cal-Am invoked to pursue its devious acquisition of the CEMEX well site, may not be used or invoked to take actions that are violations of existing state or local laws, ordinances, or regulations. Under California law, eminent domain may not be used to acquire unlimited groundwater pumping rights in an overdrafted basin. Cal-Am is attempting to pursue acquisition of a well site for a project that it is prohibited from owning and operating, and for which it has no groundwater rights. Neither Cal-Am nor the CPUC have pursued an action in declaratory relief. Further, the CPUC cannot grant groundwater rights nor waive the requirements of a local ordinance so as to exercise its power of eminent domain, either directly or indirectly. It certainly cannot grant other peoples' groundwater rights to Cal-Am for the sole financial benefit of Cal-Am. Nor can the SWRCB. Nor can the Coastal Commission. The granting of this appeal and application for the well site expressly to illegally appropriate and "take/steal" tens of thousands of acres feet of "other people's groundwater" from the overdrafted Salinas Valley groundwater basin, for a project that Cal-Am is legally prohibited from owning and operating, would constitute an illegal, "ultra vires" act that may not be facilitated by the Commission.

7. Cal-Am's appeal also fails to disclose to the Commission the legal limitations that will apply to its so-called "test well". The Doctrine of Correlative Overlying Water Rights, as created and interpreted by the California Supreme Court in Katz v. Walkinshaw 141 Cal. 116, and as reiterated for the last 110 years (most recently in City of Barstow v. Mojave 23 Cal. 4th 1224 (2000)), prohibits any land owner in an over-drafted percolated groundwater basin from pumping more than that land owner's correlative share of groundwater from the aquifer as against all other overlying water rights holders and senior appropriators. CEMEX is only allowed to pump a fixed (correlative) amount of water for beneficial uses solely on its' property. Given the size of the small easement pursued by Cal-Am, the Commission must limit the amount of water that Cal-Am may pump annually from that easement to that small fraction of the total available water amount that may be used by CEMEX pursuant to its deed restriction in favor of the Marina Coast Water District and the other land owners in the Salinas Valley basin and pursuant to the Doctrine as mandated by state law. If the Commission were to grant Cal-Am's appeal, it would be necessary to specifically, and in writing, limit the temporary permitted extraction to insure that Cal-Am does not conveniently forget its legal obligations like it has on the Carmel River for the past 20 years.

Uncontrolled pumping of Cal-Am's "test well" can and will reverse years of efforts to recharge and restore our aquifer, violate existing mandatory LCP policies, violate state groundwater law, and leave us permanently without a groundwater supply for our farm.

8. Cal-Am's proposed well and its uncontrolled pumping plan will intentionally contaminate the potable groundwater aquifers beneath the Ag Land Trust property and the potable aquifers of the Salinas Valley in violation of state law. Cal-Am, by its appeal for a well site, intends to intentionally contaminate a potable groundwater supply in violation of multiple state regulations and water quality laws. The California Regional Water Quality Control Board – Central Coast (CCRWQCB) is a division of the SWRCB and created pursuant to an act of the legislature known as the Porter-Cologne Act. One of the duties delegated to the CCRWQCB is the adoption and enforcement of the Water Quality Control Plan for the Central Coastal Basin. The Plan is mandated to meet the requirements of the federal Clean Water Act and the Porter-Cologne Act. It was adopted after numerous public hearings in June, 2011. This Plan is mandated by law to identify the potable groundwater resources of the Central Coast and Monterey County. At Chapter 2, Page II-1, the Plan states, "Ground water throughout the Central Coastal Basin, except for that found in the Soda Lake Sub-basin, is suitable for agricultural water supply, municipal and domestic water supply, and industrial use. Ground water basins are listed in Table 2-3. A map showing these ground water basins is displayed in Figure 2-2 on page II-19." This reference specifically included the potable groundwater supplies/aquifers under the Ag Land Trust property, adjacent to the CEMEX site, which is sought to be exploited by Cal-Am to supposedly pump "seawater". The Plan goes on to quote the SWRCB Non-Degradation Policy adopted in 1968 which is required to be enforced by the CCRWQCB. "Wherever the existing quality of water is better than the quality of water established herein as objectives, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," (See Exhibit 3) including any revisions thereto. Cal-Am, in pursuing its well site, knowingly has ignored the above stated facts and law and withheld this information from the Commission so as to avoid having to compensate the Ag Land Trust for its irreparably damaged property, wells, and water rights and to avoid further legal enforcement actions against Cal-Am by federal and state regulatory agencies.
9. Cal-Am's flawed and self-serving real estate appraisal of the proposed well site and easement fails to evaluate, quantify, and value the exploitation of groundwater resources and the value of permanently lost water supplies and rights due to induced seawater intrusion into the potable aquifers by Cal-Am's wrongful pumping and its illegal exploitation of the Ag Land Trust's percolated, potable groundwater supply. The full price of Cal-Am's actions and "takings" has been significantly underestimated expressly for Cal-Am's prospective economic benefit.
10. Our wells (two wells) and pumps on our ranch adjacent to the location of the proposed well field are maintained and fully operational. **Cal-Am has failed to identify and disclose in their exhibits to the Commission the location of our largest well (900 ft.) which is located west of Highway 1 and within the "cone of depression" area of Cal-Am's proposed "taking" of our groundwater (See Exhibit 2). Its' water will be taken and contaminated by Cal-Am's actions that are endorsed by Commission staff.** We rely on our groundwater and our overlying groundwater rights to operate and provide back-up supplies for our extensive agricultural activities. Our property was purchased with federal grant funds and the U.S. Department of Agriculture has a reversionary interest in our prime farmland and our water rights and supplies that underlie our farm. Neither Cal-Am, nor the CPUC, nor the Coastal commission can acquire property or groundwater rights as against the federal government by regulatory takings or eminent domain. Cal-Am has intentionally omitted these facts from its appeal so as to avoid uncomfortable environmental questions that would invariably disclose Cal-Am's intended illegal acts and proposed "takings". Cal-Am's proposed "takings", as supported by Commission staff, will

intentionally and wrongfully contaminate our protected potable groundwater supplies, resources, and wells. Cal-Am's and staff's intent on "eliminating our right of use (through "public trust" inspired pumping to protect unidentified marine organisms) is akin to the drastic impact of physical invasion on real property, which categorically warrants compensation" (Loretto v. Teleprompter Manhattan 458 U.S. 419,421 (1982) (physical occupation of property requires compensation). Hence, such an impact on water rights should merit the same categorical treatment. (See Josh Patashnik, Physical Takings, Regulatory Takings, and Water Rights, 51 Santa Clara Law Review 365,367 (2011)).

11. The staff report admits that the test well site is an environmentally sensitive habitat area (ESHA) and that the project is not a resource dependent use. (Only resource dependent uses are permitted in ESHA). That should end the discussion and result in denial of the project. But, the staff report then states that this project qualifies for an exception under the Coastal Act for "industrial facilities." This is not an industrial facility under the Coastal Act. It might be a public works facility, except Cal-Am is not a California public/government agency. Cal-Am is a division of a for-profit, privately owned corporation from New Jersey. The Staff is relying on section 30260 which allows such industrial facilities if alternative locations are infeasible, it would be against the public welfare to not approve the project, and the impacts are mitigated to the maximum extent feasible. That exception is for industrial facilities, not public works facilities. This project is not an industrial facility. It is a privately owned water well. Section 30260 states that industrial facilities may be permitted contrary to other policies in the Coastal Act "in accordance with this section (30260) and Sections 30261 and 30262..." These latter sections concern oil and gas facilities. Public works are addressed in a different Article of the Coastal Act. The staff report at p. 57 characterizes the test well as an industrial activity because "It would be built within an active industrial site using similar equipment and methods as are currently occurring at the site." This is an unsustainable stretch of the definition. The staff report refers to a Santa Barbara County LCP provision regarding public utilities concerning natural gas exploration as support for the notion that the test well is an industrial facility. But, the Santa Barbara County provision notably concerns natural gas. Thus, development of the test well in ESHA would violate the Coastal Act.

12. Finally, Cal-Am touts its "so-called" settlement agreement with a few non-profit entities and politicians as some kind of alleged justification for the Commission to ignore Cal-Am's intended violations of law and approve their illegal taking of our property/water rights. Not one of the parties to the so-called settlement agreement holds any groundwater rights in the Salinas Valley that will be adversely taken by Cal-Am's proposed conduct. None of them have offered to compensate the Ag Land Trust for the "theft" of our groundwater rights that they have endorsed. Cal-Am has a history of unapologetic violations of California's water rights laws. Cal-Am's contrived reliance on "endorsements" by uninformed and unaffected parties to the "so-called" settlement agreement is akin to a convicted thief asserting a defense that his mother and grandmother both agree that he is "a good boy" who really did not mean to steal.

Since 1984, The Ag Land Trust's Board of Directors has been committed to the preservation of California's prime and productive farmland and the significant environmental benefits that flow therefrom. The Trust does not want to "pick a fight" with the Commission staff with whom we have worked cooperatively and successfully for many years. But the Commission staff and Cal-Am have produced no environmental evidence or facts to justify ignoring the mandates of the City of Marina in requiring the preparation of a full Environmental Impact Report (EIR) pursuant to the California Environmental Quality

Act (CEQA) prior to drilling a well meant to knowingly contaminate our water resources and wells. The staff has cited the Santa Barbara LCP to try to rationalize its recommendation, but they have produced no evidence to justify ignoring the multiple mandates of the North Monterey County Local Coastal Plan (just 50 yards from the well) that will be violated. The Commission's review of the test well must comply with CEQA since its' review is the functional equivalent of CEQA review. The staff report does not provide analysis of the impacts of the project on groundwater supply and rights. The Commission must perform analysis of the adverse effects of the project on the groundwater of adjacent overlying land owners and senior water rights holders. The test well is being used in place of environmental review. Its' significant, if not irreversible, adverse effects will not be identified until after the permanent damage to our aquifer and wells is done. This is antithetical to CEQA which requires the analysis to be performed prior to beginning the project. A test well that will operate for two years, without analysis of potential impacts, violates CEQA. Indeed, the City of Marina City Council (which includes three attorneys) recognized this fact when it voted to require an EIR prior to the considering the CDP.¹ Cal-Am and the staff have produced no comprehensive evidence that the damage that will result to protected coastal resources from the proposed "test well" is less than the damage that may be caused by other alternative sources of seawater. Further, Commission staff and the CPUC can no longer intentionally avoid the CEQA mandates of a full alternatives analysis in the EIR of all potential seawater sources, including seawater intakes at Moss Landing as identified as the "preferred site" for all of Monterey Bay (see directives, mandates, and findings of the California Legislature of Assembly Bill 1182 (Chapter 797, Statutes of 1998) which required the California Public Utilities Commission to develop the Plan B project, and the CPUC Carmel River Dam Contingency Plan – Plan B Project Report which was prepared for the Water Division of the California Public Utilities Commission and accepted and published in July, 2002 by the California Public Utilities Commission." "Plan B" identifies the Moss Landing Industrial Park and the seawater intake/outfall on the easement in the south Moss Landing Harbor as the optimal location for a regional desalination facility.) The staff report has chosen to ignore long standing and mandatory coastal protection policies to try to force us to give up our farm's water rights for the sole economic benefit of Cal-Am. This political position by staff is misguided and is a failure of the environmental protection policies and laws that are intended to protect all of our resources from immitigable, adverse effects of improperly analyzed and poorly considered development projects. The Coastal Commission staff simply has to do a lot more than take a political position at the expense of otherwise innocent adjacent land owners with real groundwater rights that are about to be wrongfully taken.

The cumulative impacts section of the staff report ignores the cumulative impacts of drawing more water from an overtaxed aquifer and the loss of prime farmland. This is a violation of CEQA. The cumulative impact analysis only addresses the impacts to dune habitat and it also addresses this cumulative impact in a very localized fashion. This is a special and rare habitat and the impacts to this habitat in the entire dune complex extending down to the Monterey Peninsula should be examined.

Furthermore, an EIR is being prepared by the PUC for the project. The Coastal Commission is approving the test well without really addressing the impacts of the project as a whole. Either the PUC should be the lead agency and finish the EIR, or the Commission should analyze the entire project as one. The

¹ The staff report makes an unwarranted and unfair assertion that the City of Marina set "poor precedent" when the City of Marina denied the CDP without making LCP consistency findings. The reason the findings were not made is because the Council was simply complying with CEQA and requiring adequate environmental review before making a final decision. The Commission's premature assumption of jurisdiction and lack of appropriate and detailed analysis simply thwarts the City's attempt to comply with CEQA, and the Commission's staff report fails to adequately address environmental impacts as the functional equivalent CEQA document.

Commission buries the analysis about the project as whole in the cumulative impacts section. (See p. 60-62). This is illegal piecemeal environmental review pursuant to CEQA.

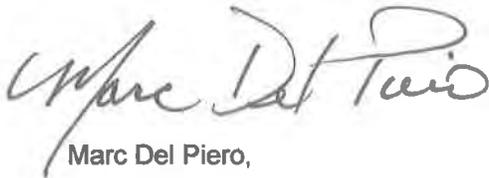
In the case of Bennett v. Spear (520 U.S.154, at 176-177 (1997)), the United States Supreme Court ruled the following in addressing the enforcement of the protection of species under the federal Endangered Species Act: "The obvious purpose of the requirement that each agency "use the best scientific and commercial data available" is to ensure that the ESA not be implemented haphazardly, on the basis of speculation or surmise. While this no doubt serves to advance the ESA's overall goal of species preservation, we think it readily apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives." The Ag Land Trust believes that, absent preparation of a full and complete EIR with a full and complete seawater intake alternatives analysis BEFORE any well is permitted or drilled, the staff recommendation violates the laws of California and will result in the unlawful taking of our property rights for the benefit of a private party.

The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. We have not caused nor have we contributed to that problem. It has gone on for decades. The Ag Land Trust also recognizes that Coastal Commission staff desires an absolute prohibition of seawater intakes for desalination plants. The water shortage that is of Cal-Am making (by its failure to produce a water supply project in over 20 years) does not justify the Commission staff's proposed illegal taking of our groundwater and property rights, and the intentional contamination of our potable aquifers and wells, for the sole and private economic benefit of Cal-Am.

We hereby incorporate by reference all facts, statements, and assertions included in the documents, cases, laws, and articles referred to herein, and included in the attachments and exhibits hereto.

We ask that the Commission deny the Cal-Am's appeal and application and require that a full and complete EIR be prepared before any permit is considered by your Commission and for the other reasons stated herein.

Most Respectfully for the Ag Land Trust,



Marc Del Piero,

Attorney at Law



Richard Nutter, Monterey County

Monterey Co. Agricultural Commissioner (ret.)

cc: California Coastal Commission staff

Exhibit 3 – Ag Land Trust Exhibits -

Opposition correspondence – 2006 - Present



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Location: 1263 Padre Drive | Salinas, CA
Mail Address: P.O. Box 1731 | Salinas, CA 93902
Tel.: 831.422.5868

3 September 2014

To: City Council of the City of Marina

From: Board of Directors of the Monterey County Ag Land Trust

RE: Cal-Am slant well application/Mitigated Negative Declaration

Dear Council members:

The Ag Land Trust owns prime irrigated farmland adjacent to the property where Cal-Am proposes to construct and operate a test well that is designed to remove approximately 8,000.0 acre feet of groundwater from the overdrafted Salinas Valley groundwater basin during its test period. The Ag Land Trust has met with the representatives of Cal-Am and others in an effort to develop a mitigation agreement if and when damage is caused to the Ag Land Trust's property and well water supply by the test well and future well field operation. No agreement has been reached at this time. Therefore, due to the lack of action and mitigation agreement between Ag Land Trust and Cal-Am, the Board of Directors of the Ag Land Trust is forced to re-iterate its opposition to the appeal by Cal-Am of the denial of Cal-Am's slant well application by the Planning Commission of the City of Marina.

We hereby incorporate by reference each and every prior submission provided by our attorneys and us to the City of Marina, and its consultants and staff, as correspondence and/or exhibits in opposition to the pending Cal-Am slant well application. We oppose the Cal-Am slant well application and test wells because these applications fail to comply with CEQA and totally lack any groundwater rights in the overdrafted groundwater basin. We further agree with and incorporate by reference, and adopt as our additional comments, all of the statements included in the letter of objection written to the City of Marina dated September 3, 2014 from the law firm of Remy, Moose, and Manley LLC on behalf of the Marina Coast Water District.

Due to the absence of mitigation agreement the Ag Land Trust continues to object to the application by Cal-Am, in part, based upon the following reasons:

1. The California American Water Company has no groundwater rights in the overdrafted Salinas Valley groundwater basin. As a proposed junior appropriator, and as a matter of both California case law and statutory law, Cal-Am cannot acquire groundwater rights in that overdrafted basin, and is prohibited from exporting any groundwater, including the water pumped from their proposed test well, from that basin. The statutory prohibition is absolute. Cal-Am's so-called "physical solution" is prohibited by statute. The proposed "test wells" are a shame to obfuscate Cal-Am's lack of property/water rights to legally pursue its proposal. Moreover, Cal-Am's application poses grave and unmitigated adverse impacts (including, but not limited to loss of agricultural productivity, loss of prime farmland, loss of existing jobs, loss of potable water supplies and ground water storage capacities, loss of beneficial results from regionally funded and publicly owned seawater intrusion reversal capital projects (i.e. CSIP and the "Rubber Dam"), and intentional contamination of potable groundwater supplies) upon the privately held overlying

The Ag Land Trust is a 501 (c)(3) non profit organization.
Donations are welcome and tax deductible.

groundwater rights, water supplies and resources, and property rights of the Ag Land Trust, other overlying land owners with senior groundwater rights in the Salinas Valley, and of the residents of the City of Marina and the Salinas Valley.

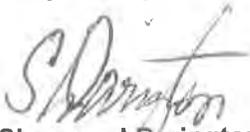
2. The current Cal-Am slant wells/test wells application has identified no mitigation for the groundwater contamination that it will induce into the Ag Land Trust's underlying groundwater resources and storage aquifers. Cessation of wrongful pumping by a non-water rights holder in an overdrafted basin IS NOT MITIGATION FOR THE DAMAGE THAT WILL BE INDUCED TO OUR GROUNDWATER RESOURCES. Failure to identify an appropriate mitigation for the groundwater contamination that will result from the pumping of the 8,000.0 acre feet of groundwater from the test wells is a violation of CEQA. Further, Cal-Am's plan of intentionally inducing seawater into a potable groundwater aquifer that underlies our property is an intentional violation of both the 1968 SWRCB Resolution 68-16, the California Non-Degradation Policy, and the Basin Plan as adopted by the Central Coast California Regional Water Quality Control Board. Such intentional "bad acts" may be prosecuted both civilly and criminally against parties who are complicit in such intentional potable water supply contamination.

3. The 1996 agreement between the City of Marina, the MCWD, the land owners of the CEMEX site, the Armstrong family and the County of Monterey/MCWRA prohibits the extraction of more than 500 acre feet of groundwater annually from any wells on the CEMEX site as a condition of the executed agreement/contract. It further mandates that such water be used only on-site at the CEMEX property, within the Salinas Valley groundwater basin, as mandated by statute. The Ag Land Trust is a third party beneficiary of this 1996 agreement because Ag Land Trust pays assessments to the County of Monterey expressly for the seawater intrusion reversal projects known as CSIP and "the Rubber Dam". Cal-Am is prohibited from pursuing its project because of this prior prohibition and because Cal-Am's proposed acts will cause an ongoing nuisance, will directly injure Ag Land Trust property rights, and will irreparably compromise the beneficial public purposes of the above reference publicly owned capital facilities.

4. The granting of Cal-Am appeal will result in a loss of groundwater resources by the City and MCWD, massive expenses to the residents of Marina, and the effective transfer of water resources to a private company that provides no benefit or service to the City of Marina or its citizens.

We respectfully request that the Cal-Am appeal be denied, and if not, that as a condition of approval, the approval is subject to a signed mitigation agreement between Cal-Am and the Ag Land Trust prior to the construction of any well or wells. Furthermore, we believe that the Marina Planning Commission's denial of the Cal-Am application was well reasoned and correct. If the Council chooses not to deny the Cal-Am application, the Ag Land Trust respectfully requests that a full and complete EIR on the proposed slant wells (and their significant and unmitigated impacts and threats to regional groundwater supplies and the communities of Marina and the Salinas Valley as well as the determination of Cal-Am's groundwater rights) be prepared as mandated by CEQA. Failure to fully and completely require Cal-Am to comply with CEQA by requiring a full EIR will expose the City and its residents to the loss of public funds due to attorney's fees, litigation expenses, damages awards, and costs that provide no benefit to the City or to its citizens.

Respectfully,



Sherwood Darington
Managing Director
Ag Land Trust



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

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

August 11, 2011

TO: California Coastal Commission

From: The Ag Land Trust of Monterey County

RE: Groundwater Rights and Submerged Lands

Tom Luster asked the question "Who owns the groundwater in the 180 ft. aquifer under the ocean?"

The answer is that, under California case law which controls the ownership and use of potable (fresh) groundwater rights in our state, each property owner with land that overlies a percolated fresh groundwater aquifer (including the State of California as the "public trust owner" of submerged lands that are overlying the Salinas Valley potable groundwater aquifer that extends into the Monterey Bay National Marine Sanctuary) is entitled only to its correlative share of the safe yield of the fresh groundwater that may be used without causing additional over-draft, adverse effects, waste and/or damage to the potable water resource or to the water rights of the other overlying land owners. (Katz v. Walkinshaw (141 Cal. 116); Pasadena v. Alhambra (33 Calif.2nd 908), and reaffirmed in the Barstow v. Mojave Water Agency case in 2000). The Commission has no right to authorize or allow the intentional contamination and waste of a potable aquifer which is also a Public Trust resource (see below), and such an act would be "ultra vires" and illegal.

The proposed slant "test" wells are intended to violate these laws and significantly induce saltwater and contamination into an overdrafted freshwater aquifer (a Public Trust resource) thereby causing depletion, contamination, waste, and direct and "wrongful takings" of the private water rights of other overlying land owners and farmers. Further, the project proponents, by their own admission, have no groundwater rights in

the Salinas Valley aquifer because they are not overlying land owners. Such a "taking" will constitute a direct and adverse impact and impairment of the public's health and safety by diminishing a potable groundwater aquifer and a Public Trust resource. It will also adversely affect protected coastal priority agricultural enterprises.

In an overdrafted potable groundwater basin, no property owner or user of water is entitled to pump or take any such actions as to waste, contaminate, impair, or diminish the quality or quantity of the freshwater resource. The overdrafted Salinas Valley fresh water groundwater aquifer that extends under the Monterey Bay National Marine Sanctuary is identified as a potable water resource by the State and is governed the SWRCB Groundwater Non-Degradation Policy, which finds its source in the California Constitution:

CALIFORNIA CONSTITUTION ARTICLE 10 - WATER

SEC. 2. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

In other words, the state has determined that the subject Salinas Valley potable groundwater aquifer is a protected natural resource. The state may use the fresh groundwater only to the extent that it has a correlative right that accrues to its public trust lands as against all other overlying land owners that are exercising their rights and using the fresh groundwater for beneficial uses, as mandated and protected in the California Constitution. Further, the 1968 SWRCB Non-Degradation Policy absolutely prohibits the intentional contamination and/or "waste" of a potable groundwater aquifer by any party. (See attached Resolution No. 68-16) The fact that the Salinas Valley aquifer is a potable supply is definitively established in the Central Coast Regional Water Quality Control Board "Basin Plan" for Central California

Additionally, the mandatory requirements of the California Coastal Act also control the conduct, powers, and authority of the Calif. Coastal Commission when addressing these Public Trust resources and this application.

The California Coastal Act - Section 30231 (California Public Resources Code Section 30231) requires of the Commission that:

Sec. 30231 - 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed test wells directly and intentionally violate the mandatory statutory requirements, duties, and obligations imposed upon the California Coastal Commission by Section 30231 of the Coastal Act to protect and preserve and restore this potable water resource and protected coastal resource. The Salinas Valley potable groundwater aquifer, which is proposed to be wrongfully exploited by the project applicants' slant test wells, is a "coastal water", is producing potable water which is used and recognized for human consumption and coastal priority agricultural production, and shall be "protected from depletion" by the express language of the Coastal Act.

Finally, in the landmark Public Trust case of National Audubon Society v. Superior Court of Alpine County (1981), the California Supreme Court confirmed as part of its "Public Trust Doctrine" that the State retains continuing supervisory control over the navigable waters of California and the lands beneath them. This prevents any party from acquiring a vested right to appropriate water in a manner harmful to the uses protected by the Public Trust. (California Water Plan Update 2009, Vol. 4, Page 2 (1)).

The proposed slant test wells are designed to intentionally deplete, contaminate, and waste a protected potable water supply and a Public Trust resource. The project will violate statutory and regulatory mandates of the California Coastal Act, the California Water Code, the

California Public Resources Code, the California Constitution, and over 100 years of case law governing groundwater rights and the Public Trust Doctrine. It will result in the wrongful taking of water rights from farmers who are beneficially using the water for protected, coastal priority agricultural production and for human consumption. Besides that, the project applicants, by their own admission, have no appropriative groundwater rights. They should not even be entitled to a hearing.

This project should be denied, or at the very least continued until the Monterey County Superior Court can rule on the two lawsuits that are pending over these issues.

A handwritten signature in cursive script, appearing to read "Marc DePaulo". The signature is written in dark ink and is positioned below the second paragraph of text.

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 68-16

STATEMENT OF POLICY WITH RESPECT TO
MAINTAINING HIGH QUALITY OF WATERS IN CALIFORNIA

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

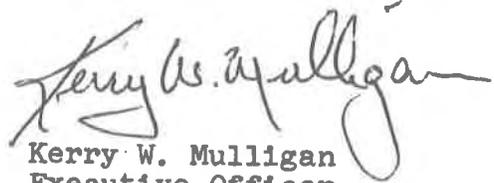
1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.
2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
3. In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Secretary of the Interior as part of California's water quality control policy submission.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 24, 1968.

Dated: October 28, 1968

A handwritten signature in cursive script, reading "Kerry W. Mulligan". The signature is written in dark ink and is positioned above the printed name and title.

Kerry W. Mulligan
Executive Officer
State Water Resources
Control Board

LAW OFFICES OF
MICHAEL W. STAMP

Facsimile
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July 26, 2011

Via Email

Thomas Luster
Energy, Ocean Resources, and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dan Carl, District Manager
Michael Watson, Coastal Planner
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

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

Dear Mr. Luster, Mr. Carl and Mr. Watson:

This Office represents Ag Land Trust, which owns agricultural properties in the Salinas Valley. For years, Ag Land Trust has pointed out that the Regional Desalination Project does not have valid water rights. The environmental documents to date have failed to point to valid groundwater rights for the project, and instead took various inconsistent positions on water rights.

This letter responds to new claims made by Downey Brand LLP, attorneys for the proponents of the Regional Project, in a letter dated May 20, 2011 to Lyndel Melton, P.E., of RMC Water and Environment. The Downey Brand letter was submitted to the Coastal Commission as part of the Regional Project proponents' response to the Commission's incomplete letter.

The Downey Brand letter raises various claims which may have superficial appeal but in reality 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" (Downey Brand letter, sec. 1, pp. 1-4) are addressed briefly here. Of the four different Downey Brand claims, none has merit, and none provides the necessary proof of water rights.

Downey Brand's General Claims about Water Rights

Monterey County Water Resources Agency has no groundwater storage rights, no overlying groundwater rights, and no "imported water rights." The Salinas Valley is

Thomas Luster, Dan Carl, Michael Watson
July 26, 2011
Page 2

not an adjudicated groundwater basin. 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 of Salinas, according to the latest (2009) mapping. (Historic Seawater Intrusion Map Pressure 180-Foot Aquifer, attached as Exhibit A to this letter.)

The EIR for the Coastal Water Project did not comprehensively or 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, 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, 2011 [<http://www.thecalifornian.com/article/20100331/NEWS01/3310307/280M+-desalination-plant-10-mile-pipeline-agreed-on-for-Monterey-Peninsula>].) The Regional Project intake wells would be owned and operated by MCWRA.

The Coastal Commission should not be misled by the claims of Downey Brand, starting with the claim that the 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. .)

The general claims made in the Downey Brand letter about water rights (at p. 1, bottom paragraph) should be disregarded because they are devoid of specific citation to law or to specific water rights. The specific claims made 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, p. 2) While that may be true, MCWRA's powers do not include groundwater rights that it can use 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 intentionally abandons and "loses management and control" of that surface water when the MCWRA releases the water into the rivers and subsequently lost to percolation. "Management and control" are prerequisites to maintain the use of any right to water. In its letter, 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. Downey Brand's approach is inconsistent with basic California groundwater law which holds that waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are

what the Regional Project would do. An overlying right is the owner's right to take water from the ground underneath for use on his land within the basin. An overlying right it 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.)

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." (Downey Brand letter, p. 2.) There is no cognizable legal support given by Downey Brand for that claim in the sole case it cites: the California Supreme Court in *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 ("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 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 those rights which attach to water that does not originate within 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 claim of "developed" water. 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, 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. (Wells A. Hutchins, *The California Law of Water Rights* (1956) at pp. 383-385.) Appropriative rights to salvaged water depend on the original source of the water supply. (*Pomona Land and Water Company v. San Antonio Water Company* (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 and the interests of other vested rights must be protected. (*Ibid.*, at p. 623.)

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

Downey Brand cites the doctrine of salvaged water as discussed in *Pomona Land and Water Company v. San Antonio Water Company*, *supra*, 152 Cal. 618 (*Pomona*), but that case does not help the Regional Project. *Pomona* involved a dispute between two water companies who appropriated water from a creek. The companies had existing water rights and a contractual agreement on how the waters flowing in the creek were to be divided between them. San Antonio Water built a pipeline in the creek and "saved" some water that would otherwise had been lost due to seepage, percolation, and evaporation. When Pomona claimed half of this saved water, 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 ruled for San Antonio, holding that Pomona was entitled only to the natural flow, and that San Antonio was entitled to any amount saved by its economical method of impounding the water.

The Regional 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 – water which is fully appropriated. 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 (Downey Brand letter, 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 take it to 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 groundwater rights that can be applied to the Regional Project. The Water Purchase Agreement does not award water rights to anyone.

Conclusion

None of the Downey Brand claims provide proof of groundwater rights. In an overdrafted basin, proof of water rights is essential before groundwater can be appropriated. The Coastal Commission does not have the authority to grant groundwater rights or to grant approval of a project that relies on the illegal taking of groundwater that belongs solely to the overlying landowners of the Salinas Valley. We urge the Coastal Commission to consult with its own expert water rights counsel with regard to this critical issue.

Thank you for the opportunity to respond to the Downey Brand letter. Feel free to contact me with any questions.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP

Molly Erickson

- Exhibit A: "Historic Seawater Intrusion Map Pressure 180-Foot Aquifer" showing intrusion as of 2009, dated November 16, 2010 (available at <http://www.mcwra.co.monterey.ca.us/SVWP/01swi180.pdf>)
- Exhibit B: Salinas Californian article, March 31, 2011
- Exhibit C: Letter from MCWRA to Molly Erickson, March 24, 2010

FAX TRANSMISSION



MONTEREY COUNTY WATER RESOURCES AGENCY
P. O. BOX 930
SALINAS, CA 93902
831.755.4860
FAX: 831.424.7935

FOR IMMEDIATE DELIVERY

DATE: 3/25/10

To: Molly Erickson

From: David Kimbrough

C/O:

FAX: 373-0242 ()

Re: PRAR-3/3/10

MONTEREY COUNTY

WATER RESOURCES AGENCY

PO BOX 930
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(831)765-4880
FAX (831) 424-7836

CURTIS V. WEEKS
GENERAL MANAGER



STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93801-4456

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.

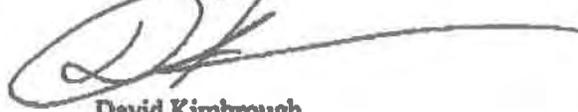
As to MCWD, it was previously annexed into Zones 2 & 2A and as such has a right to ground water. These documents are hereby attached PDF files.

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

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

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March 3, 2010

Via Facsimile

Les Girard
Assistant County Counsel
County of Monterey
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Irv Grant
Deputy County Counsel
Monterey County Water Resource Agency
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Subject: Public Records Request

Dear Mr. Girard and Mr. Grant:

This Office would like to inspect the following County records and County Water Resources Agency records, and possibly copy some of them.

1. All records that reference the groundwater rights held by Monterey County Water Resources Agency or by Marina Coast Water District, as asserted at the Board of Supervisors hearing on Friday afternoon, February 26, 2010, by Curtis Weeks, General Manager of the County Water Resources Agency.

As further information, we seek all records on which Mr. Weeks based his response to Supervisor Calcagno's question regarding whether the Water Resources Agency has rights to pump groundwater for the proposed Regional Project. Mr. Weeks responded as follows:

"As to wells that are developing basin water, both ourselves and Marina Coast Water District are organizations that can pump groundwater within the Salinas basin. Every drop of water that we pump that is Salinas groundwater will stay in the Salinas groundwater basin. After the implementation, which will begin . . . actually, the operation of the Salinas Valley Water Project on the 22nd of April, we'll be fully in balance. There will be no harm to any pumpers in the Salinas Valley."

2. All records that show that after the initiation of the operation of the Salinas Valley Water Project, the Salinas Groundwater basin will "be fully in balance," as Mr. Weeks asserted.

March 3, 2010
Les Girard, Assistant County Counsel
Irv Grant, Deputy County Counsel
Page 2

The request includes all email communications of all kinds, including those, for example, residing on personal computers, on shared drive(s), and in archived form. We request access to the emails in the same format held by the County. (Gov. Code, § 6253.9, subd. (a).) Instead of printing out electronic records, please place them on CDs. If the records are kept individually, please copy them as individual emails, and include attachments attached to the respective emails.

If you produce an EIR or any lengthy documents in response, please identify the specific pages on which the responsive information is presented.

If there are records that you think might be eliminated from the County production, please let me know. If the County has any questions regarding this request, please contact me. We will be happy to assist the County in making its response as complete and efficient as possible.

I draw the County's attention to Government Code section 6253.1, which requires a public agency to assist the public in making a focused and effective request by (1) identifying records and information responsive to the request, (2) describing the information technology and physical location of the records, and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought.

If the County determines that any or all of the information is exempt from disclosure, I ask the County to reconsider that determination in view of Proposition 59, which amended the state Constitution to require that all exemptions be "narrowly construed." Proposition 59 may modify or overturn authorities on which the County has relied in the past. If the County determines that any requested records are subject to a still-valid exemption, I ask that: (1) the County exercise its discretion to disclose some or all of the records notwithstanding the exemption, and (2) with respect to records containing both exempt and non-exempt content, the County redact the exempt content and disclose the rest.

Should the County deny part or all of this request, the County is required to provide a written response describing the legal authority on which the County relies.

Please respond at your earliest opportunity. If you have any questions, please let me know promptly. Thank you for your professional courtesy.

Very truly yours,


Molly Erickson

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December 16, 2009

Via Email

Michael R. Peevey, President,
and Members of the Commission
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Subject Coastal Water Project EIR Does Not Comply with CEQA; Illegal
Piecemealing of Environmental Review; Potential Takings Claim**

Dear President Peevey and Member of the California Public Utilities Commission:

This Office represents the Ag Land Trust, which owns property that would be affected by the proposed Regional Project. (See attached figure.) The Ag Land Trust was formerly known as the Monterey County Agricultural and Historic Land Conservancy. On the Commission's December 17, 2009 agenda, there is a request to certify the Environmental Impact Report (EIR) for the Coastal Water Project.

The Ag Land Trust urges the Commission to delay the proposed certification of the EIR for many reasons, including these:

1. If the CPUC certifies the EIR now, local public agencies plan to use it to approve one of the project alternatives, thereby taking away the authority of the CPUC to select a project based on this EIR.
2. The Public has had inadequate time to review the EIR, which is over 3,100 pages and is not available in hard copy anywhere in Monterey County. The Public was told that the EIR certification would be considered in January 2010. The certification was expedited to December 2009 with inadequate notice to the Public.
3. The EIR is deeply flawed. The public needs more time to advise the Commission as to the flaws, so the EIR can be corrected to address key issues adequately.

**As Soon as the EIR is Certified, the Local Agencies Plan to
Jump Ahead of the CPUC and Approve the Regional Project.**

The Regional Project is the third of the three projects analyzed in the EIR. As soon as the CPUC certifies the EIR, the local public agencies that are the proponents of the Regional Project plan to rely on the EIR to approve the Regional Project on an

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 2

expedited basis, as the attached December 9, 2009 powerpoint documents show (see p. 5). The project proponents have already determined that the CPUC's EIR is inadequate as to specific known potential impacts, including brine disposal. Given the EIR omission, a local agency plans to issue a supplemental environmental document to address brine disposal, and the local agencies can then be under way with the Regional Project, making the CPUC's future scheduled action to select a project meaningless.

The local agencies would be able to do this because they are not subject to CPUC authority. They are seeking grant funding which would provide project financing. Once the local agencies approve the Regional Project, the CPUC would not be able to rely on its certified EIR to select either of the two projects proposed by Cal Am. The reason is that to select either of the Cal Am projects would mean the CPUC would be allowing a second project to be built, in addition to the Regional Project. The EIR does not evaluate the environmental impacts of two projects being built. It addresses the impacts of only one of three projects being built. If the local agencies approve the Regional Project first, as they plan to do, then when the CPUC in April 2010 considers selecting a project, the CPUC could not rely on its own EIR to do so because the EIR does not envision two projects being built. A second project would have significant cumulative and growth-inducing impacts that have not been analyzed in the EIR.

The CPUC cannot certify an EIR for a project over which it has no jurisdiction. Under CEQA, "lead agency" is defined as "the public agency which has the *principal* responsibility for carrying out or approving a project which may have a significant effect upon the environment." (Pub. Resources Code, § 21067, italics added.) The CPUC is not the lead agency for the Regional Project, because the CPUC would have no role in approving or carrying out the desalination plant, the source water wells and pipelines, or the brine disposal, which are the principal facilities of the Regional Project. The desalination plant would be owned and operated by the Marina Coast Water District (MCWD), a local public agency. Monterey County Water Resources Agency (MCWRA) would own and operate the wells. The brine disposal would be through facilities owned by the Monterey Regional Water Pollution Control Agency (MRWPCA). The public agencies would carry out and approve the project. The lead agency for the Regional Project should be a local agency.

As the Court of Appeal held in addressing the issue of the lead agency, "Our threshold question here is which agency . . . has the principal responsibility for the activity." (*Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District* (1994) 28 Cal.App.4th 419, 427.) The specific facts of a case determine who is lead agency. (*Id.*, at p. 428.)

The Legislature enacted CEQA in 1970 as a means to force public agency decisionmakers to document and consider the environmental implications of their actions. (§ 21000,

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 3

21001; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 254-256, criticized on another ground in *Kowis v. Howard* (1992) 3 Cal.4th 888, 896.) CEQA and its Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) constitute a comprehensive scheme to evaluate potential adverse environmental effects of discretionary projects proposed to be carried out or approved by public agencies. (§ 21080, subd. (a); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 437.) "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390, quoting *Friends of Mammoth v. Board of Supervisors, supra*, 8 Cal.3d at p. 259.)

The issue here is . . . [which public agency] was the public agency required under the act to evaluate potential adverse environmental effects of this activity. Or, using the applicable terms of art under CEQA, the issue is whether the District was the "lead agency."

(*Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District, supra*, 28 Cal.App.4th 419, 426, internal parallel citations omitted.)

Under CEQA, a local agency must be lead agency for the Regional Project due to (1) the CPUC's lack of jurisdiction over the Regional Project's primary components, (2) the local agencies' ownership interests in the proposed desalination plant, source wells and pipeline, and brine disposal, and (3) the local agencies will be the first to act on the project approvals (see FEIR Figure 5-6 and presentations attached to this letter for reference).

EIR Discussion of "Lead Agency" is Inconsistent and Misleading.

The EIR does not clearly present this issue. Instead, the EIR discussion of agency roles under CEQA is inaccurate and fails to disclose the material facts or the issues. The EIR lacks the required comprehensive discussion of the issues to inform the public and decisionmakers. At best, the EIR creates a significant ambiguity.

The EIR repeatedly describes the CPUC as the lead agency, and the local agencies (such as the MCWD, MCWRA, and MRWPCA) as responsible agencies (e.g., FEIR Master Response 13.3). The EIR does not directly address whether those roles

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 4

would be different for any of the project alternatives. Instead, in discussing the Regional Project, the EIR merely alludes to the CPUC as not having direct authority or jurisdiction over the project proponents. The EIR never addresses a key CEQA issue: that the CPUC is not the lead agency for the Regional Project. The EIR never identifies which agency would be lead agency for the Regional Project.

The ALJ'S Draft Decision Compounds the Problems.

Perhaps as a result of the EIR's confusing discussion, the draft decision before the CPUC to certify the EIR contains similar important ambiguities. For example, the draft decision states that Phase 2 of the Regional Project is not subject to the CPUC's approval at this time. (Draft Decision, rev. 1, p. 19.) However, the draft decision fails to clarify that Phase 1 of the Regional Project is also not subject to the CPUC's approval – either now or in the future – because the project proponents are not subject to CPUC jurisdiction. The project proponents – the local public agencies – can and plan to approve and carry out the Regional Project without CPUC involvement.

Only one week after the EIR was released, the ALJ issued a proposed draft decision certifying the EIR, which was later revised with minor non-substantive changes. The draft decision proposes that the CPUC make findings that are not authorized by CEQA, and proposes an order for which the CPUC has no authority. The Order states that the EIR is "certified for use by . . . responsible agencies in considering subsequent approvals of the project, or for portions thereof." (Draft decision, p. 24.) The CPUC does not have authority to make that order, and no supporting reference is provided. If local agencies approve the project or project components first, before the CPUC does or can, then the first local agency to act becomes the lead agency under CEQA. (See *City of Sacramento v. State Water Resources Control Board* (1992) 2 Cal.App.4th 960; *Citizens Task Force on Sohio v. Bd. of Harbor Commissioners of the Port of Long Beach* (1979) 23 Cal.3d 812.)

The draft decision asserts (p. 20) without legal support that "the lead agency must find that the document was (or will be) presented to the decisionmaking body for review and consideration prior to project approval." There is nothing in CEQA that requires a finding that the document "will be" presented to the decisionmaking body, and such a finding is both misleading and confusing. Further, with regard to the Regional Project, the CPUC has no authority over what documents will be presented to the various decision-making bodies who will act on project components. As another example, the proposed finding of fact #1 fails to state that the CPUC is not the lead agency for review of the Regional Project alternative. The CPUC has no authority over the local agencies who are the proponents of that project. The draft decision is also inaccurate in key respects, including the claim that the FEIR states that the Monterey Peninsula has experienced seawater intrusion for decades. The Monterey Peninsula

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 5

has no documented problems with seawater intrusion. Throughout this proceeding, the lack of familiarity with the on-the-ground conditions has been a significant problem.

The Final EIR Is Deeply Flawed and Does Not Comply with CEQA.

The project description has changed dramatically from the Notice of Preparation to the Draft EIR to the Final EIR. This violates the basic CEQA tenet that "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR. (*Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Ass'n.* (1986) 42 Cal.3d 929, 938, internal citations, quote marks and punctuation omitted.) Here, the changes from the Notice of Preparation, to the Draft EIR, to the Final EIR have violated this basic principle. As one example, a project alternative (the Regional Project) that was not proposed to be built by the project applicant (Cal Am) and was not subject to the CPUC's jurisdiction was added after the EIR was under way. Under the circumstances, the EIR's inclusion of the Regional Project was highly unusual and not adequately explained in the EIR, either substantively or procedurally. Other examples of the significant EIR flaws are provided here.

Lack of Compliance with Monterey County Code: No Alternative Water Supply:
The EIR fails to disclose Monterey County's requirement that each desalination plant include an alternative source of water supply (Monterey County Code, Ch. 10.72). The code requires that a permit be obtained for all desalination facilities (10.72.10), and states that the permit application shall include:

a contingency plan for alternative water supply which provides a reliable source of water assuming normal operations, and emergency shut down operations. Said contingency plan shall also set forth a cross connection control program.

(Monterey County Code, § 10.72.020.F, attached for reference.) None of the three proposed projects includes a "contingency plan for alternative water supply." As proposed, the City of Marina and the majority of the Monterey Peninsula population would rely on the project for their water supply. If that supply fails, either for a short term or for a long term, the community will not have a water supply. The EIR does not analyze the projects' inconsistencies with the County requirement for an alternative water supply. In response to the comment that the project should include an operations plan and a contingency plan, the EIR merely states "comment noted." (FEIR, G-SVWC-13 and response thereto.)

The EIR omission is significant due to CEQA's requirement that in order to fulfill CEQA requirements, environmental review is mandated "at the earliest possible stage." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282.) By failing to

include consideration of an alternative water supply in the project description, the EIR is piecemealing the environmental review, because such alternative supply is required.

The EIR omission is also significant due to the magnitude of the health and safety risk to the community which is the County Code intends to address. (See attached County documentation supporting the creation of Chapter 10.72.) Desalination plants have a very poor record of operations and maintenance. There is no record of any desalination plant of any size, such as proposed here, operating for any reliable period of time in the United States. The few that have been constructed have had very serious design, construction, and maintenance issues. For this reason, the success of the three proposed projects is pure speculation. If, as proposed, the vast majority of the Monterey Peninsula population and all of Marina -- including residents, industry and business -- rely on the desalination plant for their water supply, and the supply stops, or is interrupted, there would be very significant impacts and risks to public health and safety. The EIR does not address this issue.

Incorrect and Misleading Statements: The EIR contains incorrect and misleading material statements. The inaccuracies extend to basic information about the current environmental setting. For example, section 1.6 Project Setting (pp. 1-7 and 1-8) contains significant misstatements of fact. No support is provided for these misstatements which include (1) the claim that the MCWRA is a primary custodian of water supplies in North Monterey County (when in fact, MCWRA is not a water supplier and, critically, does not have appropriative rights), (2) the claim that the Salinas Valley Water Project will "stop seawater intrusion and provide adequate water supplies to meet current and future (2030) needs" (when in fact the SVWP EIR admits it may not achieve those goals), and (3) the claim that the San Clemente Dam is "the major point of surface water diversion from the [Carmel] river" (when in fact the San Clemente Dam provides no water supply because it is fully silted up and is proposed to be removed). These three examples early in the EIR set the stage for the myriad errors and misrepresentations that permeate the EIR document. There are many other problems which the public has been unable to present to the CPUC staff because of the expedited schedule, the length of the EIR, and the lack of availability of a hard copy of the EIR. The EIR preparer should correct all errors before the EIR is considered for certification.

As another material example, the EIR incorrectly identifies and discusses Zone 2C in a way that is misleading to the public and to decisionmakers. (See, e.g., FEIR, p. 6.2-16.) Zone 2C is not a groundwater scheme. It is a zone created for the purposes of tax assessments, and delineates the boundary of the area that would purportedly benefit from -- and therefore be assessed for -- the Salinas Valley Water Project, which is a surface water project. The distinction is critical.

Failure to Adequately Analyze Potential Environmental Impacts of Project; Failure to Adequately Describe or Analyze Environmental Setting; Failure to Adequately Describe or Analyze Cumulative and Growth-Inducing Impacts: These failures take many forms. As one significant example, the FEIR fails to adequately disclose that the local agencies' hybrid Regional Urban Water Augmentation Project (RUWAP) would produce up to 3,000 AFY, which is expected to be online between 2008 and 2015. The EIR describes the RUWAP as producing only 1,000 AFY. It fails to identify or investigate the additional 2,000 AFY of RUWAP supply that is currently under active implementation, and that would be provided to the MCWD and the Peninsula. As a result, the EIR fails to adequately analyze the potential growth-inducing environmental impacts of the proposed projects, fails to adequately describe or analyze environmental setting, and fails to adequately describe or analyze cumulative impacts. (See attachments for further documentation of the hybrid RUWAP project currently under way by local agencies.)

Failure to Adequately Investigate or Disclose Brine Disposal Impacts: The EIR fails to analyze the potential impacts of the proposed ocean outfall disposal of the brine that would be produced by the desalination plan. As one material example, the Regional Project proposes to use the treated water wastewater outfall owned by the MRWPCA. Studies indicate that MRWPCA's outfall capacity may not be available for all outfall flow conditions. It is unknown whether the outfall could accommodate all outfall operating parameters if the Regional Project is built. It is foreseeable that brine discharge would exceed outfall capacity during high-flow periods. There is no analysis of the availability of wastewater for the various demands of multiple projects. It is foreseeable that if all wastewater is used for disposal and brine dispersion, that commitment would cause significant impacts on the RUWAP (which uses recycled water from the MRWPCA) and the Ground Water Replenishment project that is an essential part of the Regional Project.

The EIR fails to disclose or investigate these issues or their potential significant impacts. The EIR fails to investigate important issues including: the capacity of the existing outfall to accommodate increased brine flow; the potential sacrifice of outfall capacity allocated for future development in the area in favor of allocating unused capacity for brine; minimization of stormwater capacity in the outfall and how this might be mitigated (e.g., storage tanks, ASR well, if mitigation is even possible, etc.); or blended water quality in light of applicable water quality parameters, including NPDES discharge limits for TDS. Further, the EIR fails to adequately describe or investigate the fate of desalination-facility cleaning chemicals and other project waste streams. This is not new information. It has been openly and publicly discussed since at least early 2008. (See February 20, 2008 report to MPWMD, attached.)

The local agencies have acknowledged that the CPUC's EIR does not adequately address brine disposal through their own actions to address the omission.

Even before the comment period on the CPUC's Draft EIR closed, one agency had already begun to prepare a separate environmental review of brine issues that should have been included in the CPUC's EIR. This fractured approach to environmental review of project components is piecemealing, which is prohibited by CEQA. The local agency's work is intended to allow the local agencies to move ahead with the Regional Project without the active involvement of the CPUC, and even if the CPUC intends to select a different project of the three analyzed in the EIR.

Piecemealing of Project Review: Another example of the EIR's inadequacy and piecemealing is the project description's failure to include the known cogeneration facility that is part of the project. That facility has been proposed at least since 2008, before the Draft EIR was released. (See attached references, including March 2009 presentation by Curtis Weeks of Monterey County Water Resources Agency.) As a result of this failure, the EIR fails to analyze the potential environmental impacts of that facility. The very brief EIR discussion (FEIR pp. 5-45 and 5-46) contemplates the new facility, but defers analysis to a future date. The new facility is foreseeable and would be built as part of the Regional Project, to enable the project. The environmental analysis should not have been deferred, and should have been included in the FEIR.

Unanalyzed Impacts on Overdrafted North County Aquifers: The FEIR is claiming the "modeling" indicates there will be no impacts of pumping 24,000+ AFY out of the 180-foot aquifer. However, a review of the well locations upon which the EIR modeling is based shows that none of them are located within any of North County's hydrological subareas.¹ For this reason, the wells could not show impacts to North County wells, because that information was not part of the model. The Salinas Valley Water Project was approved by the voters based on claims that it would improve the North County aquifers, which are uphill from the Salinas Valley Groundwater Basin. Several times, MCWRA general manager Curtis Weeks has publicly described that claim by likening the basin to a bathtub into which North County aquifers run, and when the water level of the bathtub increases, the aquifers do not run downhill to the same extent. Here, the EIR fails to analyze whether the pumping of 24,000+ AFY – or 88,000 AFY, as is foreseeable – on the North County hydrological subareas.

EIR Relies on False Assumption: The EIR uses the modeling presented by the project proponents. According to the EIR, project proponent's Regional Project impact analysis relied on a modeling assumption that the SWP Phase II would be in place.

¹ This can be determined by reviewing the mapping of North County's subareas in relation to major roadways, and comparing that information to the figures showing well locations in the EIR appendices in relation to those same roadways.

The SVIGSM modeling used to evaluate impacts of the Regional Project was based on a future baseline condition that assume complete implementation of Phase II of the SVWP.

(FEIR, p. 14.5-145.) However, no "Phase II of the Salinas Valley Water Project" is in place, and it is unclear what the EIR means. A second SVWP phase is not proposed, approved, funded or built. The Salinas Valley Water Project EIR did not use the term "Phase II," but it did envision an expanded distribution system to address the continuing water supply challenges in the Salinas Valley (e.g., SVWP EIR, p. 2-294). Because the modeling of the SVWP indicated that the SVWP may not halt seawater intrusion, the MCWRA contemplated a future expanded distribution system. Presumably that future expanded system is what the CWP EIR means when it refers to "Phase II of the SVWP." The SVWP EIR projected a cost of more than \$40 million for this distribution system, which presumably voters would need to approve, just as voters were required to approve the initial SVWP phase currently under construction. Since then, every distribution scheme the MCWRA has discussed dwarfs the \$40 million estimate found in the EIR.

The CWP EIR describes what is calls "Phase II" of the SVWP as "Increased diversion. Delivery could be directly to urban or could be expanded to CSIP with equivalent amount of pumped groundwater to urban." The CWP EIR also describes it as "urban supply." (FEIR, p. N-44.) The purported "Phase II" is also addressed at page 6.2-18. It is unclear to which Regional Project phase the CWP EIR discussion applies.

The EIR does not identify all of the assumptions used by the project proponents for their modeling, which is a significant concern. As a result, the public and the decision makers are not informed of the project proponents' assumptions, which can make a critical difference in the outcome of the modeling on which the EIR relied. The modeling and reliability is no better than the reliability of the underlying assumptions, and the assumptions are not adequately described.

Inadequate Investigation and Disclosure of Impacts to Overlying and Adjacent Properties: The EIR does not adequately investigate or discuss the impacts on overlying or adjacent properties. For this reason, the EIR fails as an informational document under CEQA.

The EIR even fails to clearly identify where the projects would be located, which is another aspect of the inadequate and changing project description. There is no reliable information as to where the wells or the pipelines would be located. Revised Figure 5-3 is the EIR's best depiction of the well and pipeline locations for the proposed seawater intake. The poster figure is a blurry generalized drawing. The figure fails to

identify the difference between the blue swath and the brown swath. The EIR does not identify property, parcels, or locations.

The EIR inappropriately defers that crucial investigation to a future date, and does not contemplate further CEQA review of that information. That was verified by Janet Brennan on December 11, 2009, in email communications with Eric Zigas, ESA (attached).

This deferred analysis is inappropriate under CEQA for several reasons. As one example, it fails to adequately address and identify the potential environmental impacts on the properties or potential property rights or taking issues. The Ag Land Trust has identified potential impacts and issues several times in its communications with the CPUC and ESA. It has not received any response other than a cursory and inadequate one in the EIR response to comments. The Ag Land Trust, which owns property underlying the blue swath on Figure 5-3, and possible the brown swath as well, has important property interests at stake, but never received notice from the CPUC, Cal Am, or the local agencies of the proposed certification of the EIR on December 17, 2009. The EIR claims that contacts were made with overlying landowners, but the Ag Land Trust was not contacted. (See the attached figures to show the Ag Land Trust properties with respect to the proposed Regional Project.)

In a related example, the EIR fails to adequately disclose or consider the projects' potential impacts on sensitive habitat. For example, the Martin Dunes property is included in the blue swath that identifies well locations and pipeline locations for the Regional Project (see FEIR Revised Figure 5-3 and figures attached to this letter).² The Martin Dunes property contains one of California's most ancient and intact dune ecosystems. It is located south of the Salinas River National Wildlife Refuge. At least six federally or state listed species are known to occur at the site, including Western snowy plover, Smith's blue butterfly, Monterey spineflower, Monterey gilia, Menzies' wallflower, and California legless lizard, as well as other special-status species. Maritime chaparral, which is also sensitive habitat, is also on the Martin Dunes site. The Martin Dunes are owned by the Big Sur Land Trust, which has made significant efforts to restore and protect the property and its resources. The North Monterey County Land Use Plan specifically addresses the site in several sections, including key policy 2.3.1, and specific policy 2.3.3.A.6, and recommended action 2.3.4.5, attached for reference. The EIR fails to identify or discuss these issues, which is a failure to adequately describe the environmental setting, as well as a failure to investigate potential

² That figure is not specific as to parcels or properties. When mapping information was requested of the EIR preparer ESA, ESA responded was that there was no more specific information available for the project location other than as shown on Revised Figure 5-3.

impacts. The EIR mitigations do not adequately mitigate for potential impacts. There are no mitigations to potential impacts on Western snowy plover, Monterey spineflower, Monterey gilia, Menzies' wallflower, and California legless lizard. Mitigation measure 4.4.1a proposed for Smith's blue butterfly are inadequate, because it is permissive and not mandatory. Subsections (2) and (3) merely state that certain actions "should" be made, without accountability by the project applicant or public agency if they do not happen, and without identifying the potential impacts if the actions are not taken. Further, FEIR Table 7-1 states that the expansion of the Salinas River Diversion Facility would be in Phase I of the Regional Project. That is incorrect; the expansion is in phase 2 of the Regional Project. FEIR Table 5-1 clearly shows the diversion facility in Phase 2. The internal inconsistencies in the EIR, like this one, make parts of the EIR impossible to understand because the information cannot be reconciled. For this reason as well, the EIR fails as an informational document.

Separately, the EIR figures are inconsistent with project depictions presented just last week to the local cities and agencies by Jim Heitzman, General Manager of MCWD and Curtis Weeks, General Manager of MCWRA. (See attached December 9, 2009 powerpoint presentation.) These agencies are the ones who will be implementing the project. If the EIR figures are inaccurate, as they appear to be, that also causes the EIR to fail as an informational document.

The Regional Project Would Export Groundwater from the Salinas Valley Groundwater Basin, Which is Prohibited by Law.

The MCWRA Act prohibits groundwater exportation due to concern about the "balance between extraction and recharge" within the Salinas Valley Groundwater Basin (MCWRA Act, § 52-21; FEIR p. 4.2-28). The EIR does not dispute that the Salinas Valley Groundwater Basin is in overdraft and has been increasingly in overdraft for decades, as shown by the steady inland progression of seawater intrusion. One of the three projects reviewed in the CWP EIR – the Regional Project – would pump groundwater directly from the overdrafted Salinas Valley Groundwater Basin. Another of the projects – the Cal Am North Marina project – would pump groundwater indirectly.

These two projects would violate the MCWRA Act because the project would extract groundwater and not recharge the basin. Instead, the groundwater would be put to use. The EIR claims that the amount of groundwater pumped would be returned in the same volume to the basin, either by providing the water for irrigation through CSIP (the Cal Am North Marina project) or for consumptive use by MCWD customers (the Regional Project). However, use of the "returned" water for irrigation would allow only 50% of that amount to recharge the basin. The County uses a 50% return water factor for irrigation in its standard water calculations. Both of these two methods – irrigation and consumption – would violate the Act's requirement for a "balance between extraction and recharge" because any recharge of the basin would be much less than

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 12

the amount extracted from the basin. Use of the pumped groundwater for MCWD connections would also violate the MCWRA Act, because such use results in far less than a 50% return to the basin, because much water is lost through irrigation and sewers. The EIR fails to adequately discuss these issues, impacts and inconsistencies.

The proposed desalination project would export Salinas Valley groundwater to the Monterey Peninsula. The proposed way around the prohibition on groundwater exportation is to "return" an "annual average" to the Salinas Valley Groundwater Basin by placing it in the 80-AF CSIP pond for irrigation of Salinas Valley agricultural lands. There are multiple problems with the EIR's analysis.

There is no question that Salinas Valley Groundwater would be exported to the Monterey Peninsula. Such groundwater would be pumped "at unspecified volumes" (FEIR, pp. 4.2-50, 6.2-16), desalinated, and sent through the Cal Am pipes to the Peninsula. It is misleading for the EIR to claim that the groundwater would stay in the basin. The groundwater would be mixed with the seawater as it comes up the pumps, through the pipelines, and through the treatment plant. The groundwater molecules cannot be separated from the seawater molecules. The treated water would be a blend of both kinds of water, and that blended water would be exported to the Monterey Peninsula.

The EIR does not describe how the "annual average" will be calculated, or who will verify it. The proposed use of an "average" means that in some years more water will be exported to the Peninsula than "returned" to the Salinas Valley basin, which means that in those years the basin would be further imbalanced (causing attendant harm) through the operation of the proposed project. The EIR fails to analyze this inconsistency with the MCWRA prohibition, and fails to analyze the potential environmental impacts of the scheme.

The EIR repeatedly uses the 85% seawater/15% groundwater proportions, although those proportions are projected only for the first 10 years (FEIR, Appendix Q, p. 24). The EIR fails to adequately discuss or investigate whether the proposed actions are feasible or effective in future project years, when the proportions change significantly to 60% seawater and 40% groundwater, or what potential impacts those actions may have. For example, in the years when the 24,870-AFY of pumped water is 40% groundwater, that 40% would be 9,947 AFY of desalinated water that must be returned to the SVGB. The desalination plant is intended to produce 10,700 AFY, under full operating conditions. The Monterey Peninsula (Cal Am system) will be depending on receiving 8,800 AFY of that amount during normal weather years. If 9,947 AF are returned to the SVGB, and Marina takes its 1,700 AF, that leaves only 553 AF for the Monterey Peninsula, far less than it would be depending on. Even if Marina decides to pump from its unsustainable Deep Aquifer during that year, and thereby does not use its 1,700, that would leave only 2,253 AF for the Monterey

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 13

Peninsula system, which is only a small fraction of Cal Am's needs under Order 95-10 and the Seaside Basin adjudication. This is a foreseeable scenario which the EIR fails to address.

The EIR states that Salinas Valley groundwater extracted by the Cal Am North Marina project would be returned using the CSIP 80-AF pond (FEIR p. 13.6-8). The EIR fails to investigate or explain whether the proposed "return" method can be accommodated by the 80-AF pond in all years through the life of the project, for all volumes of foreseeable water, both in wet and dry years, and what the environmental impacts would be. The water "returned" to the Salinas Valley would be surface water, and the recipients of that surface water may not have rights to that water.

For the Regional Project, the EIR states that the pumped Salinas Valley groundwater would be delivered to the MCWD service area within the Salinas Valley basin (FEIR p. 13.6-8). The EIR fails to discuss how the water in excess of the 1,700 AF required for use within the MCWD would be returned to the SVGB. In some years, the volume of the water to be returned would far exceed 1,700 AF. The EIR omits any analysis of whether adequate water rights are held by the proposed appropriator of the Salinas Valley groundwater for such actions.

Under the predicted 60% seawater/40% groundwater scenario, in order to provide the 8,800 AF to the Monterey Peninsula (Cal Am system), the intake wells would have to pump 88,000 AFY. Of that 88,000 AFY, the 40% to be returned to the Salinas Valley Groundwater Basin would be 35,200 AFY. Of that 88,000 AFY, the desalination plant would produce 44,000 AF of desalinated water. The proposed "return" to the Salinas Valley Groundwater Basin would be 35,200 AF. Assuming the MCWD 1,700 AF is part of the amount returned to the Salinas Valley Groundwater Basin, that would leave 8,800 AF for the Monterey Peninsula. The EIR fails to investigate this foreseeable scenario, or what the impacts would be of 88,000 AFY of pumping, or the fact that the desalination plant is not designed to process 88,000 AFY of untreated water or to produce 44,000 AF of desalinated water. And there is no discussion of whether returning 35,200 to the Salinas Valley Groundwater Basin is feasible, or how it would be done. There is no question this foreseeable scenario would cause significant impacts, none of which has been addressed in the EIR.

The EIR fails to analyze any potential impacts for the times when the EIR indicates that the proportions of the pumped water will be approximately 60% seawater and 40% groundwater. (FEIR Appendix E and Appendix Q [modeling shows TDS concentrations of from 21,300 mg/L to 34,500 mg/L over a 56-year period].) The EIR fails to investigate whether the project would be able to pump or deliver sufficient water to provide 12,500 AFY to the Monterey Peninsula every year under the foreseeable scenario requiring a "return" of up to 40% of the pumped water to the CSIP or requiring the distribution of up to 40% to the MCWD service area within the Salinas Valley basin

for years at a time. There is no evidence that there is current demand for 40% of the pumped water within that MCWD service area. Thus, at times, only 60% of the water would be available for export to the Monterey Peninsula, when that area requires – and is planned to receive under the proposed project – 85% of the desalinated water, assuming perfect and uninterrupted plant operations. The EIR fails to investigate or explain how the difference between the available desalinated water and the area's water demand will be met over the life of the project, and the potential impacts over time. The evidence is that the current MCWD demand within the Salinas Valley Groundwater Basin is less than the 40% of the pumped water that would be delivered to that MCWD area. The EIR has failed to investigate or disclose the impacts of the forced delivery of that amount of water to that area. That forced delivery would foreseeably cause growth which has not been analyzed in the EIR.

Another significant issue is the lack of accountability for the amount of groundwater pumped. As one example, for the North Marina project, the EIR assumes that Cal Am will keep track of the amount of water pumped, and the salinity of that water. There are no requirements with regard to frequency of monitoring, and no provision or mitigation requiring Cal Am to report its pumping and water quality information to any public agency. Therefore, Cal Am would not be accountable to any public agency, and could keep its number secret and unverified by the public and the government.

**The Project Proponents' Assumption of Continuous Pumping
Is Unsupported and Unreasonable.**

The EIR uses only modeling scenarios that assumed continuous pumping. (See, e.g., p. E-31, Appendix E, Appendix Q.) The models were prepared and submitted by the project proponents. The EIR claims that the applicants' models of continuous pumping of the desalination intake wells show the creation of an underground trough in the water level due to the volume of water being pumped. The EIR claim is that over time the pumping will decrease and/or halt the progression of inland seawater intrusion because the pumps will be sucking up seawater faster than the seawater intrudes. There was no modeling for anything other than continuous pumping, or cessation, including any scenario for the likely interruption of pumping (at any time, including at end of the project's lifetime).

An assumption of continuous pumping is not reasonable. Desalination facilities simply are not reliable. There are very poor track records of the two similarly sized plants in the United States (the Tampa Bay desalination plant and the Yuma Desalter). Large desalination plants as proposed here have proved to be unreliable and have been non-operable for long periods of time, and none has ever operated at full capacity. The EIR fails to investigate or disclose this information, or what would happen if the

proposed plant is non-operable for long periods of time (or even for short periods), and if it never operates at full capacity.

In addition to failing to adequately investigate the potential environmental impacts of non-continuous pumping throughout the life of the project, the EIR also fails to discuss the potential environmental impacts that may occur at the end of the plant's useable life, which the EIR anticipates to be approximately 50-56 years.

Groundwater has several unknowns. Unknown variables require assumptions to be made in each analysis. The unknowns and assumptions can be reduced through testing the groundwater system through pumping and monitoring wells. This has not been done here to the level that would provide usable data for reliable conclusions. The testing that was done for the EIR was minimal and based on an insufficient number of wells and locations. For that reason, the EIR conclusions are not reliable or adequate information. Even after test wells are used to validate assumptions, there remains the variable of time. Things change over time, yet the EIR does not recognize that basic fact of nature.

If water is removed from the aquifer by wells, then an equivalent amount of water will move in from one side or the other to fill the vacated space. Given the proximity of the ocean to the location of the wells, it is far more likely that the vacated space will be filled in by seawater than by groundwater. If the replacement water comes from off shore, that means increased seawater intrusion. The EIR claims that the replacement water will come from inland, which will halt or reverse seawater intrusion. However, that scenario can only occur if there is already a net flow of water from inland to offshore in the vicinity of the wells. Based on over 50 years of data (the seawater intrusion figures presented by Monterey County), that will not be the case unless either it is a temporary condition that occurs only in very wet years or the wells are located in an area that does not already have seawater intrusion. The EIR acknowledges that the wells will be located in an area that has seawater intrusion. Accordingly, the only time that the EIR claim would be valid would be during very wet years, when there is a net flow of water from inland to offshore in the Salinas Valley Groundwater Basin. In the vast majority of years – in other words, all years that are not "very wet" – the EIR claim would not be valid. The EIR fails to disclose or discuss these issues, and draws its conclusions based on its flawed assumption of continuous operations.

The EIR claim of a "trough" that would halt seawater intrusion is inconsistent with the theory behind the Castroville Seawater Intrusion Program (CSIP). The CSIP goal is to reduce pumping by coastal agricultural property owners because by doing so, the theory goes, seawater intrusion will be slowed. That theory is opposite to the one proposed in the CWP EIR, which is that significant continuous pumping at the coast will halt seawater intrusion. Both theories cannot be correct, and the EIR has failed to address the inconsistencies.

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 16

Critically, the EIR does not use any model runs that assumed a multi-year drought, which is a foreseeable scenario in the semi-arid Central Coast. The project impacts on the aquifers may be very different under those scenarios. The rigid assumptions used by the models relied upon by the EIR are not reasonable under the circumstances and the known likely variables.

It appears that the EIR uses only modeling runs presented by project proponents. For example, the July 25, 2008 model run was prepared by Geoscience, Cal Am's consultant. The June 5, 2009 and September 11, 2009 reports were prepared by RMC Water and Environment, which represents the Regional Project proponents. CEQA requires independent investigation and review of materials submitted by project proponents, to rest their validity and reliability. It appears that was not done here.

The EIR Responses to Comments Are Inadequate.

The responses to comments do not meet the requirements of CEQA for good faith, reasoned responses. There are many examples of this violation of CEQA mandates. For example, the response to L-PSMCS-2(b) fails to answer the issue and question clearly raised, and instead uses a semantic pretense about dates. As another example, the response to L-PSMCS-2(a) merely regurgitates the testimony of an attorney for a project proponent for more than two pages, without a reasonable independent investigation or discussion of the issues. In that response, the claimed legal basis is highly suspect and has not been confirmed under California law.

As another example, the responses to The Open Monterey Project (TOMP) comments are nonresponsive. For example, a TOMP comment is that future expansion of project facilities would be easier. The FEIR response (p. 14.5-201) states, "Therefore, construction of the plant would not substantially alter the character of the areas and any future expansion would required additional permitting and review." This inadequate response fails to address the ease of expansion from a technical, environmental and financial perspective, and the related growth-inducing impacts. Desalination plants are very costly to construct. Once the initial expense is invested, the expansion of the plant to accommodate increased production is relatively much less costly. This also means that the Peninsula ratepayers would be subsidizing growth for other areas in Monterey County.

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 17

The EIR Discussion of Water Rights is Inadequate under CEQA.

On November 6, 2006, and again on April 15, 2009, the Ag Land Trust notified the Public Utilities Commission of certain key flaws in the Coastal Water Project EIR. Specifically, the first full paragraph on page two of the Trust's November 6, 2006 letter (identified as "G_AgLTR-3" in the FEIR) states that Cal-Am, a water appropriator under California law, has no groundwater rights to appropriate water from the overdrafted Salinas Groundwater Basin. In an overdrafted, percolated groundwater basin, California groundwater law clearly and definitely holds that the doctrine of correlative overlying water rights applies (*Katz v. Walkinshaw* (1903) 141 Cal. 116), whereby no surplus water is available for new groundwater appropriators.

The FEIR response claims that an analysis of water rights is not necessary because "CalAm claims no rights to groundwater" and that "no Salinas Valley groundwater will be exported from the Basin." The FEIR attempts to bypass a central issue – the EIR's failure to analyze legal water rights – by claiming that the issue does not exist. On the contrary, the issue of legal water rights exists and should be analyzed.

Because the extracted water would be composed of both saltwater and groundwater, Cal-Am (under the North Marina project) or Monterey County (under the Regional Project) would be extracting groundwater from the overdrafted Salinas Valley Groundwater Basin. Those actions would represent an illegal appropriation of water. The EIR claims that water can be appropriated from under privately owned land in the overdrafted basin, so long as it promises to return the same amount of pumped groundwater to the basin. That claim is not enforceable, not subject to oversight and does not change the fact that the extraction of the water would be an illegal appropriation. In essence, the Cal Am North Marina desalination project and the Regional Project would rely on illegal extraction and appropriation of groundwater from the basin. The EIR does not analyze the significant impact of an illegal taking of groundwater from overlying landowners. Instead, the FEIR accepts as unquestionably true the flawed rationale that a purported return of a portion of the water somehow allows the illegal extraction of groundwater from the overdrafted basin. This deficiency in the EIR must be addressed, and the EIR should identify mitigations for the adverse impacts and proposed illegal actions and takings.

The principle is established that the water supply in a source may be augmented by artificial means. (See *Pomona Land & Water Co. v. San Antonio Water Co.* (1908) 152 Cal. 618.) We do not question that general statement of law.

However, when getting to the specifics of the abilities and limitations in regard to the augmented or developed water proposed for the Project, the EIR defaults on the necessary discussion. Instead of addressing the entire doctrine of water rights

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 18

applicable here, the FEIR (14.1-94, n. 4) defers entirely to the MCWD's legal counsel for the discussion of the essential factors. From page 14.1-94 to 14.1-96, MCWD's legal argument is presented without critical analysis or further comment as the FEIR's discussion. There is no independent review of the legal argument.

California law on the ability of an agency to claim the right to salvage any or all of any developed water in the circumstances here, and any limits on that claim, has not yet been defined by the Courts. The citations in the FEIR overstate the situation, and do not point to any California court case where the analysis presented in the FEIR has been upheld by the Court. The two cases relied upon by the MCWD's counsel (and therefore the FEIR) are cited in footnote 10 of FEIR page 14.1-96: *Pajaro Valley Water Mgt. Agency v. Amrhein* (2007) 150 Cal.App.4th 1364, 1370 and *Lanai Company, Inc. v. Land Use Commission* (S. Ct. Ha. 2004) 97 P.2d 372, 376. The citations in both cases are to portions of the introductory factual recitations in the cases, and not to Court holdings or legal analysis, and thus are not fairly considered precedents or statements of settled law. Other FEIR citations are to legal claims asserted in a staff report by the head of the Monterey County Water Resources Agency, who is not an attorney.

At the very least, the FEIR was required to evaluate the claims of MCWD and MCWRA, test them analytically, and provide the decisionmakers and the public with the analysis. Without the reasoned good faith analysis, the EIR fails as an informational document. (See, e.g., *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722.) "It is not enough for the EIR simply to contain information submitted by the public and experts." In particular, water "is too important to receive such cursory treatment." (*Id.*) CEQA requires a detailed analysis of water rights issues when such rights reasonably affect the project's supply. Assumptions about supply are simply not enough. (*Id.*, at p. 721; *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 131-134, 143 [EIR inadequate when it fails to discuss pertinent water rights claims and overdraft impacts]; see also, *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 94-95 [groundwater contamination issues].) The reasoning of the Court in *Cadiz* would also apply to the proper analysis of the rights associated with the overdraft here.

At the very least, the determinations of safe yield, surplus, the rights of the MCWRA, and of "persons with land in the zones of benefit for the projects" must be identified, discussed and analyzed. The analysis must be independent, and cannot simply be "extracted" (FEIR, p. 14.1-94, n. 4) from the argument of the attorney for the MCWD, a proponent of the Regional Project and potential owner of the desalination plant component of that project. Whether the project may take salvaged or developed water originating from onsite supplies depends on whether injury will result to existing

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 19

lawful users or those who hold vested rights. The FEIR response to comments does not fairly consider or investigate the actual on-the-ground issues.

Recirculation of the EIR Is Required.

Under CEQA Guidelines section 15088.5, the EIR should be recirculated because it contains significant new information. The Final EIR contains significant newly identified impacts and new information that leads to new unanalyzed impacts. Several examples of the unanalyzed impacts are identified throughout this letter.

The FEIR identifies new significant and unavoidable impacts that had not been disclosed in the Draft EIR. These impacts include greenhouse gases and air quality (PM10). The FEIR finds that PM10 construction emissions would exceed the local Air District thresholds. Greenhouse gas emissions and construction PM10 impacts of the Regional Project would be outside of the CPUC's jurisdiction. Both impacts would be significant and unavoidable. However, the EIR treats the two impacts differently and inconsistently. The EIR inappropriately pre-determines that the local agencies might find that the Regional Project's PM10 mitigation measures would be infeasible because of the "potential need to accelerate the construction schedule" for the project (e.g., p. ES-19). The EIR attempts to place mitigations on the Regional Project which are unenforceable, because the CPUC has no jurisdiction over the Regional Project. (E.g., FEIR p. 6.8-4, Mitigation Measure 6.8-11a.) The EIR approach is confusing and inconsistent, and misleads the public and decisionmakers as to which mitigations it can enforce and which it cannot enforce. This confusion continues in the EIR discussion of the environmentally superior alternative, where the EIR makes unsupported assumptions about mitigations and mitigation monitoring in order to affect its determination of the superior alternative. (FEIR p. 7-67.) Further, the EIR's announcement of new significant and unavoidable impacts is inconsistent with its response to the League of Women Voters' comments that there are no significant project impacts.

As a separate reason for recirculation, the FEIR reduced the DEIR's conclusions about the RUWAP project production from 1,700 to 1,000 AFY. That is significant new information, because it significantly affects the determination of the Regional Project water supply. In fact, the selected project now under way, the hybrid RUWAP, will produce 3,000 AFY. The FEIR used an incorrect 1,000-AFY figure to analyze cumulative and growth-inducing impacts, and the EIR analysis is incorrect. As another reason for recirculation, the EIR fails to include the planned cogeneration plant in the project description, or to analyze its impacts.

SWRCB Antidegradation Policy: CRWQCB Basin Plan.

The EIR fails to adequately investigate and disclose the extent of the proposed projects' violation of the State Water Resources Control Board's Antidegradation Policy. This policy, formally known as the Statement of Policy with Respect to Maintaining High Quality Waters in California (SWRCB Resolution No. 68-16), restricts degradation of surface and ground waters. The policy protects water bodies where existing quality is higher than necessary for the protection of beneficial uses. Under the Antidegradation Policy, any actions that can adversely affect water quality in all surface and ground waters must (1) be consistent with maximum benefit to the people of the State, (2) not unreasonably affect present and anticipated beneficial use of the water, and (3) not result in water quality less than that prescribed in water quality plans and policies. Any actions that can adversely affect surface waters are also subject to the Federal Antidegradation Policy (40 Code of Federal Regulations [CFR] section 131.12) developed under the Clean Water Act. The Central Regional Water Quality Control Board's Basin Plan implements the antidegradation policy. The EIR also fails to adequately investigate and disclose the proposed projects' violation of the Basin Policy.

Potential Takings Claims.

In comments to the DEIR, it was pointed out that it is reasonably possible that the proposed project, if approved, would result in the deterioration in, or elimination of, valuable water rights of the Armstrong Ranch property owned by the Ag Land Trust. Such action would result in a compensable taking of the Ag Land Trust's property. On a related point, the stripping of the water rights from this productive agricultural land is a physical change to the environment which must be addressed in the FEIR and, when feasible, mitigated to a level of insignificance or considered as part of the alternatives analysis of the FEIR. The FEIR fails to fairly consider and address these impacts. To the best the public can discern from the MCWRA's seawater intrusion depictions, the Ag Land Trust property overlies a part of the 400-foot aquifer that is not seawater intruded. (See attached figure.) The Regional Project could significantly affect the water quality in the 180-foot and 400-foot aquifer. The Ag Land Trust would lose valuable property rights if its ground water rights were affected.

The EIR fails to identify the potential eminent domain authority or actions that could be used to implement the project, or even to present the fact that eminent domain may be used or necessary for project implementation. For example, the FEIR (p. 5-50) states merely that private landowners may be affected by sale or lease of their property for project purposes. In fact, the public agency proponents of the project have eminent domain authority, and may choose to exercise it to implement the project. An eminent domain action is a "project" under CEQA (Pub. Resources Code, § 21065) and must be reviewed at the earliest possible stage for potential impacts. Because such eminent domain action is foreseeable, it should be disclosed and evaluated in the EIR.

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 21

Problems with Access to Final EIR.

CEQA states that draft EIRs for proposals of unusual scope or complexity should normally be less than 300 pages. (CEQA Guidelines, § 15141.) Here, the Draft EIR was approximately 1,500 pages, and the Final EIR is over 3,100 pages and contains significant new information. The Final EIR is not available in hard copy anywhere in the Monterey County. The local agencies, including Monterey County and Marina Coast Water District, have the FEIR available on disk only. For these reasons, it has been extremely difficult for the public to access and review the over 3,100 pages, much of which contained complex and interrelated new information, within the available time.

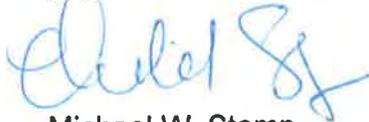
Efforts to Obtain and Provide Further Information.

Last week we contacted the project manager for the Coastal Water Project EIR³ and requested a return call, hoping to share these concerns with regard to the Coastal Water Project EIR. We did not receive a return call. On December 30, 2009, our Office made a records request to the CPUC, in accordance with the records request guidelines on the CPUC website. Our clients sought access under the California Public Records Act (Gov. Code, § 6250 et seq.) to the records for the Coastal Water Project EIR. The CPUC was required to respond to our request within ten days. (Gov. Code, § 6253, subd. (c).) We did not receive a response, and were not provided with an opportunity to inspect or copy documents.

Thank you for the opportunity to comment on the Coastal Water Project EIR.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP



Michael W. Stamp
Molly Erickson

Attorneys for Ag Land Trust

cc: Andrew Barnsdale

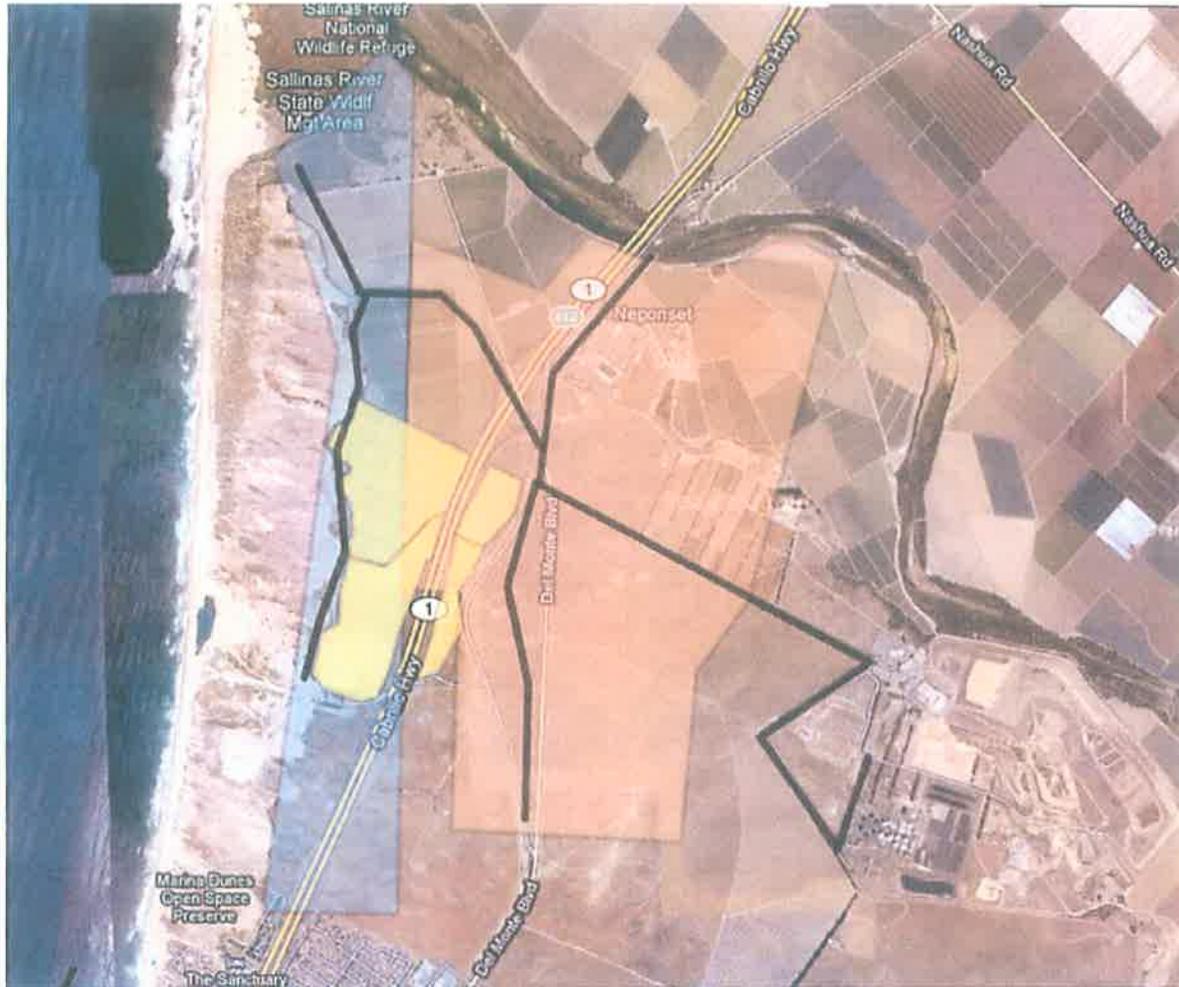
³ Years ago, when the CPUC took over as lead agency, our Office was informed that the CPUC had not previously managed the preparation of an EIR on a water supply project, which is why the task was handled by an Energy staff member.

**Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 22**

References attached by email:

- **Figures showing Ag Land Trust Properties in relation to proposed Regional Project**
- **Presentation on the Regional Water Supply Project presented by Curtis Weeks, Monterey County Water Resources Agency, and Jim Heitzman, Marina Coast Water District, made at the City and Agency Managers' meeting, December 9, 2009 (this and the other presentations in similar format are identified in the electronic file properties as being prepared by RMC)**

All other references to be delivered to the CPUC in hard copy on December 17, 2009.



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

AG LAND TRUST

Monterey County Agricultural and Historic Land Conservancy

P.O. Box 1731, Salinas CA 93902

www.aglandconservancy.org

Phone: 831-422-5868 Fax: 831-758-0460

April 25, 2009

TO: Monterey County Board of Supervisors

FROM: Monterey County Ag Land Trust

RE: Opposition to proposed MOU's for Monterey Regional Supply Planning and Coastal Water Project

By this letter, the Board of Directors of the Ag Land Trust unanimously and vehemently objects to the proposed MOUs and the Coastal Water Project that are recommended for your approval by the staff of the MCWRA. These proposed MOUs and the project that they expressly advance are wrongful, illegal acts that propose to take and convert our water and water rights for the benefit of a private company. We hereby incorporate by reference into this letter (as our own) each, every, and all facts, objections, statements, references, legal citations, and assertions located within each and every Attachment herewith attached to this correspondence. **Before your Board takes any action on these matters that will expose you to significant litigation from landowners with senior overlying percolated groundwater rights, you need to ask the question and receive a written answer from your staff, "If the Salinas Valley percolated groundwater basin has been in overdraft for sixty years, whose percolated groundwater and overlying percolated groundwater rights are you proposing that we take without compensation to benefit Cal-Am?"**

1. The proposed MOUs, and the projects which they include, violate and will result in an illegal, wrongful, "ultra vires", and unlawful "taking" of our percolated overlying groundwater rights. Our Trust owns (in fee) the large ranch (on which we grow artichokes and row crops) that lies between the ocean and the proposed "well field" that the California-American Water Company (a private, for profit appropriator) proposes to use to illegally divert percolated groundwater from the overdrafted Salinas groundwater basin. The so-called "environmentally superior alternative" in the Coastal Water Project EIR is based upon the illegal taking of our water rights and pumping of our percolated groundwater for the economic benefit of Cal-Am. The Salinas basin has been in overdraft for over 60 years and California law holds that, in an overdrafted percolated groundwater basin, there is no groundwater available for junior appropriators to take outside of the basin. In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies, (Katz v. Walkinshaw 141 Cal. 116). In an over-drafted basin, there is no surplus water available for new "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. This is the situation in the over-drafted Salinas percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Salinas aquifers. Moreover, no legal claim or relationship asserting that water from a distant water project (over 6 miles from the proposed Cal-Am well field to the rubber dam) may be credited for the over-drafted Salinas percolated

groundwater basin can be justified or sustained. California groundwater law refutes such “voodoo hydrology” by holding that “Waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are part of any definite underground stream, are percolating waters” (Vineland I.R. v. Azusa I.C. 126 Cal. 486). Not only does Cal-Am have no right to take ground water from under our lands, but neither does the MCWRA. **MCWRA HAS NO PERCOLATED OVERLYING GROUNDWATER RIGHTS THAT IT MAY USE TO GIVE TO CAL-AM FOR EXPORT OUT OF THE BASIN.** Our first objection to this illegal project and conduct was filed with the CPUC and MCWRA on November 6, 2006 (see herein incorporated Attachment 1). Your staff has not responded and our concerns have been ignored.

2. The recommended MOUs before the Board of Supervisors is a project under CEQA and the MCWRA staff recommendations to the Board violate the California Environmental Quality Act and the California Supreme Court decision in the “Tara” case. The California Supreme Court’s decision in *Save Tara v. City of West Hollywood*, Case No. S151402 (October 30, 2008), provides specific direction to public agencies entering into contingent agreements. In this opinion, the Supreme Court held that the City of West Hollywood (“City”) had violated CEQA by entering into a conditional agreement to sell land and provide financing to a developer before undertaking and completing environmental (CEQA) review. This is exactly what the MCWRA staff is asking the Board to do. They want you to approve their project without a certified EIR from the CPUC. One of the proposed MOUs even references the fact that it is contingent on the certification of the FEIR by the CPUC. Monterey County abdicated its role as the “lead” agency under CEQA years ago when it agreed to allow the CPUC to prepare the EIR on the Coastal Water Project. Monterey County is now a “responsible agency” and must wait while the CPUC staff deals with the fact that its draft EIR is woefully inadequate because of its failure to address that fact that none of the public agencies in Monterey County have the rights to pump groundwater from an overdrafted basin for the economic benefit of Cal-Am (see Attachment 2). Further, the Draft EIR acknowledges that the proposed MOUs and Coastal Water Project violate MULTIPLE provisions of the Monterey County General Plan, and the North County Local Coastal Plan, and contradicts the express purpose (ELIMINATION OF SEAWATER INTRUSION) of every water development project for which land owners have been assessed and charged (and continue to be charged) by Monterey County and the MCWRA for the past 50 years, including the Salinas Valley Water Project.

3. It is clear that the MOUs and the Coastal Water Project are being advanced by MCWRA staff and Cal-Am jointly as if they are already one entity. In fact, the proposed MOUs advanced by MCWRA staff advocate a governmental structure (JPA) that would be completely immune for the voters’ constitutional rights of initiative, recall, and referendum. Moreover, this plan to deny the Monterey County public’s right to public ownership of any new water project was also secretly advanced this month in Assembly Bill AB 419 (Caballero) wherein Cal-Am lobbyists got the Assemblywoman to try to change one hundred years of state law by “redefining a JPA with a private, for-profit utility (Cal-Am) member” as a “public agency”. (See Attachment 3). These actions by MCWRA staff and Cal-Am to circumvent and “short-circuit” the mandatory CEQA process for the MOUs and the Coastal Water Project are further reflected in Attachment 4 wherein counsel for MCWRA requested an extension of time from the SWRCB (on permits issued to address water shortages in the Salinas Valley) to develop “alternative plans”. Although the letter says that “there will be no export of groundwater outside of the Salinas basin”, that is exactly what the MOUs and the Coastal Water Project proposes... to pump and export thousands of acre feet of groundwater out of the Salinas basin for the benefit of Cal-Am.

4. Our wells and pumps on our ranch adjacent to the location of the proposed well field are maintained and fully operational. We rely on our groundwater and our overlying groundwater rights to operate and provide back-up supplies for our extensive agricultural activities. MCWRA nor the CPUC has never contacted our Board of Directors that includes farmers (including past

presidents of the Grower-Shippers Assn.), bankers, attorneys, and agricultural professionals to get our input on this proposed taking of our water rights. As a result of this lack of concern for our property rights, we must assume that the County has now assumed an adversary position toward our Land Trust and our groundwater rights. In 2001-2002, MCWRA staff recommended that you include the Gonzales area in the assessment district for the SVWP. The Gonzales farmers objected, your MCWRA staff ignored them, you got sued and the taxpayers ended up paying the bill. From 1999 – 2005, the owner of Water World objected to the conduct of MCWRA staff and was ignored by your staff. Thirty (30) million dollars later, you lost the lawsuit and the taxpayers paid the bill. When will the taxpayers stop having to pay for poorly conceived ideas from MCWRA and Cal-Am?

5. The draft CPUC EIR marginalizes the grave and significant environmental impacts on groundwater and groundwater rights, violations of the General Plan and Local Coastal Plan policies, and the illegal violations and takings of privately owned, usufructory water rights upon which the Coastal water Project depends. **These and the illegal appropriations of thousands of acre feet of groundwater from under privately owned land in an overdrafted basin ARE NOT A LESS THAN SIGNIFICANT IMPACTS! This is the project that the staff of the MCWRA staff wants the Board to approve without a certified EIR.** (see Attachment 5). Further, the Marina Coast Water Agency has used up all of its full allocation of groundwater from the Salinas Valley groundwater basin, and as an appropriator is not entitled to any more water from the overdrafted basin, contrary to the information presented to the Growers-Shippers Association by Mr. Curtis Weeks of MCWRA (see Attachment 6)..

The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. It has gone on for decades. That shortage does not justify the illegal taking of our water rights for the economic benefit of Cal-Am. We ask that the Board not approve the MOUs or the Coastal Water Project for the reasons stated herein.

Respectfully,

A handwritten signature in black ink that reads "Ed DeMare, Sec." with a long horizontal flourish extending to the right.

The Board of Directors of the Monterey County Ag Land Trust

CC: CPUC, MCWD, California Coastal Commission, and California-American Water Co.



Ag Land Trust

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fax. 831 758 6053

To: California Public Utilities Commission
C/O CPUC Public Advisor
505 Van Ness Avenue, Room 2103,
San Francisco, CA 94102
Fax: 415.703.1758
Email: public.advisor@cpuc.ca.gov.

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 result 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

**'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 include 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,

A handwritten signature in cursive script that reads "Brian Rianda".

Brian Rianda, Managing Director

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File No. 055604-0000

LATHAM & WATKINS LLP

November 7, 2014

**Agenda Items
W14a & 15a**

VIA EMAIL AND FEDEX

Chair Kinsey and Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, California 94105

Re: Appeal No. A-3-MRA-14-0050 & Application No. 9-14-1735:
(California-American Water Company Test Well Project)

Dear Chair Kinsey and Honorable Commissioners:

On behalf of California-American Water Company (“Cal-Am”), we write regarding the Commission’s consideration of Cal-Am’s (1) appeal of the City of Marina’s denial of Cal-Am’s Coastal Development Permit (“CDP”) application to construct, operate, and decommission a temporary test slant well at the CEMEX sand mining facility (the “Project”); and (2) CDP application for that portion of the Project in the Commission’s retained jurisdiction. The Commission will consider the appeal and CDP application at its November 12, 2014, meeting.

Cal-Am supports the recommendations of Commission staff in the Staff Report, and appreciates the detailed analysis of the Project that the Staff Report presents. Consistent with Commission staff’s recommendation, **as proposed, conditioned, and analyzed in the Staff Report, the Project will be consistent with all applicable Coastal Act and City of Marina Local Coastal Program (“LCP”) policies.**

In addition, Cal-Am has reviewed several opposition letters that have been submitted to the Commission and/or Commission staff regarding the Project. Attached as **Attachment A** is a detailed response to those letters. As explained in detail in Attachment A:

- The City of Marina’s denial of the Project’s CDP constituted a **final action that is legally appealable to the Commission** under Coastal Act section 30603;
- The Commission’s **jurisdiction over the entire Project is proper** – including the portion of the Project in the Commission’s retained jurisdiction and the portion of the Project initially subject to the City of Marina’s Local Coastal Program (which Cal-Am properly appealed to the Commission following the City’s CDP denial);

These materials have been provided to the Coastal Commission Staff

LATHAM & WATKINS^{LLP}

- **The Project is a major public works project** under Coastal Act section 30114 and Coastal Act Regulations section 13012;
- The Project **does not violate the 1996 Annexation Agreement** between the Monterey County Water Resources Agency and Monterey Coast Water District;
- The State Water Resources Control Board has confirmed that **Cal-Am may develop water rights to pump groundwater from the Project site;**
- The Project would not significantly impact groundwater supplies or agricultural lands and **therefore is fully consistent with Coastal Act policies requiring that development not impair agricultural viability;** and
- The Project's proposed slant wells are a **preferred desalination intake methodology.**

We appreciate the opportunity to respond to the comments submitted by Project opponents, and we look forward to the Commission's consideration of Cal-Am's appeal and CDP application at the November 12 meeting.

Very truly yours,


Duncan Joseph Moore
of LATHAM & WATKINS LLP

cc: Andrew Homer, California-American Water Company
Tom Luster, California Coastal Commission

Attachments

LA3876739.5

These materials have been provided to the Coastal Commission Staff

ATTACHMENT A

CALIFORNIA-AMERICAN WATER COMPANY RESPONSES TO OPPOSITION COMMENTS

Appeal No. A-3-MRA-14-0050

Application No. 9-14-1735

Agenda Items W14a & 15a

California American Water Company (“Cal-Am”) submits the following responses to various opposition comments received in advance of the California Coastal Commission’s (“Commission”) consideration of Cal-Am’s (1) appeal of the City of Marina’s (“City”) denial of Cal-Am’s Coastal Development Permit (“CDP”) application to construct, operate, and decommission a temporary test slant well at the CEMEX sand mining facility (the “Project”); and (2) CDP application for that portion of the Project in the Commission’s retained jurisdiction.

I. THE COMMISSION HAS JURISDICTION TO HEAR CAL-AM’S APPEAL

A. The City’s Denial of Cal-Am’s Coastal Development Permit Application is a Final Action

Ag Land Trust and the Marina Coast Water District (“MCWD”) claim that the City’s denial of the CDP for the Project is not a “final” action. To that end, MCWD asserts that because the denial of the CDP is not “final,” Cal-Am’s appeal is an unlawful appeal of the City’s decision regarding environmental review of the Project under the California Environmental Quality Act (“CEQA”). These contentions are red herrings, without legal foundation and wholly lack merit.

As described in the Commission’s Staff Report for its November 12, 2014, meeting (the “Staff Report”), on July 10, 2014, the City Planning Department declined to approve or disapprove the Project’s CDP, and declined to certify the Mitigated Negative Declaration (“MND”) that the City prepared as the Project’s environmental document under CEQA. Cal-Am appealed that decision to the City Council. On September 4, 2014, the City denied the CDP and declined to certify the MND. (Staff Report at 24.) On September 12, 2014, the Commission received the City’s Final Local Action Notice (“FLAN”) from the City.¹ (Staff Report at 24.) The FLAN states, in relevant part, that “on September 4, 2014, the City of Marina City Council adopted Resolution No. 2014-103, . . . *denying Coastal Development Permit CDP 2012-05*, for the California American Water Slant Test Well Project.” (Emphasis added.) As described below, the FLAN’s plain text and the City’s submission of the FLAN to the Commission conclusively demonstrate that the City took a final action denying the CDP. Nothing more is required.

Contrary to the assertions of Ag Land Trust and the MCWD, nothing in the Marina Municipal Code establishes procedures for a denial of a CDP “without prejudice.” Chapter

¹ The City’s FLAN is attached hereto as Exhibit A. Pursuant to Coastal Commission Regulations section 13331, “[w]ithin five (5) working days of the approval or denial of a coastal development permit. . . a local government shall notify the commission and any person requesting such notification in writing of the final local action.” (14 Cal. Code Regs., § 13331.)

These materials have been provided to Coastal Commission Staff

17.41 of the Marina Municipal Code addresses permits for coastal zoning, and Section 17.41.090 governs procedures for CDPs. Section 17.41.090.D.3. requires that “[w]ithin five days of any *final* city council action on an appeal of a coastal permit the city shall notify . . . the State Coastal Commission.” (Emphasis added.) Moreover, Section 17.41.090.F.3 states that “[a]ppeals to the Coastal Commission must follow at least *one local action on the application.*” (Emphasis added.) The City followed the procedures in its Code and the Coastal Act by taking final action on Cal-Am’s CDP application, and then notifying the Coastal Commission that its denial of the CDP was a final action in the FLAN. (See also Public Resources Code § 30603(d) [“A local government taking an action on a coastal development permit shall send notification of its final action to the commission by certified mail within seven calendar days from the date of taking the action.”].) The City’s actions demonstrate that the City determined that the denial of Cal-Am’s proposed CDP was a final decision, making it subject to Coastal Commission review on appeal.

In sum, and contrary to MCWD’s contentions, the rules are quite simple. Because the City denied the CDP and filed a FLAN with the Coastal Commission, the City’s denial is appropriately considered a final action that may be appealed to the Commission.²

1. MCWD’s Interpretation Leads to Absurd Results

MCWD argues that the decision is not final because the City should be afforded the opportunity to consider the Project on the merits once adequate CEQA review has been completed by the City. Such an interpretation would lead to absurd results and frustrate the purpose of Coastal Act section 30603. MCWD’s interpretation would mean that a City could hold a major public works project that it opposes hostage from Commission review on appeal simply because the City believes its own CEQA review is inadequate.

The plain language of the Coastal Act *unconditionally* allows local denials of major public works projects to be appealed to the Commission, so long as the appeal alleges that the major public works project conforms to the certified Local Coastal Program (“LCP”) and Coastal Act policies regarding public access. (Public Resources Code §§ 30603(a)(5), 30603(b)(2).) Nothing in the Coastal Act states that such a denial is not appealable if the local agency determines it has not complied with CEQA in considering the project.

However, the interpretation offered by MCWD would create an endless loop where a hostile local agency could hold a permit for a major public works project hostage forever. More specifically, if a local agency wanted to deny a major public works project, it could simply require the preparation of an EIR (as the City has attempted to do here), find its own EIR inadequate, deny the project “without prejudice,” and be able to frustrate the purpose of the Coastal Act by trapping the applicant into returning over-and-over to be denied. Such an

² MCWD also argues that Cal-Am has not exhausted all of its administrative remedies. (See Letter from Howard “Chip” Wilkins III, on behalf of MCWD, to Susan Craig, California Coastal Commission, dated October 30, 2014 (“MCWD Letter”), at 3, fn. 2.) That is incorrect. As demonstrated above, the City Council’s denial of the CDP and issuance of the FLAN demonstrates that the City took final action on the Project. Accordingly, Cal-Am’s appeal to the City Council satisfied the exhaustion doctrine.

interpretation of the Coastal Act would allow a local agency to prevent a major public works project that is locally, regionally, and nationally important from ever being permitted.

This is an absurd result that cannot have been intended by the Legislature when it approved the Coastal Act, and, more importantly, violates the plain language of the statute.³ “Interpretations that lead to absurd results or render words surplusage are to be avoided.” (*Tuolumne Jobs & Small Business Alliance v. Superior Court*, 59 Cal.4th 1029, 1037 (2014).) Accordingly, MCWD’s assertions are without merit.

2. The Commission is Not Trespassing into the City’s Jurisdiction

MCWD also claims that Cal-Am has asked the Commission to “trespass into the City’s primary jurisdiction.” That, too, is incorrect. First, the Coastal Act expressly provides that the City’s denial of the CDP for the Project is appealable to the Coastal Commission. (Public Resources Code §§ 30603(a)(5), 30603(b)(2).) Here, the City denied the CDP, and Cal-Am appealed to the Commission on the grounds that the Project—a major public works project—conforms to the standards set forth in the certified LCP and the public access policies set forth in the Coastal Act. (*See* Public Resources Code § 30603(b)(2); Staff Report, Attachment 11.)

Second, it is the Coastal Commission, not the City, which has ultimate authority over the interpretation of the Coastal Act and LCPs:

Under the Coastal Act’s legislative scheme . . . , the LCP and the development permits issued by local agencies pursuant to the Coastal Act are not solely a matter of local law, but embody state policy. . . . The Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the state’s Coastal Act. In fact, a fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government.

(*Charles A. Pratt Construction Co., Inc. v. Cal. Coastal Com.*, 162 Cal.App.4th 1068, 1075 (2008) (*Pratt*.) While Coastal Act Section 30603 may limit the reach of the Commission’s appellate review to specific projects, “the Legislature made the Commission, not the [local agency], the final word on the interpretation of the LCP.” (*Pratt*, 162 Cal.App.4th at 1078.) As such, MCWD’s assertions that the Commission has no jurisdiction have no merit.

³ *See* Cal. Pub. Res. Code § 30603(a) [“After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: . . . (5) Any development which constitutes a major public works project or a major energy facility.”], (b)(2) [“The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.”].

B. The Commission’s Assertion of Jurisdiction Over the Entire Project is Appropriate

Similarly, MCWD asserts that the Commission’s jurisdiction over the entire Project is improper. To the contrary, the Commission may appropriately assert jurisdiction over the entire Project. First, as described in the Staff Report, the Project site is entirely within the coastal zone. (Staff Report at 21.) Second, the City’s decision regarding the portions of the Project site that are landward of the mean high tide line is the subject of Cal-Am’s CDP appeal, which is appropriately within the Commission’s jurisdiction as a major public works project pursuant to Coastal Act section 30603(a)(5). Third, the portions of the Project site that are seaward of the mean high tide line are within the Commission’s retained jurisdiction.

In addition, the Commission should assert jurisdiction over the entire Project to ensure that the City’s decision on the CDP is supported by substantial evidence. Under the Coastal Act, once a FLAN is sent to the Commission and an appeal is timely filed, the Commission must determine whether there is a substantial issue with respect to the project’s conformity to the applicable LCP. (*See* Public Resources Code § 30625(b)(2); 14 Cal. Code Regs., § 13114.) Here, however, in denying the CDP, the City did not assess the Project’s conformity with the LCP, which it must do when it denies a local CDP. (*See Jamieson v. City Council of the City of Carpinteria*, 204 Cal. App. 4th 755, 763-64 (2012) [denial of CDP must be supported with substantial evidence showing inconsistency with LCP].) Therefore, notwithstanding the Commission’s clear statutory ability to accept jurisdiction over Cal-Am’s appeal of the City’s CDP denial, the Commission should find a substantial issue because of the lack of substantial evidence in the City’s record demonstrating that the Project is inconsistent with the LCP. Once the Commission finds a substantial issue, it holds a *de novo* hearing on the local CDP application. (14 Cal. Code Regs., § 13115(b).) Accordingly, the Commission’s jurisdiction over the entire Project is proper.

C. The Test Well Project is a Major Public Works Project

The MCWD also asserts that the Project does not constitute a “major public works” project. The Project, however, squarely falls within the Coastal Act’s definition of a “major public works,” and therefore the City’s CDP denial is appealable to the Commission.

Coastal Act section 30603(a)(5) provides that appeals may be filed for local government decisions to approve or deny proposed major public works projects. Coastal Act section 30114(a) defines “public works” as including: “All *production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.*” (Emphasis added.) In turn, the Coastal Act Regulations define “major public works” as facilities that cost more than \$100,000, with an automatic annual increase in accordance with the Engineering News Record Construction Cost Index. (14 Cal. Code Regs., § 13012.)

As described in the Staff Report, Commission Staff has appropriately determined that the Project is a major public works project pursuant to Coastal Act Section 30114(a). (Staff Report

at 23-24.) Cal-Am is subject to the jurisdiction of the Public Utilities Commission,⁴ the proposed Project involves the production, transmission, and recovery of water, and the Project costs are greater than Coastal Act Regulations section 13012's minimum requirement. (*Id.* at 24.) Pursuant to the above-referenced provisions of the Coastal Act and the Commission's regulations, the City's action was therefore a denial of a major public works project and Cal-Am has the right under the Coastal Act to appeal the City's denial to the Commission.

MCWD argues that “[d]ischarging groundwater into the ocean is not—in any evident way—a reasonable public use. This well is not proposed to serve anyone.” (MCWD Letter at 7.)⁵ That is incorrect. Cal-Am is under an Order from the State Water Resources Control Board to significantly reduce withdrawals from the Carmel River within the next two years. Substantial effort has gone into studying proposed water supply options that would accomplish the Order's requirements. As the Staff Report notes, “[t]he currently proposed test well is meant to provide data for a possible desalination facility that is the subject of extensive environmental and public interest review by the California Public Utilities Commission and is the subject of a Settlement Agreement *among more than a dozen local governments and public interest groups.*” (Staff Report at 3-4, emphasis added.) Moreover, the Staff Report explains the detailed history over the past 15-20 years leading to the Project. (Staff Report at 19-21.) Those facts demonstrate that the Project has an important public purpose – determining the feasibility of a type of well that could be used in a potential future desalination facility that would provide water to the public. Nevertheless, a project need not show it has a “reasonable public use” to qualify a major public works project under the Coastal Act. Accordingly, MCWD's arguments are contrary to the Coastal Act's plain text and have no support.

II. THE PROJECT DOES NOT VIOLATE THE 1996 ANNEXATION AGREEMENT

Ag Land Trust asserts that the Project would violate a 1996 annexation agreement between the Monterey County Water Resources Agency (“MCWRA”) and MCWD, owners of Armstrong Ranch, and owners of the CEMEX property (formerly the Lonestar property) (“Annexation Agreement”). For the reasons explained below, however, the Project is unaffected by the Annexation Agreement, which is not applicable or relevant to the Project.

The Annexation Agreement establishes certain terms and conditions of annexation of certain properties in the Marina area if they are ultimately added into Zone 2 and 2A of the

⁴ Cal-Am is an investor-owned water utility regulated by the Public Utilities Commission.

⁵ In addition, MCWD argues that the Project's discharge of groundwater is contrary to Section 21 of the Monterey County Water Resources Act. (MCWD Letter, at 7, fn. 2.) MCWD misinterprets the Agency Act. The Project has been proposed consistent with the Agency Act. Section 21 of the Agency Act is qualified by the statement “for the purpose of preserving [the] balance [in the Salinas Valley Groundwater Basin (SVGB) resulting from the Agency's projects to balance extraction and recharge].” The Project would, in a worst case scenario, incidentally extract relatively small quantities of contaminated brackish water from the SVGB without negatively affecting the balance of recharge and extraction of basin groundwater - and possibly it will improve that balance. As such, MCWD's assertion is without merit.

MCWRA, including the Lonestar property that is now owned by CEMEX (the “Lonestar Property”). The annexation of the Lonestar Property into Zone 2 and 2A has not occurred. Several conditions of the Annexation Agreement, including payment of annexation fees and annual assessments due upon annexation, have not been satisfied. As the Annexation Agreement explains, the actual annexation “will not take effect until the Lonestar Property has been approved for prior or concurrent annexation into MCWD. When such approval has been obtained, Lonestar shall notify MCWRA, and the MCWRA Board of Supervisors shall declare by resolution the effective date of the annexation.” (Annexation Agreement, ¶ 7.3.) Thus, the annexation contemplated in the Annexation Agreement has not occurred, and, therefore, the provisions of the Annexation Agreement do not apply.

Even if annexation has occurred, which it has not, the commitment in the Annexation Agreement by Lonestar/CEMEX to limit groundwater pumping applies only as a limit on groundwater extracted by the Lonestar Property owner to be used on the Lonestar Property. The Annexation Agreement does not purport to limit the otherwise lawful development of seawater and contaminated brackish groundwater from the Lonestar Property.⁶ In fact, the Annexation Agreement only limits the owner’s withdrawal and use of groundwater on the Lonestar Property or MCWD’s in-lieu withdrawal which “shall be used only to provide water to the Lonestar property.” (Annexation Agreement, ¶¶ 7.2, 5.1.1.3.) On the other hand, Cal-Am proposes to extract seawater from proposed slant wells and potentially small amounts of brackish groundwater, which is expected to be unusable by other users, and proposes to extract the water *from* the Monterey Bay by way of the Lonestar Property, not for use *on* the Lonestar Property.⁷

The Annexation Agreement only establishes the contractual rights of the parties to complete annexation of the specified lands. Thus, with respect to the Lonestar Property, the limit on groundwater extraction simply establishes the water use demand on the Lonestar Property so that the MCWRA and MCWD can plan for and agree to serve the Lonestar Property upon annexation. The groundwater extraction limit was not intended to be a limitation on the rights or ability of third parties to access the property for purposes of developing seawater and incidental pumping of brackish, contaminated waters that are not suitable for agricultural, industrial or other beneficial uses without significant desalination treatment. In addition, the limitation should not be construed to constrain CEMEX rights to grant access to third parties for such projects.

⁶ Cal-Am acknowledges that such pumping is subject to the legal framework comprising California’s groundwater laws, described in the State Water Resources Control Board’s (“State Board”) Final Review of California American Water Company’s Monterey Peninsula Water Supply Project, dated July 31, 2013, which is on file with the Commission. (“State Board Report”). In addition, to the extent that such pumping extracts groundwater from the Salinas Valley Groundwater Basin, that pumping must be consistent with the Monterey County Water Resources Agency Act. The Project has been designed to comply with these legal requirements.

⁷ An email from Ms. Molly Erickson contends that no CEMEX representative is listed on the list of speakers attached as Attachment 1A to Cal-Am’s appeal. To the contrary, Bruce Steubing of Benchmark Resources appeared on behalf of CEMEX, and is listed as appearing in that capacity in the “Representing” column of Attachment 1A.

In fact, MCWRA’s current General Manager, and the General Manager at the time of execution of the Annexation Agreement, concur that the Annexation Agreement was not intended to limit potential development of seawater and brackish water from slant wells located on the CEMEX property. (See Declaration of David Chardavoyne, ¶ 10 [“The limitation is specific to groundwater use on the Cemex property, and is not relevant to the rights of third parties to access the property for purposes of extracting seawater and incidental amounts of brackish groundwater from the property for a non-overlying use.”], attached hereto as Exhibit B; Declaration of Michael Armstrong, ¶ 8 [“The Annexation Agreement did not in any way contemplate or limit the extraction or use of seawater from the Marina area to supply a desalination project.”], attached hereto as Exhibit C.)⁸ Indeed, MCWRA does not interpret Cal-Am’s Project to be inconsistent with, or to violate, the Annexation Agreement. (See Declaration of David Chardavoyne, ¶ 11.)

Cal-Am is not proposing to receive water service from the agencies on the property or to exercise the landowner’s water right. Therefore, the Annexation Agreement does not apply to the Project.

III. CAL-AM CAN DEVELOP WATER RIGHTS TO PUMP GROUNDWATER FROM THE SITE

Ag Land Trust argues that Cal-Am lacks water rights for the Project and that the test well would violate the “Doctrine of Overlying Correlative Rights.” Ag Land Trust’s argument reflects a misunderstanding of basic California groundwater law. Indeed, when asked by the California Public Utilities Commission to render an opinion on water rights for the full-scale Monterey Peninsula Water Supply Project, the State Board concluded that Cal-Am could develop water rights for the Monterey Peninsula Water Supply Project. (State Board Report at 47.) Specifically, the State Board concluded that Cal-Am may develop appropriative water rights to contaminated brackish groundwater, as “surplus” or “developed” groundwater, if Cal-Am establishes that the Project will not cause injury to other users. (*Id.* at 42.) The State Board found: “Since seawater intrusion occurs in this area, this water developed. . . is likely new water that is “surplus” to the current needs of other users in the Basin. Based on the information available, it is unlikely any injury would occur by the lowering of the groundwater levels in this region.” (*Id.* at 48.) Thus, the test well is expected to produce additional technical information to confirm that Cal-Am can legally extract water from the Salinas Valley Groundwater Basin near or beneath Monterey Bay without violating groundwater rights or injuring other groundwater users. (*Id.* at 47 [“So long as overlying users are protected from injury, appropriation of water. . . should be possible.”]), 49 [“Cal-Am could legally pump from the Basin by developing a new water supply through desalination and showing the developed water is surplus to the existing supply.”].)

Ag Land Trust further asserts that the test well would constitute a “waste of water” in violation of Article X, section 2 of the California Constitution. Ag Land Trust ignores the fact that the test well would not result in a “waste” of water that would otherwise be put to beneficial

⁸ The Declarations of Mr. Chardavoyne and Mr. Armstrong were filed in *California-American Water Company v. Lonestar California, Inc.*, Monterey County Superior Court Case No. M129303.

use. As described in the State Board Report, “if, after excluding all present and potential reasonable beneficial uses, there is water wasted or unused or not put to any beneficial uses, ‘the supply. . . may be said to be ample for all, a surplus or excess exists. . . and the appropriator may take the surplus or excess. . .’” (State Board Report at 35 [citations omitted].) The water that would be drawn by the test wells “is substantially degraded by seawater intrusion and other natural factors.” (*Id.*) Therefore, water from the proposed test well would not be put to any other beneficial use, and the Project would not result in an improper “waste” of water. Indeed, the Project would provide valuable information to support the State’s policy that water resources be put to beneficial use to the greatest extent possible by investigating whether brackish, contaminated waters could be extracted without harming other water users and treated for future, potable use.

IV. THE PROJECT WOULD NOT SIGNIFICANTLY IMPACT AGRICULTURAL LANDS

Ag Land Trust argues that the Project will impact groundwater supply and surrounding farmland.”⁹ To the contrary, all of the technical data in the Commission’s record supports the conclusion that the Project will not have significant effects on groundwater elevation and conditions in the Salinas Valley Groundwater Basin, and will not adversely affect any nearby operating wells.

As described in the Staff Report, the amount of water that the Project would withdraw is expected to result in an insignificant effect on coastal agriculture. The total water withdrawal for the test well would be approximately 4,000 acre-feet per year over the two-year test period, most of which is expected to be seawater or seawater-intruded groundwater from the subseafloor. This amount of extraction represents only about 0.1 percent of the 180/400-Foot Sub-Basin’s groundwater storage. (Staff Report at 50-51.)

Additionally, the Staff Report describes how Cal-Am has modeled the expected “cone of depression,” which is the area in which groundwater levels may be lowered due to the Project’s water withdrawal, to extend to approximately 2,500 feet from the proposed test well. (Staff Report at 51.) The drawdown within this cone is expected to be only approximately four inches. The closest operational agricultural wells are approximately 5,000 feet from the test well, and are therefore not expected to be significantly affected by the well tests. (*Id.*)

Despite the unlikelihood of any impacts to operating wells, Cal-Am has incorporated the following mitigation measure to ensure that no significant impact would occur:

⁹ See Letter from William P. Parkin, Ag Land Trust, to Steve Kinsey, California Coastal Commission, dated October 29, 2014, at 1. Ag Land Trust also asserts that the Project would impact resources protected by the North Monterey County LCP, but cites absolutely no facts in support of its assertion. (*Id.* at p. 7.) In any event, the Project is located within the City of Marina, and so is subject to the City’s certified LCP. No aspect of the Project would occur in areas governed by the North Monterey County LCP. As such, Ag Land Trust’s citation to that LCP is irrelevant.

A drawdown of 1 foot above natural fluctuations on groundwater levels shall be considered a significant adverse effect on water supply. If pumping activities reflect a drawdown of 1 foot or greater on any adjacent well, compensatory mitigation shall be required. Feasible mitigation shall include consultation with the affected water user and implementation of compensatory mitigation measures, including monetary compensation (i.e., for increased pumping costs or for upgraded wells), or provision of replacement water from alternative sources. If compensation or other remediation is found to be unfeasible, pumping activities shall be adjusted so that no more than 1 foot of drawdown on usable water sources would result.

(Staff Report at 51.) In addition, the Staff Report recommends including Special Condition 11, which would require Cal-Am to conduct monitoring during all pumping activities and to record all drawdown levels and changes in salinity in nearby inland wells. Special Condition 11 also requires that Cal-Am cease its pump tests if monitoring shows a drawdown of nearby wells of one foot or more or shows an increase of more than two parts per thousand of salinity. (*Id.*; see also Declaration of David Chardavoyne, ¶ 16.)

For these reasons, the Staff Report appropriately concludes that, “[g]iven the relatively small amount of water to be pumped, the distance to other active wells, and the above mitigation measure, the project is not expected to adversely affect coastal agriculture.” Therefore, Commission Staff has determined that the Project, as conditioned, would be carried out in a manner that is supportive of coastal agriculture and would be consistent with the LCP. (Staff Report at 51.)

V. OTHER OBJECTIONS TO THE PROJECT LACK MERIT

A. The MND Addressed the Aquitard Beneath the Dune Sand Aquifer and Potential Impacts to the 180-Foot Aquifer

Water Plus contends that no aquitard exists beneath the Dune Sand Aquifer, precluding the development of a desalination well at the Project site. The MND, however, provides clarification regarding the existence of an aquitard at the Project site:

[T]he Salinas Valley Aquitard is known to thin out as it approaches the ocean in some areas and recent exploratory borings taken at the CEMEX site indicate a lack of the confining layer at that location. The aquifer material that underlies the Dune Sand Aquifer at the project site is hydrostratigraphically equivalent to the 180-Foot Aquifer of the Salinas Valley (consisting of similar bodies of rock), though the geologic materials encountered in borings at the CEMEX site were formed in a different depositional environment. However, the sediments at the CEMEX site are located at similar elevations as those of the 180-Foot Aquifer; therefore, the unit is referred to as the 180-Foot equivalent aquifer (180-FTE), which

assumes that, although geologically different, the two are hydraulically connected. The 180-FTE at the project site generally ranges from approximately 50 to 200 feet [below mean sea level].

(MND at 112.)

Further, the Project's impacts on the 180-Foot Aquifer are expected to be de minimis. The 180-Foot Aquifer is already subject to highly intruded sea water because groundwater pumping from the 180-Foot Aquifer exceeds nature recharge. (MND at 112.) The MND notes that, "[i]n MCWRA's latest groundwater management plan (2006), an estimated 25,000 acres of land overlies water that has degraded to 500 mg/L chloride." (*Id.* at 113.) This highly saline water has limited or no beneficial use without treatment to remove the salt. In addition, to the extent that the Project pulls water from the 180-Foot Aquifer, any draws would be extremely low, as the Project is projected to draw up to 97 percent of its water from Monterey Bay. (State Board Report at 35.) Accordingly, and contrary to Water Plus' claims, the analysis in the MND and in the Commission's record fully supports the development of the test well Project at the proposed site.

B. Subsurface Intake Wells, Including Slant Wells, Are the Preferred Desalination Intake Methodology

Water Plus and Public Water Now erroneously claim that slant wells are not feasible or would be prohibitively expensive. Water Plus and Public Water Now ignore that subsurface intake wells, including slant wells, are the preferred desalination intake methodology for multiple state agencies with permitting and/or other regulatory authority over desalination projects, including the Coastal Commission, State Water Resources Control Board, and the National Oceanic and Atmospheric Administration ("NOAA"). In fact, the Monterey Bay National Marine Sanctuary, a part of the NOAA, has created *Guidelines for Desalination Plants in the Monterey Bay National Marine Sanctuary*, which clearly and unconditionally state that desalination project proponents "should investigate the feasibility of using subsurface intakes [including slant wells] as an alternative to traditional [i.e., open ocean] intake methods."¹⁰ That is exactly what the Project proposes to do. Put another way, the purpose of the Project is to confirm the feasibility of slant wells for a desalination project, including the cost of such wells, and share that information with those agencies and the public. In addition, the Department of Water Resources recently awarded Cal-Am a \$1,000,000 grant to partially fund the Project, indicating that it "look[s] forward to working with [Cal-Am] to achieve a successful [slant test well] project in furtherance of water desalination as a viable water supply to meet California's needs."¹¹

¹⁰ NOAA, Monterey Bay National Marine Sanctuary, *Guidelines for Desalination Plants in the Monterey Bay National Marine Sanctuary*, at 6 (on file with the Commission).

¹¹ Letter from Richard A. Mills, Department of Water Resources, to Richard C. Svindland, California American Water, Sept. 3, 2014 (on file with the Commission).

EXHIBIT A



September 11, 2014

Mike Watson
Coastal Planner for County of Monterey
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

BY CERTIFIED MAIL

RE: Notice of Final Local Action, California American Water Slant Test Well Project

Dear Mr. Watson:

At a continued Public Hearing on September 4, 2014, the City of Marina City Council adopted Resolution No. 2014-103, on appeal disapproving a mitigated Negative Declaration and denying Coastal Development Permit CDP 2012-05, for the California American Water Slant Test Well Project located at CEMEX's Lapis Road property (APN's 203-100-001 & 203-011-019).

As described in the staff report dated August 28, 2014, within twenty-one (21) days of the final City Council action on a Coastal Development Permit within the appeal zone, an appeal of such decision may be filed by an aggrieved party with the State Coastal Commission or an appeal may be filed by the State Coastal Commission. Therefore, within the appeal zone, twenty-one (21) days must lapse from the date of a local decision on a Coastal Permit before such action can be deemed final. After this twenty-one (21) day period expires, the Coastal Permit/Notice of Permit Decision may be issued to the applicant.

Attached are the following materials provided to and received by the City Council for the September 4, 2014 Public Hearing:

- City Council Resolution No. 2014-103
- Staff report dated August 28, 2014 with draft Resolution;
- Exhibit A – Draft Initial Study and Mitigated Negative Declaration
- Exhibit B – Amended Mitigation Monitoring and Reporting Plan
- Exhibit C – Errata
- Exhibit D – Comment Letters with Responses from 30 day public review period
- Exhibit E – Correspondence June 17, 2014 through July 10, 2014
- Exhibit F – Correspondence Since July 10, 2014
- Correspondence from City Council meeting – September 3, 2014 –

An on demand video record of the meeting, which started on September 3, 2014 and was continued to September 4, 2014, can be viewed at AMPMedia.org.

Please inform the City of Marina when and where an appeal of this project will be conducted.

Sincerely,

A handwritten signature in black ink that reads "Szymanis". The signature is written in a cursive style with a large, prominent initial "S".

Theresa Szymanis, AICP CTP
Planning Services Manager
Community Development Department

Cc: City Attorney
Christine di Iorio, Community Development Director

EXHIBIT B

1 ANTHONY LOMBARDO & ASSOCIATES INC.
2 ANTHONY LOMBARDO (BAR NO. 104650)
3 PO Box 2330
4 Salinas, CA 93902
5 Phone: (831) 751-2330
6 Fax: (831) 751-2331
7 E-Mail: tony@alombardolaw.com

8 ALLEN MATKINS LECK GAMBLE
9 MALLORY & NATSIS LLP
10 K. ERIK FRIESS (BAR NO. 149721)
11 NICHOLAS S. SHANTAR (BAR NO. 228980)
12 1900 Main Street, Fifth Floor
13 Irvine, California 92614-7321
14 Phone: (949) 553-1313
15 Fax: (949) 553-8354
16 E-Mail: rfriess@allenmatkins.com
17 nshantar@allenmatkins.com

18 Attorneys for Plaintiff
19 CALIFORNIA-AMERICAN WATER COMPANY

20 SUPERIOR COURT OF CALIFORNIA
21 COUNTY OF MONTEREY

22 CALIFORNIA-AMERICAN WATER
23 COMPANY, a California water
24 corporation,

25 Plaintiff,

26 v.

27 LONESTAR CALIFORNIA, INC., a
28 Delaware corporation; CEMEX, INC., a
Louisiana corporation; CEMEX
CONSTRUCTION MATERIALS PACIFIC,
LLC, a Delaware limited liability company;
RMC PACIFIC MATERIALS, LLC, a
Delaware limited liability company; Does 1
through 50, inclusive, and all persons
unknown claiming an interest in the
Subject Property,

Defendants.

Case No. M129303

Date: October 31, 2014

Time: 9:00 a.m.

Dept: 15

**DECLARATION OF DAVID
CHARDAVOYNE (MCWRA GENERAL
MANAGER) IN SUPPORT OF
OPPOSITIONS TO MOTIONS TO
INTERVENE OF MARINA COAST
WATER DISTRICT**

1 I, David E. Chardavoyne, declare as follows:

2 1. I am the current General Manager of the Monterey County Water Resources
3 Agency ("MCWRA"), a position I have held since April 1, 2013. I have personal
4 knowledge of the facts set forth in this Declaration and, if called as a witness, could and
5 would testify competently to such facts under oath.

6 2. MCWRA is a water and flood control agency created by the State of
7 California, with jurisdiction coextensive with Monterey County, governed by MCWRA's
8 Board of Supervisors. MCWRA is the entity with jurisdiction and responsibility for
9 managing and protecting the Salinas River Groundwater Basin.

10 3. MCWRA has been involved in the development of California-American
11 Water Company ("CalAm's") Monterey Peninsula Water Supply Project ("Water Supply
12 Project" or "MPWSP"), and has an agreement with CalAm to ensure the development
13 and implementation of a corresponding monitoring and reporting program. CalAm's
14 MPWSP includes measures to mitigate any potential impacts that the project may have
15 on the Salinas River Groundwater Basin, and MCWRA will ensure full implementation
16 of a monitoring, reporting and mitigation program for both the slant test well and the
17 MPWSP.

18 **A. The Annexation Agreement Has No Relationship To The Test Well**
19 **Proposed By CalAm.**

20 4. In my capacity as General Manager of MCWRA, I have reviewed and am
21 familiar with the March 1996 *Annexation Agreement and Groundwater Mitigation Framework*
22 *for Marina Area Lands* ("Annexation Agreement") attached to the Complaint in
23 Intervention submitted by Marina Coast Water District ("MCWD").

24 5. The Annexation Agreement is a contractual agreement by and among
25 MCWRA, the City of Marina ("City"), the MCWD, the J.G. Armstrong Family Members
26 ("Armstrong"), and RMC Lonestar ("Lonestar"). On information and belief, Cemex, Inc.
27 and its affiliates that are the named defendants in this lawsuit (collectively, "Cemex") are
28

1 the successors in interest to Lonestar.

2 6. CalAm is not a party to the Annexation Agreement.

3 7. The purpose of the Annexation Agreement was to ensure access to usable
4 groundwater from the Salinas River Groundwater Basin to certain parties, i.e., MCWD,
5 Armstrong and Lonestar. In exchange, those parties agreed to pay their proportionate
6 share for the benefits of the MCWRA Zone 2 and 2A Projects that augment the usable
7 groundwater supply in the Salinas River Groundwater Basin.

8 8. The Annexation Agreement did not contemplate the extraction and use of
9 non-potable seawater or brackish water for use as part of a desalination project or
10 otherwise.

11 9. The potential annexation of the Cemex property that is addressed in the
12 Annexation Agreement has not occurred because multiple conditions precedent are
13 unfulfilled. For example, neither Lonestar nor Cemex has (1) requested annexation to
14 MCWRA, or (2) paid the required annexation fees to MCWRA. In addition, the
15 annexation has not been approved by the Monterey County Board of Supervisors. And,
16 as Lonestar's successor in interest, Cemex has never indicated to MCWRA that it intends
17 to request annexation under the Annexation Agreement.

18 10. The 500 acre-foot per year limitation described in the Annexation
19 Agreement is a limitation applicable to Cemex's pumping of groundwater from the
20 Salinas River Groundwater Basin for use on the Lonestar/Cemex property. The
21 limitation is specific to groundwater use *on* the Cemex property, and is not relevant to
22 the rights of third parties to access the property for purposes of extracting seawater and
23 incidental amounts of brackish groundwater from the property for a non-overlying use.

24 11. MCWRA does not interpret the Test Slant Well project proposed by CalAm
25 to be inconsistent with, or to violate, the Annexation Agreement..

26 12. The Annexation Agreement includes remedies and dispute resolution
27 procedures that would be the required and appropriate means to address any grievances
28

1 under the Annexation Agreement. No party to the Annexation Agreement has requested
2 a remedy or instituted the dispute resolution procedures available under the Annexation
3 Agreement.

4 13. As an indispensable party to the Annexation Agreement, MCWRA does not
5 view the Annexation Agreement or any of the rights, responsibilities, and obligations it
6 establishes as an impediment to CalAm's completion of the Test Slant Well project or the
7 overall MPWSP in any way.

8 **B. MCWRA Will Monitor The Test Well To Ensure The Well Will Not**
9 **Cause Any Material Impacts On The Salinas River Groundwater Basin.**

10 14. CalAm is proposing to develop a test well on the Cemex property to assess
11 the feasibility of slant well technology and to facilitate hydrogeologic assessment of the
12 potential effects of a full scale desalination project in the Marina area to meet the water
13 supply needs of the Monterey Peninsula. The slant test well and the full scale project are
14 within the jurisdiction of MCWRA and are designed to draw seawater from underneath
15 the Monterey Bay to source the wells and desalination project.

16 15. Preliminary analyses indicates that at times, particularly during start-up,
17 the well could draw some brackish groundwater from the immediate vicinity of the well
18 and inland of the mean high tide line.

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EXHIBIT C

1 ANTHONY LOMBARDO & ASSOCIATES INC.
2 ANTHONY LOMBARDO (BAR NO. 104650)
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8 ALLEN MATKINS LECK GAMBLE
9 MALLORY & NATSIS LLP
10 K. ERIK FRIESS (BAR NO. 149721)
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17 nshantar@allenmatkins.com

18 Attorneys for Plaintiff
19 CALIFORNIA-AMERICAN WATER COMPANY

20 SUPERIOR COURT OF CALIFORNIA
21 COUNTY OF MONTEREY

22 CALIFORNIA-AMERICAN WATER
23 COMPANY, a California water
24 corporation,

25 Plaintiff,

26 v.

27 LONESTAR CALIFORNIA, INC., a
28 Delaware corporation; CEMEX, INC., a
Louisiana corporation; CEMEX
CONSTRUCTION MATERIALS PACIFIC,
LLC, a Delaware limited liability company;
RMC PACIFIC MATERIALS, LLC, a
Delaware limited liability company; Does 1
through 50, inclusive, and all persons
unknown claiming an interest in the
Subject Property,

Defendants.

Case Nos.

Date: October 31, 2014

Time: 9:00 a.m.

Dept: 15

**DECLARATION OF MICHAEL D.
ARMSTRONG (FORMER MCWD
GENERAL MANAGER) IN SUPPORT OF
OPPOSITIONS TO MOTIONS TO
INTERVENE OF MARINA COAST
WATER DISTRICT**

1 I, Michael D. Armstrong, declare as follows:

2 1. I am an individual residing in the County of Monterey, City of Pacific
3 Grove, California. I make this declaration in support of California-American Water
4 Company's ("CalAm's") Oppositions to the Motions to Intervene Filed by the Marina
5 Coast Water District. I have personal knowledge of the facts set forth in this declaration
6 and if called as a witness, could and would testify thereto competently under oath.

7 2. From 1996 to 2000, I was the General Manager of the Monterey County
8 Water Resource Agency ("MCWRA"). After I left that position, I was the General
9 Manager of Marina Coast Water District from 2000 to 2006.

10 3. The MCWRA is a water and flood control agency created by the State of
11 California, with jurisdiction coextensive with Monterey County, and is governed by an
12 appointed Board of Directors and by the Monterey County Board of Supervisors. The
13 MCWRA is the agency responsible for, among other things, managing the Salinas Valley
14 Groundwater Basin to address issues of salt water intrusion into the Basin. The Marina
15 Coast Water District is a limited purpose special district which provides water service to
16 customers in Marina and the former Fort Ord. Marina Coast Water District has no
17 managerial or oversight authority in the Salinas Valley Groundwater Basin.

18 4. In my capacity as General Manager for the MCWRA, one of my
19 responsibilities was negotiating, drafting, and securing the execution of that certain
20 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands
21 dated as of March 1996 ("Annexation Agreement"). I was also designated as the initial
22 Administrator of the Annexation Agreement for the MCWRA, pursuant to Section 16 of
23 the Annexation Agreement. As such, I am intimately familiar with the purposes and
24 intent of that agreement, including each of the terms therein, as of the date the parties
25 entered into the agreement.

26 5. The purpose of the Annexation Agreement was to establish the framework
27 for the annexation of two private properties (the Lonestar property, which is the current
28 Cemex property, and the Armstrong property) and the Marina Coast Water District into

1 Zone 2 and 2A of the MCWRA.

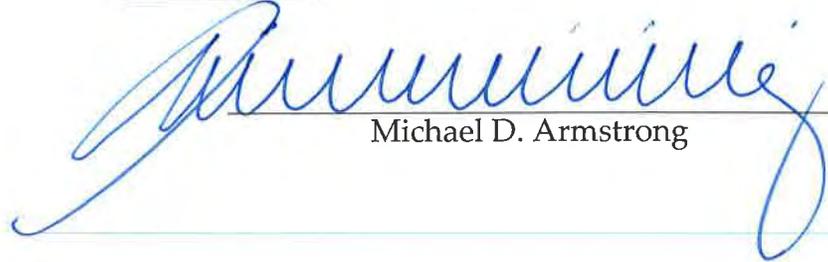
2 6. The fundamental intent of the Annexation Agreement was to provide the
3 right to the use of a defined amount of groundwater from the Salinas Valley
4 Groundwater Basin to Marina Coast Water District, Armstrong, and Lonestar. In
5 exchange, those parties agreed to pay their proportionate share for the benefits of the
6 MCWRA Zone 2 and 2A Projects that augment the groundwater supply in the Salinas
7 Valley Groundwater Basin.

8 7. The agreement does not purport nor was it intended to create any legal or
9 equitable interest by any of the parties in the property of any of the other parties.

10 8. The Annexation Agreement did not in any way contemplate or limit the
11 extraction or use of seawater from the Marina area to supply a desalination project.

12 I declare under penalty of perjury under the laws of the State of California that the
13 foregoing is true and correct.

14 Executed on October 14, 2014, at Marina, California.

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17 Michael D. Armstrong

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Luster, Tom@Coastal

From: Larry Parrish <lparrish@toast.net>
Sent: Friday, November 07, 2014 9:37 AM
To: Luster, Tom@Coastal
Subject: November 12, 2014 Hearing at Half Moon Bay

Agenda items 14(a), 15(a)
Larry Parrish

Dear Chairman Steve Kinsey and fellow Coastal Commissioners:

I am writing in regard to your upcoming hearing on Nov. 12 in Half Moon Bay. I strongly recommend that you deny both the Appeal (No. A-3-MRA-14-0050) from California-American Water Company (Cal-Am), and also the Coastal Permit Application (No.9-14-1735) also from Cal-Am. Here are my reasons for denial, and they apply to both the appeal and the application.

1. Not in Cal-Am district:

The proposed site at the Cemex facility is in Marina, California, which is NOT being served by Cal-Am. This is in fact a blatant attempt to invade and intrude into another water district that is being served by a public (not private) water purveyor, namely the Marina Coast Water District (MCWD), a public agency. Not only is this an infringement into MCWD's territorial boundaries, but MCWD has it's own plans for development of the very same site at the Cemex property for it's own use for a desalination (desal) plant in the future, albeit without a specific date for that process to begin. No doubt, you have probably read MCWD's objections first hand.

2. No Water Rights:

Cal-Am does NOT have any rights to water at the Cemex site, nor to the property, nor any other right that would allow for development of either a slant well, or a desal. facility. Cemex itself has denied Cal-Am permission to use their property for a slant well test or any other future use for that matter. Cal-Am simply has no legal claim to use that site for anything whatsoever. And even if they did have permission from Cemex, the most water that can be obtained legally from that site, according to a prior written legal agreement, is 500 acre feet (AF) per year. Cal-Ams' proposed slant well would use several thousand AF per year, not to mention the production capacity of the final desal. plant, which would total tens of thousands of AF/yr..

3. Unproven technology:

Currently there are exactly ZERO slant wells in operation in the United States for the production and/or extraction of water - desalinated or otherwise. This is a totally unproven and unsubstantiated technology. However, there have been other attempts at implementation of this type of well technology. Right across the Monterey Bay from Marina is Santa Cruz, and the Santa Cruz Water District made an attempt at implementation of slant well technology, but to no avail. They (SCWD) determined, after several years of study, that slant wells are "NOT FEASIBLE". End of discussion. Also, down at Doheny Beach in Dana Point the South Coast Water District has installed a slant well, and the results were inconclusive and with several unresolved problems, including unacceptable variations in salinity of the extracted water, and sand clogging the screens. That well has been shut down and the project is not expected to be completed until 2027, at the earliest, if at all.

4. No local support:

When I say "local", I am referring to Marina. The City of Marina Planning Commission did NOT approve the permit for the slant well at the Cemex site. The Marina City Council voted to DENY the permit for the slant

well. And the MCWD has vehemently objected to the permit being granted, for many other reasons of their own that I assume you have previously heard or read in communications from MCWD or from prior testimony and/or documentation.

5. Not just a test well:

Cal-Am, and many others, in testimony given at the September 3, 2014 Marina City Council meeting, and elsewhere, have repeatedly stated that "it's only a test well". Well, this is basically a half truth, at best. In Cal-Am's very own appeal to the Coastal Commission (SECTION II, Item 2.: Brief description of development being appealed:) Cal-Am states, and I quote, "it is possible that California-American Water Company would apply for an additional Coastal Development Permit to convert it (the slant well) to a production well.". Obviously, that is the avenue Cal-Am will choose to take - to use that well, at that site, for the intake for their desal. project. Cal-Am even says so. And it's blatantly obvious that that is their desire, because if there was a different site available for the project, wouldn't Cal-Am have to construct ANOTHER test well at that other site? The answer is YES! Every site has it's own specific geological and hydrological characteristics and challenges, and no two sites are the same. What might work at one site, may not work at another. Obviously! If Cal-Am had a site, or actually owned a site, the situation would be different - BUT THEY DON'T.

6. A HUGE cost (and waste) of money to Monterey District ratepayers:

The Monterey Peninsula area ratepayers, served by Cal-Am Water, have effectively been punished financially for many years - by Cal-Am's failures to develop a new water source, by Cal-Am's incompetence, by Cal-Am's avaricious business model, and probably most of all by the stellar efforts of ratepayers to conserve water due to the threats from the State Water Resources Control Board via CDO 95-10. The more we conserve - the higher price we pay for our water. Currently, we are using very near the least amount of water per person in the State of California - and we're paying the highest rates for that water. What a payoff for conscientiousness. Whatever happened to the law of supply and demand? Lower demand (usage) should equal lower prices, should it not?

Basically, we've had enough and we're sick and tired of Cal-Am's extensive list of failures that we always have to end up paying for. And this slant well boondoggle is just one more giant failure in the making, which we will undoubtedly have to pay for. Just the other day we heard that the price for the test slant well has jumped from \$4 million to \$6 million. OVERNIGHT. And the bottom line is - everyone knows (including Cal-Am) that the slant well won't work. The geology won't work, they have no water rights, there is no aquatard which would prevent the well from drawing water from Salinas River aquifers, and the practically guaranteed lawsuits that will emanate from the Salinas Valley agriculture community et al. must certainly be considered. And that's just a few reasons why this well will not work - no doubt you will hear many others.

CONCLUSION:

Again, I strongly urge you to DENY both the appeal and the application at the proposed Cemex site. You've read my reasons - there are countless others. It's simply the wrong project at the wrong site by the wrong entity. Instead, please direct Cal-Am to move their aspirations northward to the area of Moss Landing. There are better sites, more willing agencies, more agreeable partnerships in the offing, and a much, much greater opportunity for success in their pursuit of a desal. project. Thank you for your time and consideration.

Sincerely,
Larry Parrish
Carmel, CA
831 622-7455

Luster, Tom@Coastal

From: Markey, Kristi A. x7576 <MarkeyKA@co.monterey.ca.us>
Sent: Friday, November 07, 2014 3:01 PM
To: Luster, Tom@Coastal
Subject: Comments on Appeal No. A-3-MRA-14-0050
Attachments: Condition proposed by staff.webarchive; Salt Water Intrusion 180 aquifer - reduced-2 copy.pdf

Dear Mr. Luster,

Monterey County Supervisor Jane Parker submits the following in regards to California American Water Company's appeal for a permit to conduct pumping tests for a desalination plant (A-3-MRA-14-0050). This appeal is scheduled to be heard at next week's meeting of the Coastal Commission. Regrettably, Supervisor Parker cannot attend in person, but hopes that due consideration may be given to this request to modify a proposed condition. The following is Supervisor Parker's message:

The Salinas Valley aquifer is in overdraft and has suffered significant salt water intrusion over many decades. The Water Resources Agency of Monterey County has wrestled with this problem and initiated projects to protect the aquifer, but the salt water intrusion has continued to march inland, and currently threatens the water supplies of regional communities. (See attached salt water intrusion map created by WRA)

For this reason, the pumping proposed by California American Water must be carefully monitored to avoid further damaging the aquifer. The question is how this can be accomplished. As a Supervisor for this area, I have spoken with hydrologists about the pattern of intrusion and potential effects of pumping. It is possible that pumping would cause increased salt water intrusion outside the 5,000 foot distance of the Cal Am's proposed monitoring wells, due to the geology of the land creating greater opportunity for sea water to flow inland further north of where the monitoring wells are planned. In other words, the area of the monitoring wells may be too small. I would suggest that Monterey County Water Resources Agency be given authority to halt pumping if there is evidence either via the monitoring wells or from wells outside the monitored zone that the pumping is damaging the aquifer. Perhaps a hearing could be held before the Commission if there is a dispute about halting the pumping. Such authority would need to be added to the condition. Additionally, in order for WRA to obtain the data from Cal Am's monitoring wells, I believe the condition would need to state a requirement that the data be provided to WRA weekly or monthly.

While creating new water projects is vitally important, protecting our existing water supply is equally important and must be given proper weight in your deliberations.

Finally, I wish to state that I am writing this letter as an individual Supervisor and am not representing the County or any other agency in sending these remarks. Thank you for your time and service to the State of California,

Submitted on behalf of Monterey County Supervisor Jane Parker Kristi Markey, Chief of Staff
(831) 883-7576

Luster, Tom@Coastal

From: MJDelPiero@aol.com
Sent: Monday, November 10, 2014 7:09 AM
To: sarahcoastalcom@yahoo.com; zimmerccc@gmail.com; mmclureccc@co.del-norte.ca.us; cgroom@smcgov.org; Gregcoastal@sdcounty.ca.gov; Luster, Tom@Coastal; Luster, Tom@Coastal; virginia.jameson@gmail.com
Subject: Objection to Cal-Am appeal/application for test slant well
Attachments: BoardofDirectors.pdf; Maps.pdf; NoticeofObjection.pdf; Oppositioncorrespondence.pdf

TO: The California Coastal Commission (Please Distribute/Forward This to All Members and Staff)

FROM: Monterey County Agricultural and Historic Lands Conservancy (THE AG LAND TRUST)

RE: Opposition to Proposed California American Water Company Appeal/Application to Acquire a Well Site to Violate Mandatory Policies of the Certified Local Coastal Plan and to Prescriptively "Take" Groundwater from the Overdrafted Salinas Valley Groundwater Basin and our Farm

Herewith enclosed, please accept this notice/letter of opposition to the appeal/application by the California American Water Company, along with the herewith attached EXHIBITS A, B, AND C.

Notice of Objection to proposed Cal-Am "test" slant well (11 pages)

Exhibit A - Board of Directors bios.

Exhibit B - Maps (showing induced seawater intrusion area and undisclosed A.L.T. wells)

Exhibit C - Prior objections correspondence (2006 - present)

The flawed Cal-Am appeal/application proposes to directly violate multiple mandatory Local Coastal Plan policies and state groundwater rights laws, and proposes an illegal "taking" of private property/groundwater rights, to economically benefit the privately held California American Water Company at the expense of the Ag Land Trust.

The application even fails to identify one of our agricultural groundwater wells on our farm property (the "Big Well"), which is the closest to the so-called Cal-Am "test well" and which will be the first to be permanently and irreparably contaminated by Cal-Am's illegal conduct. The proposed environmental review is incomplete and flawed.

No Coastal Commission staff review of these reasonably anticipated, immitigable adverse impacts on our protected coastal agricultural groundwater resources and farmland has been conducted or presented to the Commission in anticipation of this appeal hearing. The failure to even identify these unmitigated adverse impacts in the staff report, we assume, is because the Commission staff has relied exclusively on the flawed (by omission) Cal-Am appeal/application that has tried to "downplay" its intended "taking" of our groundwater supplies and its adverse environmental effects on our prime farmland. Coastal Commission staff has not contacted our Aq Land Trust in spite of our prior correspondence (see Exhibit C).

We anticipate presenting testimony pursuant to our attached Letter of Opposition and Exhibits at your Wednesday meeting in Half Moon Bay.

Please distribute our full comments and all attachments to each and all commissioners prior to the day of the meeting so that they may fully understand and consider the potential consequences of their actions.

Most Respectfully, Marc Del Piero, Director

Exhibit 1 – Ag Land Trust Exhibits -

Board of Directors bios.



Ag Land Trust Board of Directors

President Aaron Johnson

Mr. Johnson is a partner of the law firm Partner at L+G, LLP Attorneys At Law. With over 15 years of practice specializing in representing major agricultural business enterprises on the Central Coast, he has extensive real property, transactional, and litigation experience, particularly related to agricultural business and mineral rights.

Vice President David Gill

Co-owner and Founder of Rio Farms, Mr. Gill oversees current operations of over 14,500 acres of specialty vegetable crop production. He is a past president of the Western Growers Association of California. Mr. Gill is recognized nationally as an expert in California agricultural production and management systems.

Treasurer Louis Frizzell

Mr. Frizzell is a Certified Public Accountant and Certified Financial Planner who provides accounting and financial planning services to many of the largest agri-business enterprises in Central California. He joined the Board of Directors in 2007, and has served as Treasurer since that time, helping to manage the Ag Land Trust's finances, including serving as the chief liaison for audits.

Secretary Kellie Morgantini

Ms. Morgantini is an attorney, a founding member of the Board of Directors, and the decendent of a century old farming family in Monterey County. She formerly served as the Director of Planning for the City of Greenfield, and served in the coastal planning unit for the County of Monterey. She is currently the Executive Director of Legal Services for Seniors, Inc. of Monterey County.

Managing Director Sherwood Darington

A founding member of the Ag Land Trust and currently serving as Managing Director, Mr. Darington is a retired Vice-President of Bank of America specializing in agricultural finance and lending for Central California. His family has lived in Monterey County for over 150 years. Mr. Darington is a Licensed Certified Appraiser, specializing in

agricultural properties and currently the Public Member on the Local Agency Formation Commission of Monterey County.

Member Ed DeMars

A founding member of the Ag Land Trust Board of Directors, he served as the first Planning Director of Monterey County (33years). Additionally, he co-founded both the Big Sur Land Trust and the Elkhorn Slough Foundation.

Member Richard Nutter

Recognized throughout California as an expert in the areas of cultivated agriculture, pesticide regulations, and agricultural groundwater supply and quality protection, Mr. Nutter served as the President of the California Agricultural Commissioners Association. He served with distinction on NOAA's Monterey Bay National Marine Sanctuary advisory council for over a decade addressing coastal land use and water quality policies and protection strategies. Mr. Nutter served as Agricultural Commissioner for Monterey County from 1971 to 1998 (27 years). Mr. Nutter is now a partner at Agricultural Services Certified Organic, Inc., a company providing technical expertise to organic agri-business concerns throughout California.

Member Marc Del Piero

Mr. Del Piero, a Founder and the first President of the Ag Land Trust, is an attorney specializing in environmental and water law issues. He served formerly as the attorney member and Vice-Chair of the California State Water Resources Control Board (SWRCB 1992-1999), and is recognized throughout California as an expert in the areas of groundwater rights and the "public trust doctrine". From 1981-1992, he served on the Monterey County Board of Supervisors and co-authored the North Monterey County Local Coastal Plan that established the first mandatory groundwater protection policies within the coastal zone of Monterey County. An adjunct professor of water law at Santa Clara University School of Law from 1992-2011, he has represented public water agencies throughout California. For eight years, he represented the California Environmental Protection Agency on NOAA's Monterey Bay National Marine Sanctuary advisory council. He is best known for having produced the SWRCB Decision 1631 (The Mono Lake Decision - 1995) that ordered the Los Angeles Department of Water and Power to reduce its diversions and to restore the eco-systems of the lake and its tributary streams.

Member Virginia Jameson

Formerly the Associate Director of the Ag Land Trust, Ms. Jameson is recognized as an expert in multi-national agricultural production, international business, and "fair trade" issues. She holds a master's degree from American University in international economics and has formerly worked for both governmental agricultural organizations and NGO's both in Central America and in Monterey County.

Exhibit 2 – Ag Land Trust Exhibits

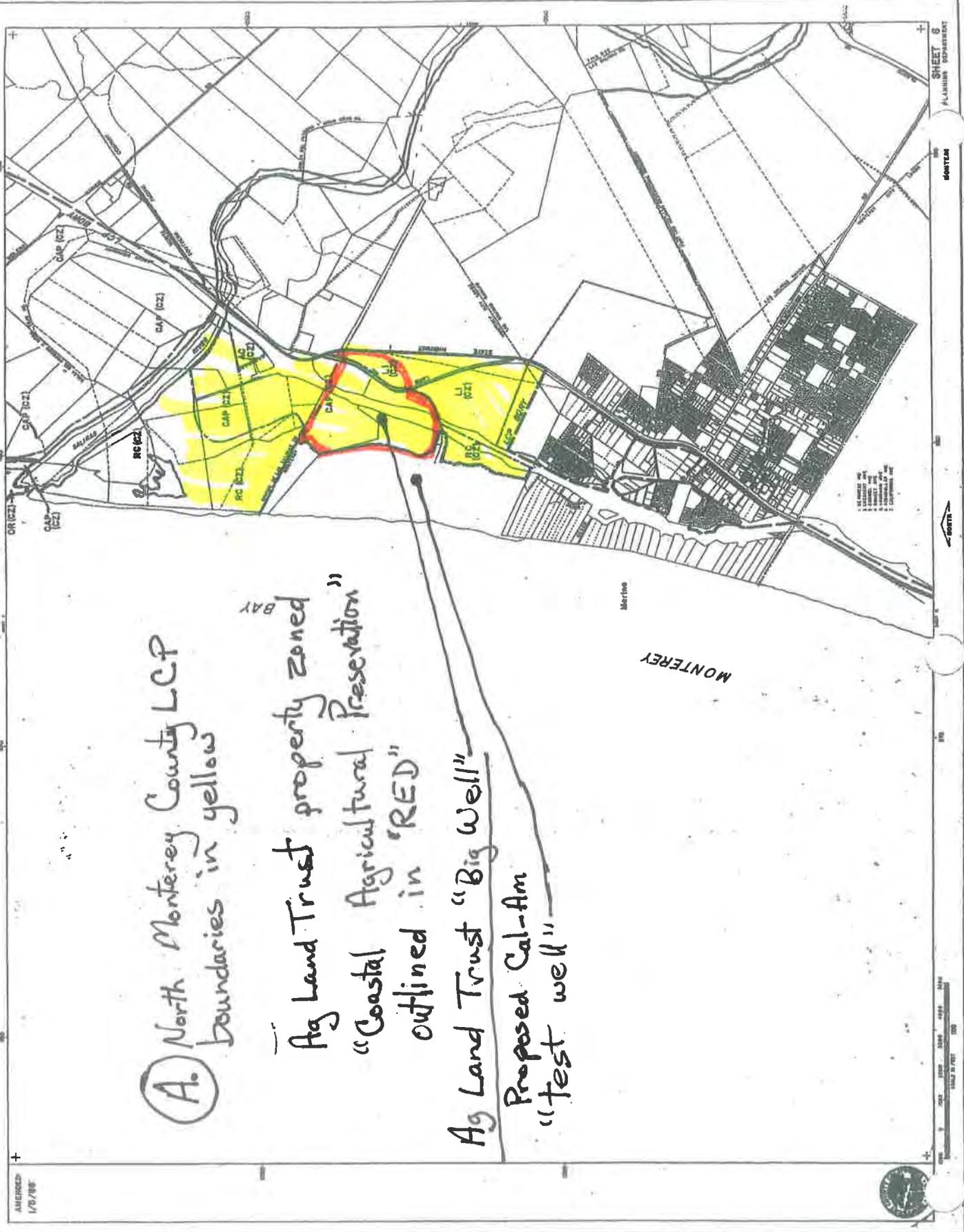
Maps

- A. Map of North Monterey County LCP area (yellow) and Ag Land Trust farm (Armstrong Ranch zoned “Coastal Agricultural Preserve” CAP) outlined in RED. Proposed Cal-Am “test well” site shown in black. Ag Land Trust “Big Well” shown in black.
- B. Ag Land Trust Armstrong Ranch in YELLOW; early proposed alternate seawater wells locations by Cal-Am
- C. Cal-Am map that misrepresents the proposed location of the “test well” and the “drawdown” contours of the “cone of depression” from the “test well”. Map fails to identify Ag Land Trust “Big Well” west of Highway 1 and within cone of depression and subject to seawater contamination from Cal-Am’s proposed pumping.
- D. Cal-Am map with notation of corrected location for “test well” and location of Ag Land Trust “Big Well”. Adjusted “cone of depression” covers 75% of the Ag Land Trust property and shows seawater intrusion into “Big Well”.
- E. Cal-Am map that falsely indicated Ag Land Trust property as within the designated “Project Area”. Insert is not to scale.

A.

North Monterey County LCP

SECTION 6 OF THE ZONING PLAN OF THE COUNTY OF MONTEREY



A. North Monterey County LCP boundaries in yellow

Ag Land Trust property zoned "Coastal Agricultural Preservation" outlined in "RED"

Ag Land Trust "Big Well" Proposed Cal-Am "test well"

(B)



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

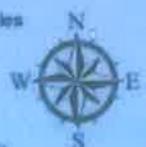
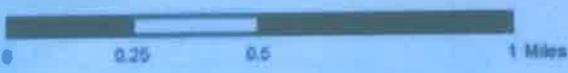
Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

C.

-  Project Area
-  CEMEX Parcel Boundary
-  -0.2 ft. Drawdown Contours after 6-Months of Pumping Test Slant Well at 2,500 GPM
-  Wells



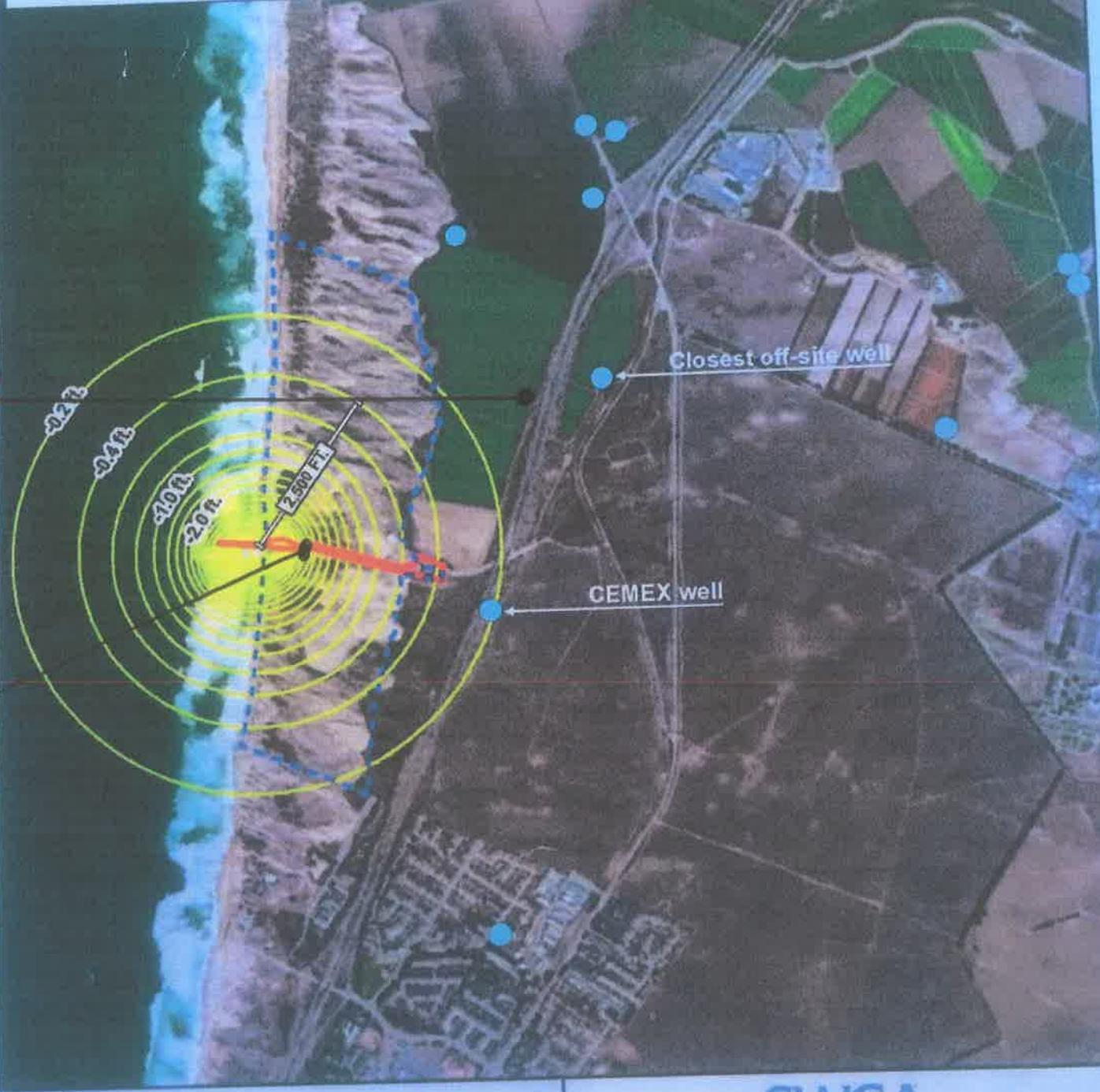
Source: GEOSCIENCE Support Services, Inc.
Basemap: ESRI, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX,
Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

SWCA
ENVIRONMENTAL CONSULTANTS

**Drawdown Contours Map
California American Water
Slant Test Well Project**

(D.) Corrected Map

- Project Area
- CEMEX Parcel Boundary
- 0.2 ft. Drawdown Contours after 6-Months of Pumping Test Slant Well at 2,500 GPM
- Wells

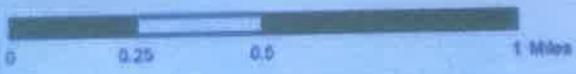


AgLand Trust "Big Well"

Actual Well Site for Cal-Am Test

Closest off-site well

CEMEX well



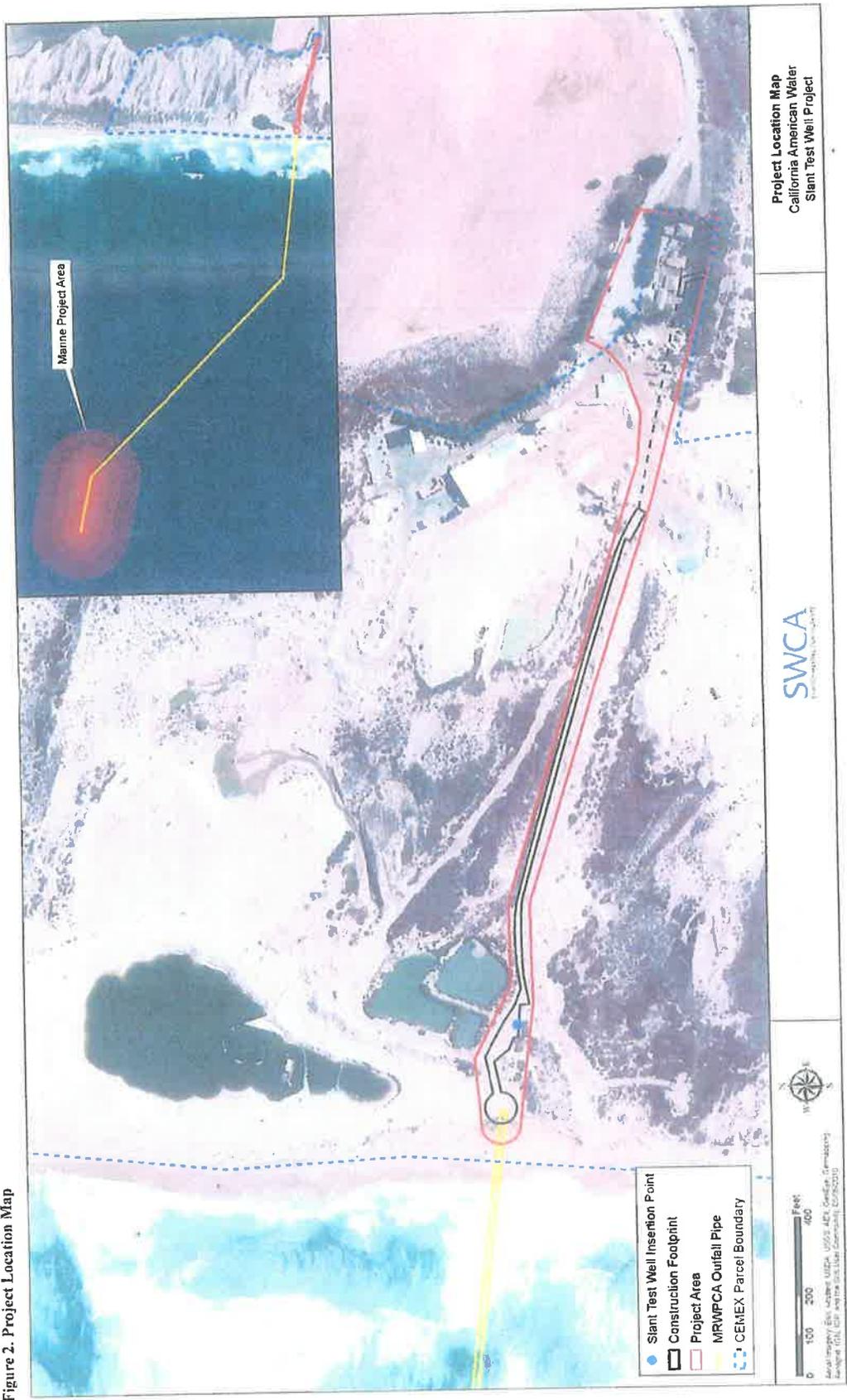
SWCA
ENVIRONMENTAL CONSULTANTS

Drawdown Contours Map
California American Water
Slant Test Well Project

Source: GEOSCIENCE Support Services, Inc.
Bavemap, ESRI, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX,
Getmapping, Aerogrid, IGN, IGR, swisstopo, and the GIS User Community

E.

Figure 2. Project Location Map



A-3-MRA-14-0050 / 9-14-1735
EXHIBIT 2



www.AgLandTrust.org
Location: 1263 Padre Drive | Salinas, CA
Mail Address: P.O. Box 1731 | Salinas, CA 93902
Tel.: 831.422.5868

12 NOVEMBER 2014

AGENDA ITEM 14 – copies provided to staff

TO: The California Coastal Commission

RE: Opposition to Proposed California American Water Company (Cal-Am) Appeal/Application to Acquire a Well Site to Violate Mandatory Policies of the Certified Local Coastal Plan and to Prescriptively Take Groundwater from the Overdrafted Salinas Valley Groundwater Basin

The Ag Land Trust is strongly objecting to the subject appeal and application because Cal-Am and the commission staff are asking the Commission to participate in an illegal project that violates an unprecedented number of coastal protection policies and state laws. The Coastal Commission, if it follows their wrongful advice, will be taking an “ultra vires” act and approving an illegal “test well” which violates CEQA, which fails to address the cumulative adverse impacts of the project as a whole, and which will result in an unlawful “taking” of groundwater rights from the Ag Land Trust and other rights holders.

We are writing this correspondence to you based upon our collective professional experience of over 80 years working in Monterey County on county groundwater rights and legal issues, California Coastal Act issues, agricultural water supply and water quality issues, potable water supplies and public health issues, and based upon our technical expertise in the areas of California groundwater rights law, agricultural regulatory and water supply issues, and environmental and public health issues related to potable groundwater supplies.

The Ag Land Trust of Monterey County (the Monterey County Agricultural and Historic Lands Conservancy) is a 501(c)(3) NON-PROFIT CORPORATION organized in 1984 for the purposes of owning, protecting, and permanently preserving prime and productive agricultural lands in Monterey County and within the California Coastal Zone. It is now the largest and most successful farmland preservation trust in the State of California, and it owns, either “in fee” or through permanent conservation easements, over 25,000 acres of prime farmlands and productive coastal agricultural lands throughout Monterey County and the Central Coast of the state. (**See attached Board of Directors roster – Exhibit 1**). Further, and of more particular importance, The Ag Land Trust has been the farmland conservancy that the California Coastal Commission has sought out to accept the dedications of prime and productive coastal farmlands in Monterey and San Mateo Counties as mitigations for the Coastal Commission’s issuance of development permits within those Local Coastal Planning areas.

The Ag Land Trust owns, in fee, the prime and productive coastal farmland (the Armstrong Ranch), and all of the overlying percolated groundwater rights thereunder, that is located immediately adjacent to (within 50 yards of) the California American Water Company’s (Cal-Am) proposed well site on the CEMEX

The Ag Land Trust is a 501 (c)(3) non profit organization.
Donations are welcome and tax deductible.

property. Our ranch was acquired with grant funds from the State of California and the United States (USDA) expressly to preserve its protected and irreplaceable prime and productive coastal farmland from development. We have over 160 acres under cultivation and use our potable groundwater wells for irrigation water.

Our property is in the unincorporated area of Monterey County. Our ranch lies within, and is subject to, the policies and regulations of the certified North Monterey County Local Coastal Plan area. Cal-Am has publicly stated that the huge cone of depression that will be created by its' massive proposed test well, and the excessive duration (two (2) years) of Cal-Am's intended proposed pumping, will result in the contamination of our wells and the unlawful "taking" of our potable groundwater from beneath our property in direct violation of the certified policies protecting our farmland in the North Monterey County Local Coastal Plan (NMCLCP – certified 1982). The appeal/application and the commission's staff analysis are fatally flawed because they have ignored the test well's immitigable operational and environmental violations and failed to address conflicts with the NMCLCP policies that Cal-Am's own documents have disclosed. **The proposed "test well" appeal/application directly violates the following policies/mandates of the certified North Monterey County Local Coastal Plan that the Coastal Commission is required to uphold and enforce:**

"NMCLCP 2.5.1 Key Policy

The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.

NMCLCP 2.5.3 Specific Policies

A. Water Supply

1. The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.

2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.

3. The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources."

Cal-Am's proposed illegal pumping and then its "wasting/dumping" of our protected potable groundwater resources will result in significant cumulative adverse impacts, immitigable permanent damage, a continuing nuisance, and irreversible seawater intrusion into the potable groundwater resources and

aquifers that belong to and which underlie the Ag Land Trust's Armstrong Ranch. Further, it will cause irreparable damage to our protected prime coastal farmlands in violation of our certified Local Coastal Plan. Cal-Am has no groundwater rights in the Salinas Valley and the North Monterey County Local Coastal Plan area and, pursuant to California groundwater rights law, is flatly prohibited from acquiring such rights in an overdrafted basin. **Importantly, Cal-Am's proposal, and Commission staff's recommendations directly violate the new mandates of Governor Brown's groundwater legislation that specifically identifies (and prohibits) "significant and unreasonable seawater intrusion" as an "Undesirable Result" that must be avoided in the management of potable groundwater basins, and specifically in the Salinas Valley. (See AB 1739 (Dickinson); SB1168 (Pavley); and SB 1319 (Pavley) signed by Governor Brown in October, 2014). The express legislative intent of these important pieces of legislation, in part, includes "respecting overlying and other proprietary rights to groundwater" by rights holders like the Ag Land Trust as against parties like Cal-Am (a junior, non-overlying, would-be prescriptive appropriator). Further, Cal-Am's proposed "test well", and its operation recommended by Commission staff, directly violates the new definition of "GROUNDWATER SUSTAINABILITY" as embodied in Governor Brown's new legislation.**

By this letter, the Board of Directors of the Ag Land Trust unanimously objects to the proposed coastal permit appeal and the application to the Commission initiated by the California American Water Company (Cal-Am) for a well site on the CEMEX property for Cal-Am's stated and prohibited reasons of wrongfully extracting potable groundwater from the overdrafted Salinas Valley Groundwater basin and our property. A significant portion of the groundwater that Cal-Am has expressly indicated it intends to wrongful "take" with its proposed "test well", without providing compensation for their resultant irreparable damage to our potable groundwater aquifers, belongs to the Ag Land Trust **(See attached Exhibit 2 - MAPS - by Cal-Am showing its' "drawdown" of groundwater by Cal-Am's well pumping on the adjacent Ag Land Trust property; Exhibit Map showing Ag Land Trust property in yellow right next to the proposed "test well"; Exhibit Maps (two copies - original and corrected) of Cal-Am maps misrepresenting the actual location of the proposed "test well" site, misrepresenting the actual impact area of Cal-Am's well pumping "cone of depression"; and failing to identify the closest agricultural well on the Ag Land Trust property which is in the "cone of depression" area.)**.

Cal-Am has been denied the prerequisite permits for a ground water well twice by both the City of Marina Planning Commission and the City Council of the City of Marina due, in part, to Cal-Am's failure to produce even one shred of evidence that it has any legal property or water right to pump groundwater from the overdrafted Salinas Valley Groundwater Basin, or that it can overcome its intended express violations of the farmland and groundwater protection policies of the certified North Monterey County Local Coastal Plan (NMCLCP). Unfortunately, these direct violations of existing mandatory NMCLCP protection policies are ignored in your staff report, in spite of the woefully inadequate condition that groundwater within 5000 feet of the well site be monitored for seawater intrusion. Further, there is no evidence produced by Cal-Am or the Commission's staff that the CEMEX well site is entitled to enough groundwater to satisfy Cal-Am's uncontrolled demand even if Cal-Am is successful in acquiring the well permit, and your staff has failed to disclose this issue for public review.

UNDER CALIFORNIA GROUNDWATER RIGHTS LAW, ACQUISITION OF A SURFACE WELL SITE DOES NOT RESULT IN THE ACQUISITION OF WATER RIGHTS TO PUMP GROUNDWATER FROM THE UNDERLYING OVERDRAFTED PERCOLATED GROUNDWATER BASIN. The over-drafted aquifers that are proposed to be exploited and contaminated by Cal-Am's self-serving pumping and dumping are required to be used by the NMCLCP "to protect groundwater supplies for coastal priority agricultural uses". **Has Cal-Am or the Commission staff explained how their proposed project does not violate the mandate to prevent adverse cumulative impacts upon coastal zone groundwater**

resources (North County LCP Sec. 2.5.3 (A) (3))? We can find no reference or consideration of this issue in your staff report. Moreover, the proposed appeal by Cal-Am, which is now being pushed by staff, directly violates the mandates of the certified North Monterey County Local Coastal Plan Sections 2.5.1, and 2.5.2.3, and 2.5.3.A.1-3; and 2.5.3.A.1.6, and 2.6.1; and 2.6.2.1; and 2.6.2.2; and 2.6.2.6. The impacts of the Cal-Am test well, by Cal-Am's own filings, will directly violate these policies in spite of the failure to have evaluated these significant and immitigable adverse impacts. We object to these obvious failures to comply with these mandated coastal protection policies and CEQA.

The Ag Land Trust objects to the Cal-Am appeal and application because Cal-Am, by omission, seeks to deceive the Commission as to its actual intent in pursuing the acquisition of the proposed "test well". Further, Cal-Am knows, but has failed to disclose to the Commission, that it intends to wrongfully and surreptitiously contaminate a potable groundwater aquifer and "take" the real property rights and the potable water rights of the Ag Land Trust, without compensation and in violation of over 100 years of California groundwater rights law. Cal-Am has been advised of this concern for at least eight (8) years by the Ag Land Trust. **(Exhibit 3 - See attached letters of objection from the Ag Land Trust).** Cal-Am intends to, and has admitted, that it intends to pump water from beneath the Ag Land Trust's property over the objection of the Trust since 2006. **(See Exhibit 2 - attached Cal-Am pumping map).**

Although our objections are not limited to those enumerated herein, The Ag Land Trust further objects to the Cal-Am proposal to use the CEMEX well site for the following reasons:

1. Cal-Am's assertions that it intends to pump seawater from the proposed "test well" is untrue. Cal-Am has conducted water quality sampling that already shows that its proposed extended pumping of that test well will intentionally and significantly draw water from "fresh", potable aquifers (180 ft. and 400 ft.) that underlie the Ag Land Trust property, and aggravate seawater intrusion below the Ag Land Trust property, thereby implementing a wrongful, uncompensated "taking" of our real property (aquifer storage and our well water) rights for Cal-Am's financial benefit. Cal-Am has disclosed this information to the City of Marina City Council. Moreover, Cal-Am has indicated that it intends to not use, but intends to "dump" the water it pumps from its "test well", including our potable water, back into the ocean, thereby constituting a prohibited "waste of water" and a direct violation of Article X, Sec.2 of the Constitution of California and the Doctrine of Reasonable Use (Peabody v. Vallejo 2 Cal. 2nd 351-371 (1935)). "The use of groundwater is a legally protected property right." (See Peabody). Cal-Am intends to do this to intentionally contaminate the aquifer and our wells so that it can avoid the legal penalties and financial consequences of its plan to illegally, prescriptively, and permanently take control of the groundwater aquifers underlying the Ag Land Trust's productive farmland for Cal-Am's sole economic benefit. Moreover, the granting of this appeal and the issuance of a permit by the Commission, now that this intended violation of the law has been disclosed, will likely expose the Coastal Commission to nuisance claims and "vicarious liability" for the taking of our groundwater rights, and the resultant damages flowing therefrom, along with Cal-Am (See Aransas v. Shaw 756 F.3rd 801 (2014)). Further, granting Cal-Am's appeal will directly violate Governor Brown's landmark groundwater legislative package that prohibits the taking of other parties' groundwater rights and prohibits the intentional contamination of identified potable groundwater supplies.

2. The Salinas Valley groundwater basin has been identified as being in overdraft by the California Department of Water Resources, the California Coastal Commission, and the Monterey County Water Resources Agency (MCWRA) for over 60 years. The sole source of recharge to the aquifer is rainfall and water percolated into the Salinas River from water supply projects paid for, pursuant to Proposition 218 requirements and provisions of the California Constitution, by overlying land owners (assesses) within the basin, including the Ag Land Trust. The overlying water rights holders have paid tens of millions of dollars to protect and restore their groundwater supplies. Cal-Am has not paid anything to protect and preserve the aquifers, and has acquired no groundwater rights in the basin or from those projects.

3. The overdraft was initially identified in Monterey County studies of the basin in the 1960's and 1970's, and has been repeatedly identified by more recent MCWRA hydrologic and hydro-geologic studies (U.S. ARCORPS, 1980; Anderson-Nichols, 1980-81; Fugro, 1995; Montgomery-Watson, 1998). The universally identified remedy for seawater intrusion specified in these studies is the reduction of well pumping near the coast. Further, the overdraft in the North County aquifers has been publicly acknowledged for decades by both the Monterey County Board of Supervisors and the California Coastal Commission in the certified "North County Local Coastal Plan" (1982), the "Monterey County General Plan" (1984 and 2010) and the "North County Area Plan" (1984). The Ag Land Trust and all other land owners within the basin have spent millions of dollars over the last sixty years to build water projects to reverse and remedy the overdraft and recharge the aquifers. Cal-Am has not spent anything to protect the groundwater resources of the Salinas Valley. Unfortunately, Cal-Am, in its continuing wrongful pursuit of "taking" other people's water rights, has failed to disclose to the Commission how it intends to violate the laws of groundwater rights that govern the basin. Moreover, Cal-Am and Commission staff, without any evidence to back up their assertions, now asks the Commission to blindly ignore 50 years of detailed hydro-geologic and engineering studies by independent, impartial public agencies, and asks the Commission to rely on Cal-Am's "voo doo hydrology" that its "test well" pumping results will not aggravate seawater intrusion in the Salinas Valley or "take" our potable water resources and water rights.

4. California law holds that, in an overdrafted percolated groundwater basin, there is no groundwater available for junior appropriators to take outside of the basin. In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies (Katz v. Walkinshaw 141 Cal. 116 (1902)). In an over-drafted basin, there is no surplus water available for new, junior "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. The clear, expansive, and often re-stated law controlling groundwater rights in an over-drafted basin has been reiterated by California courts for over a century (Katz v. Walkinshaw, 141 Cal. 116; Burr v. Maclay 160 Cal. 268; Pasadena v. Alhambra 33 Cal. 2nd 908; City of Barstow v. Mojave 23 Cal. 4th 1224 (2000)). This is the situation in the over-drafted Salinas Valley percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Salinas aquifers. Cal-Am is a junior appropriator that has

no rights to groundwater in the Salinas Valley, and can't get any. Moreover, Cal-Am's unsubstantiated assertions that it needs to drill a test well to satisfy the SWRCB ignores the fact that Cal-Am's actual intent and conduct is aimed at avoiding the SWRCB Cease and Desist order on the Carmel River (that has resulted from its constant illegal diversions of water over the past twenty years) by creating an even greater illegal diversion of "other peoples" groundwater from the overdrafted Salinas Valley. Cal-Am's shameless propensity to violate both the requirements of California water law and the water rights of other innocent property owners is legend, and is the reason that the SWRCB issued its enforcement SWRCB Order 95-10 and the Cease and Desist order against Cal Am.

5. Further, it is important for the Commission to know that the SWRCB is specifically prohibited by the Porter-Cologne Act (1967) from having any jurisdictional authority of non-adjudicated percolated groundwater basins like the Salinas Valley. Moreover, neither the CPUC, nor the Coastal Commission, nor the SWRCB can grant groundwater rights to Cal-Am. Such an approval would be a direct violation of California groundwater rights law. The SWRCB cannot, and has no authority to, order the installation of slant wells so that Cal-Am can wrongfully take other people's water and water rights without a full judicial adjudication of the entirety of the Salinas Valley groundwater basin among all landowners and existing water rights holders therein. Cal-Am's request for a test well site seeks to hide by omission the irrefutable legal impediments to its planned illegal taking of groundwater.
6. The Cal-Am desalination plant, and its proposed test wells and the appeal to which we object, are illegal and directly violate existing Monterey County Code Section 10.72.010 et seq (adopted by the Board of Supervisors in 1989) which states in part:

Chapter 10.72 - DESALINIZATION TREATMENT FACILITY (NMC LCP)

Sec. 10.72.010 - Permits required.

No person, firm, water utility, association, corporation, organization, or partnership, or any city, county, district, or any department or agency of the State shall commence construction of or operate any Desalination Treatment Facility (which is defined as a facility which removes or reduces salts from water to a level that meets drinking water standards and/or irrigation purposes) without first securing a permit to construct and a permit to operate said facility. Such permits shall be obtained from the Director of Environmental Health of the County of Monterey, or his or her designee, prior to securing any building permit.

Sec. 10.72.030 - Operation permit process.

All applicants for an operation permit as required by Section 10.72.010 shall:

- A. Provide proof of financial capability and commitment to the operation, continuing maintenance replacement, repairs, periodic noise studies and sound analyses, and emergency contingencies of said facility. Such proof shall be in the form approved by County Counsel, such as a bond, a letter of credit, or other suitable security including stream of income. For regional desalinization projects undertaken by any public agency, such proof shall be consistent with financial market requirements for similar capital projects.
- B. Provide assurances that each facility will be owned and operated by a public entity.

Cal-Am, by its own admission is not a "public entity", as defined under the Monterey County Code and the California Government Code. Cal-Am is a privately owned, for-profit corporation which is a regulated private company and taxed as a private company by the Internal Revenue Service. Further, the California Public Utilities Commission's power of eminent domain, which Cal-Am invoked to pursue its devious acquisition of the CEMEX well site, may not be used or invoked to take actions that are violations of existing state or local laws, ordinances, or regulations. Under California law, eminent domain may not be used to acquire unlimited groundwater pumping rights in an overdrafted basin. Cal-Am is attempting to pursue acquisition of a well site for a project that it is prohibited from owning and operating, and for which it has no groundwater rights. Neither Cal-Am nor the CPUC have pursued an action in declaratory relief. Further, the CPUC cannot grant groundwater rights nor waive the requirements of a local ordinance so as to exercise its power of eminent domain, either directly or indirectly. It certainly cannot grant other peoples' groundwater rights to Cal-Am for the sole financial benefit of Cal-Am. Nor can the SWRCB. Nor can the Coastal Commission. The granting of this appeal and application for the well site expressly to illegally appropriate and "take/steal" tens of thousands of acres feet of "other people's groundwater" from the overdrafted Salinas Valley groundwater basin, for a project that Cal-Am is legally prohibited from owning and operating, would constitute an illegal, "ultra vires" act that may not be facilitated by the Commission.

7. Cal-Am's appeal also fails to disclose to the Commission the legal limitations that will apply to its so-called "test well". The Doctrine of Correlative Overlying Water Rights, as created and interpreted by the California Supreme Court in Katz v. Walkinshaw 141 Cal. 116, and as reiterated for the last 110 years (most recently in City of Barstow v. Mojave 23 Cal. 4th 1224 (2000)), prohibits any land owner in an over-drafted percolated groundwater basin from pumping more than that land owner's correlative share of groundwater from the aquifer as against all other overlying water rights holders and senior appropriators. CEMEX is only allowed to pump a fixed (correlative) amount of water for beneficial uses solely on its' property. Given the size of the small easement pursued by Cal-Am, the Commission must limit the amount of water that Cal-Am may pump annually from that easement to that small fraction of the total available water amount that may be used by CEMEX pursuant to its deed restriction in favor of the Marina Coast Water District and the other land owners in the Salinas Valley basin and pursuant to the Doctrine as mandated by state law. If the Commission were to grant Cal-Am's appeal, it would be necessary to specifically, and in writing, limit the temporary permitted extraction to insure that Cal-Am does not conveniently forget its legal obligations like it has on the Carmel River for the past 20 years.

Uncontrolled pumping of Cal-Am's "test well" can and will reverse years of efforts to recharge and restore our aquifer, violate existing mandatory LCP policies, violate state groundwater law, and leave us permanently without a groundwater supply for our farm.

8. Cal-Am's proposed well and its uncontrolled pumping plan will intentionally contaminate the potable groundwater aquifers beneath the Ag Land Trust property and the potable aquifers of the Salinas Valley in violation of state law. Cal-Am, by its appeal for a well site, intends to intentionally contaminate a potable groundwater supply in violation of multiple state regulations and water quality laws. The California Regional Water Quality Control Board – Central Coast (CCRWQCB) is a division of the SWRCB and created pursuant to an act of the legislature known as the Porter-Cologne Act. One of the duties delegated to the CCRWQCB is the adoption and enforcement of the Water Quality Control Plan for the Central Coastal Basin. The Plan is mandated to meet the requirements of the federal Clean Water Act and the Porter-Cologne Act. It was adopted after numerous public hearings in June, 2011. This Plan is mandated by law to identify the potable groundwater resources of the Central Coast and Monterey County. At Chapter 2, Page II-1, the Plan states, "Ground water throughout the Central Coastal Basin, except for that found in the Soda Lake Sub-basin, is suitable for agricultural water supply, municipal and domestic water supply, and industrial use. Ground water basins are listed in Table 2-3. A map showing these ground water basins is displayed in Figure 2-2 on page II-19." This reference specifically included the potable groundwater supplies/aquifers under the Ag Land Trust property, adjacent to the CEMEX site, which is sought to be exploited by Cal-Am to supposedly pump "seawater". The Plan goes on to quote the SWRCB Non-Degradation Policy adopted in 1968 which is required to be enforced by the CCRWQCB. "Wherever the existing quality of water is better than the quality of water established herein as objectives, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," (See Exhibit 3) including any revisions thereto. Cal-Am, in pursuing its well site, knowingly has ignored the above stated facts and law and withheld this information from the Commission so as to avoid having to compensate the Ag Land Trust for its irreparably damaged property, wells, and water rights and to avoid further legal enforcement actions against Cal-Am by federal and state regulatory agencies.
9. Cal-Am's flawed and self-serving real estate appraisal of the proposed well site and easement fails to evaluate, quantify, and value the exploitation of groundwater resources and the value of permanently lost water supplies and rights due to induced seawater intrusion into the potable aquifers by Cal-Am's wrongful pumping and its illegal exploitation of the Ag Land Trust's percolated, potable groundwater supply. The full price of Cal-Am's actions and "takings" has been significantly underestimated expressly for Cal-Am's prospective economic benefit.
10. Our wells (two wells) and pumps on our ranch adjacent to the location of the proposed well field are maintained and fully operational. **Cal-Am has failed to identify and disclose in their exhibits to the Commission the location of our largest well (900 ft.) which is located west of Highway 1 and within the "cone of depression" area of Cal-Am's proposed "taking" of our groundwater (See Exhibit 2). Its' water will be taken and contaminated by Cal-Am's actions that are endorsed by Commission staff.** We rely on our groundwater and our overlying groundwater rights to operate and provide back-up supplies for our extensive agricultural activities. Our property was purchased with federal grant funds and the U.S. Department of Agriculture has a reversionary interest in our prime farmland and our water rights and supplies that underlie our farm. Neither Cal-Am, nor the CPUC, nor the Coastal commission can acquire property or groundwater rights as against the federal government by regulatory takings or eminent domain. Cal-Am has intentionally omitted these facts from its appeal so as to avoid uncomfortable environmental questions that would invariably disclose Cal-Am's intended illegal acts and proposed "takings". Cal-Am's proposed "takings", as supported by Commission staff, will

intentionally and wrongfully contaminate our protected potable groundwater supplies, resources, and wells. Cal-Am's and staff's intent on "eliminating our right of use (through "public trust" inspired pumping to protect unidentified marine organisms) is akin to the drastic impact of physical invasion on real property, which categorically warrants compensation" (Loretto v. Teleprompter Manhattan 458 U.S. 419,421 (1982) (physical occupation of property requires compensation). Hence, such an impact on water rights should merit the same categorical treatment. (See Josh Patashnik, Physical Takings, Regulatory Takings, and Water Rights, 51 Santa Clara Law Review 365,367 (2011)).

11. The staff report admits that the test well site is an environmentally sensitive habitat area (ESHA) and that the project is not a resource dependent use. (Only resource dependent uses are permitted in ESHA). That should end the discussion and result in denial of the project. But, the staff report then states that this project qualifies for an exception under the Coastal Act for "industrial facilities." This is not an industrial facility under the Coastal Act. It might be a public works facility, except Cal-Am is not a California public/government agency. Cal-Am is a division of a for-profit, privately owned corporation from New Jersey. The Staff is relying on section 30260 which allows such industrial facilities if alternative locations are infeasible, it would be against the public welfare to not approve the project, and the impacts are mitigated to the maximum extent feasible. That exception is for industrial facilities, not public works facilities. This project is not an industrial facility. It is a privately owned water well. Section 30260 states that industrial facilities may be permitted contrary to other policies in the Coastal Act "in accordance with this section (30260) and Sections 30261 and 30262..." These latter sections concern oil and gas facilities. Public works are addressed in a different Article of the Coastal Act. The staff report at p. 57 characterizes the test well as an industrial activity because "It would be built within an active industrial site using similar equipment and methods as are currently occurring at the site." This is an unsustainable stretch of the definition. The staff report refers to a Santa Barbara County LCP provision regarding public utilities concerning natural gas exploration as support for the notion that the test well is an industrial facility. But, the Santa Barbara County provision notably concerns natural gas. Thus, development of the test well in ESHA would violate the Coastal Act.

12. Finally, Cal-Am touts its "so-called" settlement agreement with a few non-profit entities and politicians as some kind of alleged justification for the Commission to ignore Cal-Am's intended violations of law and approve their illegal taking of our property/water rights. Not one of the parties to the so-called settlement agreement holds any groundwater rights in the Salinas Valley that will be adversely taken by Cal-Am's proposed conduct. None of them have offered to compensate the Ag Land Trust for the "theft" of our groundwater rights that they have endorsed. Cal-Am has a history of unapologetic violations of California's water rights laws. Cal-Am's contrived reliance on "endorsements" by uninformed and unaffected parties to the "so-called" settlement agreement is akin to a convicted thief asserting a defense that his mother and grandmother both agree that he is "a good boy" who really did not mean to steal.

Since 1984, The Ag Land Trust's Board of Directors has been committed to the preservation of California's prime and productive farmland and the significant environmental benefits that flow therefrom. The Trust does not want to "pick a fight" with the Commission staff with whom we have worked cooperatively and successfully for many years. But the Commission staff and Cal-Am have produced no environmental evidence or facts to justify ignoring the mandates of the City of Marina in requiring the preparation of a full Environmental Impact Report (EIR) pursuant to the California Environmental Quality

Act (CEQA) prior to drilling a well meant to knowingly contaminate our water resources and wells. The staff has cited the Santa Barbara LCP to try to rationalize its recommendation, but they have produced no evidence to justify ignoring the multiple mandates of the North Monterey County Local Coastal Plan (just 50 yards from the well) that will be violated. The Commission's review of the test well must comply with CEQA since its' review is the functional equivalent of CEQA review. The staff report does not provide analysis of the impacts of the project on groundwater supply and rights. The Commission must perform analysis of the adverse effects of the project on the groundwater of adjacent overlying land owners and senior water rights holders. The test well is being used in place of environmental review. Its' significant, if not irreversible, adverse effects will not be identified until after the permanent damage to our aquifer and wells is done. This is antithetical to CEQA which requires the analysis to be performed prior to beginning the project. A test well that will operate for two years, without analysis of potential impacts, violates CEQA. Indeed, the City of Marina City Council (which includes three attorneys) recognized this fact when it voted to require an EIR prior to the considering the CDP.¹ Cal-Am and the staff have produced no comprehensive evidence that the damage that will result to protected coastal resources from the proposed "test well" is less than the damage that may be caused by other alternative sources of seawater. Further, Commission staff and the CPUC can no longer intentionally avoid the CEQA mandates of a full alternatives analysis in the EIR of all potential seawater sources, including seawater intakes at Moss Landing as identified as the "preferred site" for all of Monterey Bay (see directives, mandates, and findings of the California Legislature of Assembly Bill 1182 (Chapter 797, Statutes of 1998) which required the California Public Utilities Commission to develop the Plan B project, and the CPUC Carmel River Dam Contingency Plan – Plan B Project Report which was prepared for the Water Division of the California Public Utilities Commission and accepted and published in July, 2002 by the California Public Utilities Commission." "Plan B" identifies the Moss Landing Industrial Park and the seawater intake/outfall on the easement in the south Moss Landing Harbor as the optimal location for a regional desalination facility.) The staff report has chosen to ignore long standing and mandatory coastal protection policies to try to force us to give up our farm's water rights for the sole economic benefit of Cal-Am. This political position by staff is misguided and is a failure of the environmental protection policies and laws that are intended to protect all of our resources from immitigable, adverse effects of improperly analyzed and poorly considered development projects. The Coastal Commission staff simply has to do a lot more than take a political position at the expense of otherwise innocent adjacent land owners with real groundwater rights that are about to be wrongfully taken.

The cumulative impacts section of the staff report ignores the cumulative impacts of drawing more water from an overtaxed aquifer and the loss of prime farmland. This is a violation of CEQA. The cumulative impact analysis only addresses the impacts to dune habitat and it also addresses this cumulative impact in a very localized fashion. This is a special and rare habitat and the impacts to this habitat in the entire dune complex extending down to the Monterey Peninsula should be examined.

Furthermore, an EIR is being prepared by the PUC for the project. The Coastal Commission is approving the test well without really addressing the impacts of the project as a whole. Either the PUC should be the lead agency and finish the EIR, or the Commission should analyze the entire project as one. The

¹ The staff report makes an unwarranted and unfair assertion that the City of Marina set "poor precedent" when the City of Marina denied the CDP without making LCP consistency findings. The reason the findings were not made is because the Council was simply complying with CEQA and requiring adequate environmental review before making a final decision. The Commission's premature assumption of jurisdiction and lack of appropriate and detailed analysis simply thwarts the City's attempt to comply with CEQA, and the Commission's staff report fails to adequately address environmental impacts as the functional equivalent CEQA document.

Commission buries the analysis about the project as whole in the cumulative impacts section. (See p. 60-62). This is illegal piecemeal environmental review pursuant to CEQA.

In the case of Bennett v. Spear (520 U.S.154, at 176-177 (1997)), the United States Supreme Court ruled the following in addressing the enforcement of the protection of species under the federal Endangered Species Act: "The obvious purpose of the requirement that each agency "use the best scientific and commercial data available" is to ensure that the ESA not be implemented haphazardly, on the basis of speculation or surmise. While this no doubt serves to advance the ESA's overall goal of species preservation, we think it readily apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives." The Ag Land Trust believes that, absent preparation of a full and complete EIR with a full and complete seawater intake alternatives analysis BEFORE any well is permitted or drilled, the staff recommendation violates the laws of California and will result in the unlawful taking of our property rights for the benefit of a private party.

The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. We have not caused nor have we contributed to that problem. It has gone on for decades. The Ag Land Trust also recognizes that Coastal Commission staff desires an absolute prohibition of seawater intakes for desalination plants. The water shortage that is of Cal-Am making (by its failure to produce a water supply project in over 20 years) does not justify the Commission staff's proposed illegal taking of our groundwater and property rights, and the intentional contamination of our potable aquifers and wells, for the sole and private economic benefit of Cal-Am.

We hereby incorporate by reference all facts, statements, and assertions included in the documents, cases, laws, and articles referred to herein, and included in the attachments and exhibits hereto.

We ask that the Commission deny the Cal-Am's appeal and application and require that a full and complete EIR be prepared before any permit is considered by your Commission and for the other reasons stated herein.

Most Respectfully for the Ag Land Trust,



Marc Del Piero,

Attorney at Law



Richard Nutter, Monterey County

Monterey Co. Agricultural Commissioner (ret.)

cc: California Coastal Commission staff

Exhibit 3 – Ag Land Trust Exhibits -

Opposition correspondence – 2006 - Present



www.AgLandTrust.org
Location: 1263 Padre Drive | Salinas, CA
Mail Address: P.O. Box 1731 | Salinas, CA 93902
Tel.: 831.422.5868

3 September 2014

To: City Council of the City of Marina

From: Board of Directors of the Monterey County Ag Land Trust

RE: Cal-Am slant well application/Mitigated Negative Declaration

Dear Council members:

The Ag Land Trust owns prime irrigated farmland adjacent to the property where Cal-Am proposes to construct and operate a test well that is designed to remove approximately 8,000.0 acre feet of groundwater from the overdrafted Salinas Valley groundwater basin during its test period. The Ag Land Trust has met with the representatives of Cal-Am and others in an effort to develop a mitigation agreement if and when damage is caused to the Ag Land Trust's property and well water supply by the test well and future well field operation. No agreement has been reached at this time. Therefore, due to the lack of action and mitigation agreement between Ag Land Trust and Cal-Am, the Board of Directors of the Ag Land Trust is forced to re-iterate its opposition to the appeal by Cal-Am of the denial of Cal-Am's slant well application by the Planning Commission of the City of Marina.

We hereby incorporate by reference each and every prior submission provided by our attorneys and us to the City of Marina, and its consultants and staff, as correspondence and/or exhibits in opposition to the pending Cal-Am slant well application. We oppose the Cal-Am slant well application and test wells because these applications fail to comply with CEQA and totally lack any groundwater rights in the overdrafted groundwater basin. We further agree with and incorporate by reference, and adopt as our additional comments, all of the statements included in the letter of objection written to the City of Marina dated September 3, 2014 from the law firm of Remy, Moose, and Manley LLC on behalf of the Marina Coast Water District.

Due to the absence of mitigation agreement the Ag Land Trust continues to object to the application by Cal-Am, in part, based upon the following reasons:

1. The California American Water Company has no groundwater rights in the overdrafted Salinas Valley groundwater basin. As a proposed junior appropriator, and as a matter of both California case law and statutory law, Cal-Am cannot acquire groundwater rights in that overdrafted basin, and is prohibited from exporting any groundwater, including the water pumped from their proposed test well, from that basin. The statutory prohibition is absolute. Cal-Am's so-called "physical solution" is prohibited by statute. The proposed "test wells" are a shame to obfuscate Cal-Am's lack of property/water rights to legally pursue its proposal. Moreover, Cal-Am's application poses grave and unmitigated adverse impacts (including, but not limited to loss of agricultural productivity, loss of prime farmland, loss of existing jobs, loss of potable water supplies and ground water storage capacities, loss of beneficial results from regionally funded and publicly owned seawater intrusion reversal capital projects (i.e. CSIP and the "Rubber Dam"), and intentional contamination of potable groundwater supplies) upon the privately held overlying

The Ag Land Trust is a 501 (c)(3) non profit organization.
Donations are welcome and tax deductible.

groundwater rights, water supplies and resources, and property rights of the Ag Land Trust, other overlying land owners with senior groundwater rights in the Salinas Valley, and of the residents of the City of Marina and the Salinas Valley.

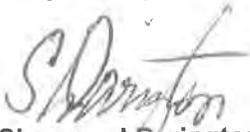
2. The current Cal-Am slant wells/test wells application has identified no mitigation for the groundwater contamination that it will induce into the Ag Land Trust's underlying groundwater resources and storage aquifers. Cessation of wrongful pumping by a non-water rights holder in an overdrafted basin IS NOT MITIGATION FOR THE DAMAGE THAT WILL BE INDUCED TO OUR GROUNDWATER RESOURCES. Failure to identify an appropriate mitigation for the groundwater contamination that will result from the pumping of the 8,000.0 acre feet of groundwater from the test wells is a violation of CEQA. Further, Cal-Am's plan of intentionally inducing seawater into a potable groundwater aquifer that underlies our property is an intentional violation of both the 1968 SWRCB Resolution 68-16, the California Non-Degradation Policy, and the Basin Plan as adopted by the Central Coast California Regional Water Quality Control Board. Such intentional "bad acts" may be prosecuted both civilly and criminally against parties who are complicit in such intentional potable water supply contamination.

3. The 1996 agreement between the City of Marina, the MCWD, the land owners of the CEMEX site, the Armstrong family and the County of Monterey/MCWRA prohibits the extraction of more than 500 acre feet of groundwater annually from any wells on the CEMEX site as a condition of the executed agreement/contract. It further mandates that such water be used only on-site at the CEMEX property, within the Salinas Valley groundwater basin, as mandated by statute. The Ag Land Trust is a third party beneficiary of this 1996 agreement because Ag Land Trust pays assessments to the County of Monterey expressly for the seawater intrusion reversal projects known as CSIP and "the Rubber Dam". Cal-Am is prohibited from pursuing its project because of this prior prohibition and because Cal-Am's proposed acts will cause an ongoing nuisance, will directly injure Ag Land Trust property rights, and will irreparably compromise the beneficial public purposes of the above reference publicly owned capital facilities.

4. The granting of Cal-Am appeal will result in a loss of groundwater resources by the City and MCWD, massive expenses to the residents of Marina, and the effective transfer of water resources to a private company that provides no benefit or service to the City of Marina or its citizens.

We respectfully request that the Cal-Am appeal be denied, and if not, that as a condition of approval, the approval is subject to a signed mitigation agreement between Cal-Am and the Ag Land Trust prior to the construction of any well or wells. Furthermore, we believe that the Marina Planning Commission's denial of the Cal-Am application was well reasoned and correct. If the Council chooses not to deny the Cal-Am application, the Ag Land Trust respectfully requests that a full and complete EIR on the proposed slant wells (and their significant and unmitigated impacts and threats to regional groundwater supplies and the communities of Marina and the Salinas Valley as well as the determination of Cal-Am's groundwater rights) be prepared as mandated by CEQA. Failure to fully and completely require Cal-Am to comply with CEQA by requiring a full EIR will expose the City and its residents to the loss of public funds due to attorney's fees, litigation expenses, damages awards, and costs that provide no benefit to the City or to its citizens.

Respectfully,



Sherwood Darington
Managing Director
Ag Land Trust



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

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

August 11, 2011

TO: California Coastal Commission

From: The Ag Land Trust of Monterey County

RE: Groundwater Rights and Submerged Lands

Tom Luster asked the question "Who owns the groundwater in the 180 ft. aquifer under the ocean?"

The answer is that, under California case law which controls the ownership and use of potable (fresh) groundwater rights in our state, each property owner with land that overlies a percolated fresh groundwater aquifer (including the State of California as the "public trust owner" of submerged lands that are overlying the Salinas Valley potable groundwater aquifer that extends into the Monterey Bay National Marine Sanctuary) is entitled only to its correlative share of the safe yield of the fresh groundwater that may be used without causing additional over-draft, adverse effects, waste and/or damage to the potable water resource or to the water rights of the other overlying land owners. (Katz v. Walkinshaw (141 Cal. 116); Pasadena v. Alhambra (33 Calif.2nd 908), and reaffirmed in the Barstow v. Mojave Water Agency case in 2000). The Commission has no right to authorize or allow the intentional contamination and waste of a potable aquifer which is also a Public Trust resource (see below), and such an act would be "ultra vires" and illegal.

The proposed slant "test" wells are intended to violate these laws and significantly induce saltwater and contamination into an overdrafted freshwater aquifer (a Public Trust resource) thereby causing depletion, contamination, waste, and direct and "wrongful takings" of the private water rights of other overlying land owners and farmers. Further, the project proponents, by their own admission, have no groundwater rights in

the Salinas Valley aquifer because they are not overlying land owners. Such a "taking" will constitute a direct and adverse impact and impairment of the public's health and safety by diminishing a potable groundwater aquifer and a Public Trust resource. It will also adversely affect protected coastal priority agricultural enterprises.

In an overdrafted potable groundwater basin, no property owner or user of water is entitled to pump or take any such actions as to waste, contaminate, impair, or diminish the quality or quantity of the freshwater resource. The overdrafted Salinas Valley fresh water groundwater aquifer that extends under the Monterey Bay National Marine Sanctuary is identified as a potable water resource by the State and is governed the SWRCB Groundwater Non-Degradation Policy, which finds its source in the California Constitution:

CALIFORNIA CONSTITUTION ARTICLE 10 - WATER

SEC. 2. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

In other words, the state has determined that the subject Salinas Valley potable groundwater aquifer is a protected natural resource. The state may use the fresh groundwater only to the extent that it has a correlative right that accrues to its public trust lands as against all other overlying land owners that are exercising their rights and using the fresh groundwater for beneficial uses, as mandated and protected in the California Constitution. Further, the 1968 SWRCB Non-Degradation Policy absolutely prohibits the intentional contamination and/or "waste" of a potable groundwater aquifer by any party. (See attached Resolution No. 68-16) The fact that the Salinas Valley aquifer is a potable supply is definitively established in the Central Coast Regional Water Quality Control Board "Basin Plan" for Central California

Additionally, the mandatory requirements of the California Coastal Act also control the conduct, powers, and authority of the Calif. Coastal Commission when addressing these Public Trust resources and this application.

The California Coastal Act - Section 30231 (California Public Resources Code Section 30231) requires of the Commission that:

Sec. 30231 - 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed test wells directly and intentionally violate the mandatory statutory requirements, duties, and obligations imposed upon the California Coastal Commission by Section 30231 of the Coastal Act to protect and preserve and restore this potable water resource and protected coastal resource. The Salinas Valley potable groundwater aquifer, which is proposed to be wrongfully exploited by the project applicants' slant test wells, is a "coastal water", is producing potable water which is used and recognized for human consumption and coastal priority agricultural production, and shall be "protected from depletion" by the express language of the Coastal Act.

Finally, in the landmark Public Trust case of National Audubon Society v. Superior Court of Alpine County (1981), the California Supreme Court confirmed as part of its "Public Trust Doctrine" that the State retains continuing supervisory control over the navigable waters of California and the lands beneath them. This prevents any party from acquiring a vested right to appropriate water in a manner harmful to the uses protected by the Public Trust. (California Water Plan Update 2009, Vol. 4, Page 2 (1)).

The proposed slant test wells are designed to intentionally deplete, contaminate, and waste a protected potable water supply and a Public Trust resource. The project will violate statutory and regulatory mandates of the California Coastal Act, the California Water Code, the

California Public Resources Code, the California Constitution, and over 100 years of case law governing groundwater rights and the Public Trust Doctrine. It will result in the wrongful taking of water rights from farmers who are beneficially using the water for protected, coastal priority agricultural production and for human consumption. Besides that, the project applicants, by their own admission, have no appropriative groundwater rights. They should not even be entitled to a hearing.

This project should be denied, or at the very least continued until the Monterey County Superior Court can rule on the two lawsuits that are pending over these issues.

A handwritten signature in cursive script, appearing to read "Marc DePaulo". The signature is written in dark ink and is positioned below the second paragraph of text.

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 68-16

STATEMENT OF POLICY WITH RESPECT TO
MAINTAINING HIGH QUALITY OF WATERS IN CALIFORNIA

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

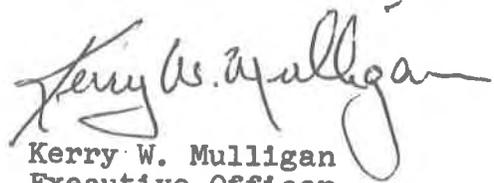
1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.
2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
3. In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Secretary of the Interior as part of California's water quality control policy submission.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 24, 1968.

Dated: October 28, 1968



Kerry W. Mulligan
Executive Officer
State Water Resources
Control Board

LAW OFFICES OF
MICHAEL W. STAMP

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July 26, 2011

Via Email

Thomas Luster
Energy, Ocean Resources, and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dan Carl, District Manager
Michael Watson, Coastal Planner
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

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

Dear Mr. Luster, Mr. Carl and Mr. Watson:

This Office represents Ag Land Trust, which owns agricultural properties in the Salinas Valley. For years, Ag Land Trust has pointed out that the Regional Desalination Project does not have valid water rights. The environmental documents to date have failed to point to valid groundwater rights for the project, and instead took various inconsistent positions on water rights.

This letter responds to new claims made by Downey Brand LLP, attorneys for the proponents of the Regional Project, in a letter dated May 20, 2011 to Lyndel Melton, P.E., of RMC Water and Environment. The Downey Brand letter was submitted to the Coastal Commission as part of the Regional Project proponents' response to the Commission's incomplete letter.

The Downey Brand letter raises various claims which may have superficial appeal but in reality 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" (Downey Brand letter, sec. 1, pp. 1-4) are addressed briefly here. Of the four different Downey Brand claims, none has merit, and none provides the necessary proof of water rights.

Downey Brand's General Claims about Water Rights

Monterey County Water Resources Agency has no groundwater storage rights, no overlying groundwater rights, and no "imported water rights." The Salinas Valley is

not an adjudicated groundwater basin. 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 of Salinas, according to the latest (2009) mapping. (Historic Seawater Intrusion Map Pressure 180-Foot Aquifer, attached as Exhibit A to this letter.)

The EIR for the Coastal Water Project did not comprehensively or 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, 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, 2011 [<http://www.thecalifornian.com/article/20100331/NEWS01/3310307/280M+-desalination-plant-10-mile-pipeline-agreed-on-for-Monterey-Peninsula>].) The Regional Project intake wells would be owned and operated by MCWRA.

The Coastal Commission should not be misled by the claims of Downey Brand, starting with the claim that the 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. .)

The general claims made in the Downey Brand letter about water rights (at p. 1, bottom paragraph) should be disregarded because they are devoid of specific citation to law or to specific water rights. The specific claims made 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, p. 2) While that may be true, MCWRA's powers do not include groundwater rights that it can use 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 intentionally abandons and "loses management and control" of that surface water when the MCWRA releases the water into the rivers and subsequently lost to percolation. "Management and control" are prerequisites to maintain the use of any right to water. In its letter, 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. Downey Brand's approach is inconsistent with basic California groundwater law which holds that waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are

what the Regional Project would do. An overlying right is the owner's right to take water from the ground underneath for use on his land within the basin. An overlying right it 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.)

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." (Downey Brand letter, p. 2.) There is no cognizable legal support given by Downey Brand for that claim in the sole case it cites: the California Supreme Court in *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 ("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 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 those rights which attach to water that does not originate within 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 claim of "developed" water. 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, 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. (Wells A. Hutchins, *The California Law of Water Rights* (1956) at pp. 383-385.) Appropriative rights to salvaged water depend on the original source of the water supply. (*Pomona Land and Water Company v. San Antonio Water Company* (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 and the interests of other vested rights must be protected. (*Ibid.*, at p. 623.)

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

Downey Brand cites the doctrine of salvaged water as discussed in *Pomona Land and Water Company v. San Antonio Water Company*, *supra*, 152 Cal. 618 (*Pomona*), but that case does not help the Regional Project. *Pomona* involved a dispute between two water companies who appropriated water from a creek. The companies had existing water rights and a contractual agreement on how the waters flowing in the creek were to be divided between them. San Antonio Water built a pipeline in the creek and "saved" some water that would otherwise had been lost due to seepage, percolation, and evaporation. When Pomona claimed half of this saved water, 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 ruled for San Antonio, holding that Pomona was entitled only to the natural flow, and that San Antonio was entitled to any amount saved by its economical method of impounding the water.

The Regional 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 – water which is fully appropriated. 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 (Downey Brand letter, 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 take it to 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 groundwater rights that can be applied to the Regional Project. The Water Purchase Agreement does not award water rights to anyone.

Conclusion

None of the Downey Brand claims provide proof of groundwater rights. In an overdrafted basin, proof of water rights is essential before groundwater can be appropriated. The Coastal Commission does not have the authority to grant groundwater rights or to grant approval of a project that relies on the illegal taking of groundwater that belongs solely to the overlying landowners of the Salinas Valley. We urge the Coastal Commission to consult with its own expert water rights counsel with regard to this critical issue.

Thank you for the opportunity to respond to the Downey Brand letter. Feel free to contact me with any questions.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP

Molly Erickson

- Exhibit A: "Historic Seawater Intrusion Map Pressure 180-Foot Aquifer" showing intrusion as of 2009, dated November 16, 2010 (available at <http://www.mcwra.co.monterey.ca.us/SVWP/01swi180.pdf>)
- Exhibit B: Salinas Californian article, March 31, 2011
- Exhibit C: Letter from MCWRA to Molly Erickson, March 24, 2010

FAX TRANSMISSION



MONTEREY COUNTY WATER RESOURCES AGENCY
P. O. BOX 930
SALINAS, CA 93902
831.755.4860
FAX: 831.424.7935

FOR IMMEDIATE DELIVERY

DATE: 3/25/10

To: Molly Erickson

From: David Kimbrough

C/O:

FAX: 373-0242 ()

Re: PRAR-3/3/10

MONTEREY COUNTY

WATER RESOURCES AGENCY

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CURTIS V. WEEKS
GENERAL MANAGER



STREET ADDRESS
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SALINAS, CA 93801-4456

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.

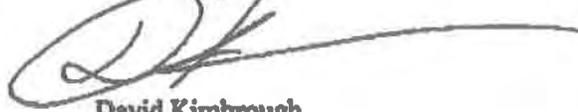
As to MCWD, it was previously annexed into Zones 2 & 2A and as such has a right to ground water. These documents are hereby attached PDF files.

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

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

LAW OFFICES OF
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March 3, 2010

Via Facsimile

Les Girard
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Salinas, CA 93901

Irv Grant
Deputy County Counsel
Monterey County Water Resource Agency
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Subject: Public Records Request

Dear Mr. Girard and Mr. Grant:

This Office would like to inspect the following County records and County Water Resources Agency records, and possibly copy some of them.

1. All records that reference the groundwater rights held by Monterey County Water Resources Agency or by Marina Coast Water District, as asserted at the Board of Supervisors hearing on Friday afternoon, February 26, 2010, by Curtis Weeks, General Manager of the County Water Resources Agency.

As further information, we seek all records on which Mr. Weeks based his response to Supervisor Calcagno's question regarding whether the Water Resources Agency has rights to pump groundwater for the proposed Regional Project. Mr. Weeks responded as follows:

"As to wells that are developing basin water, both ourselves and Marina Coast Water District are organizations that can pump groundwater within the Salinas basin. Every drop of water that we pump that is Salinas groundwater will stay in the Salinas groundwater basin. After the implementation, which will begin . . . actually, the operation of the Salinas Valley Water Project on the 22nd of April, we'll be fully in balance. There will be no harm to any pumpers in the Salinas Valley."

2. All records that show that after the initiation of the operation of the Salinas Valley Water Project, the Salinas Groundwater basin will "be fully in balance," as Mr. Weeks asserted.

March 3, 2010
Les Girard, Assistant County Counsel
Irv Grant, Deputy County Counsel
Page 2

The request includes all email communications of all kinds, including those, for example, residing on personal computers, on shared drive(s), and in archived form. We request access to the emails in the same format held by the County. (Gov. Code, § 6253.9, subd. (a).) Instead of printing out electronic records, please place them on CDs. If the records are kept individually, please copy them as individual emails, and include attachments attached to the respective emails.

If you produce an EIR or any lengthy documents in response, please identify the specific pages on which the responsive information is presented.

If there are records that you think might be eliminated from the County production, please let me know. If the County has any questions regarding this request, please contact me. We will be happy to assist the County in making its response as complete and efficient as possible.

I draw the County's attention to Government Code section 6253.1, which requires a public agency to assist the public in making a focused and effective request by (1) identifying records and information responsive to the request, (2) describing the information technology and physical location of the records, and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought.

If the County determines that any or all of the information is exempt from disclosure, I ask the County to reconsider that determination in view of Proposition 59, which amended the state Constitution to require that all exemptions be "narrowly construed." Proposition 59 may modify or overturn authorities on which the County has relied in the past. If the County determines that any requested records are subject to a still-valid exemption, I ask that: (1) the County exercise its discretion to disclose some or all of the records notwithstanding the exemption, and (2) with respect to records containing both exempt and non-exempt content, the County redact the exempt content and disclose the rest.

Should the County deny part or all of this request, the County is required to provide a written response describing the legal authority on which the County relies.

Please respond at your earliest opportunity. If you have any questions, please let me know promptly. Thank you for your professional courtesy.

Very truly yours,


Molly Erickson

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December 16, 2009

Via Email

Michael R. Peevey, President,
and Members of the Commission
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Subject Coastal Water Project EIR Does Not Comply with CEQA; Illegal
Piecemealing of Environmental Review; Potential Takings Claim**

Dear President Peevey and Member of the California Public Utilities Commission:

This Office represents the Ag Land Trust, which owns property that would be affected by the proposed Regional Project. (See attached figure.) The Ag Land Trust was formerly known as the Monterey County Agricultural and Historic Land Conservancy. On the Commission's December 17, 2009 agenda, there is a request to certify the Environmental Impact Report (EIR) for the Coastal Water Project.

The Ag Land Trust urges the Commission to delay the proposed certification of the EIR for many reasons, including these:

1. If the CPUC certifies the EIR now, local public agencies plan to use it to approve one of the project alternatives, thereby taking away the authority of the CPUC to select a project based on this EIR.
2. The Public has had inadequate time to review the EIR, which is over 3,100 pages and is not available in hard copy anywhere in Monterey County. The Public was told that the EIR certification would be considered in January 2010. The certification was expedited to December 2009 with inadequate notice to the Public.
3. The EIR is deeply flawed. The public needs more time to advise the Commission as to the flaws, so the EIR can be corrected to address key issues adequately.

**As Soon as the EIR is Certified, the Local Agencies Plan to
Jump Ahead of the CPUC and Approve the Regional Project.**

The Regional Project is the third of the three projects analyzed in the EIR. As soon as the CPUC certifies the EIR, the local public agencies that are the proponents of the Regional Project plan to rely on the EIR to approve the Regional Project on an

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 2

expedited basis, as the attached December 9, 2009 powerpoint documents show (see p. 5). The project proponents have already determined that the CPUC's EIR is inadequate as to specific known potential impacts, including brine disposal. Given the EIR omission, a local agency plans to issue a supplemental environmental document to address brine disposal, and the local agencies can then be under way with the Regional Project, making the CPUC's future scheduled action to select a project meaningless.

The local agencies would be able to do this because they are not subject to CPUC authority. They are seeking grant funding which would provide project financing. Once the local agencies approve the Regional Project, the CPUC would not be able to rely on its certified EIR to select either of the two projects proposed by Cal Am. The reason is that to select either of the Cal Am projects would mean the CPUC would be allowing a second project to be built, in addition to the Regional Project. The EIR does not evaluate the environmental impacts of two projects being built. It addresses the impacts of only one of three projects being built. If the local agencies approve the Regional Project first, as they plan to do, then when the CPUC in April 2010 considers selecting a project, the CPUC could not rely on its own EIR to do so because the EIR does not envision two projects being built. A second project would have significant cumulative and growth-inducing impacts that have not been analyzed in the EIR.

The CPUC cannot certify an EIR for a project over which it has no jurisdiction. Under CEQA, "lead agency" is defined as "the public agency which has the *principal* responsibility for carrying out or approving a project which may have a significant effect upon the environment." (Pub. Resources Code, § 21067, italics added.) The CPUC is not the lead agency for the Regional Project, because the CPUC would have no role in approving or carrying out the desalination plant, the source water wells and pipelines, or the brine disposal, which are the principal facilities of the Regional Project. The desalination plant would be owned and operated by the Marina Coast Water District (MCWD), a local public agency. Monterey County Water Resources Agency (MCWRA) would own and operate the wells. The brine disposal would be through facilities owned by the Monterey Regional Water Pollution Control Agency (MRWPCA). The public agencies would carry out and approve the project. The lead agency for the Regional Project should be a local agency.

As the Court of Appeal held in addressing the issue of the lead agency, "Our threshold question here is which agency . . . has the principal responsibility for the activity." (*Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District* (1994) 28 Cal.App.4th 419, 427.) The specific facts of a case determine who is lead agency. (*Id.*, at p. 428.)

The Legislature enacted CEQA in 1970 as a means to force public agency decisionmakers to document and consider the environmental implications of their actions. (§ 21000,

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 3

21001; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 254-256, criticized on another ground in *Kowis v. Howard* (1992) 3 Cal.4th 888, 896.) CEQA and its Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) constitute a comprehensive scheme to evaluate potential adverse environmental effects of discretionary projects proposed to be carried out or approved by public agencies. (§ 21080, subd. (a); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 437.) "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.'" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390, quoting *Friends of Mammoth v. Board of Supervisors, supra*, 8 Cal.3d at p. 259.)

The issue here is . . . [which public agency] was the public agency required under the act to evaluate potential adverse environmental effects of this activity. Or, using the applicable terms of art under CEQA, the issue is whether the District was the "lead agency."

(*Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District, supra*, 28 Cal.App.4th 419, 426, internal parallel citations omitted.)

Under CEQA, a local agency must be lead agency for the Regional Project due to (1) the CPUC's lack of jurisdiction over the Regional Project's primary components, (2) the local agencies' ownership interests in the proposed desalination plant, source wells and pipeline, and brine disposal, and (3) the local agencies will be the first to act on the project approvals (see FEIR Figure 5-6 and presentations attached to this letter for reference).

EIR Discussion of "Lead Agency" is Inconsistent and Misleading.

The EIR does not clearly present this issue. Instead, the EIR discussion of agency roles under CEQA is inaccurate and fails to disclose the material facts or the issues. The EIR lacks the required comprehensive discussion of the issues to inform the public and decisionmakers. At best, the EIR creates a significant ambiguity.

The EIR repeatedly describes the CPUC as the lead agency, and the local agencies (such as the MCWD, MCWRA, and MRWPCA) as responsible agencies (e.g., FEIR Master Response 13.3). The EIR does not directly address whether those roles

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 4

would be different for any of the project alternatives. Instead, in discussing the Regional Project, the EIR merely alludes to the CPUC as not having direct authority or jurisdiction over the project proponents. The EIR never addresses a key CEQA issue: that the CPUC is not the lead agency for the Regional Project. The EIR never identifies which agency would be lead agency for the Regional Project.

The ALJ'S Draft Decision Compounds the Problems.

Perhaps as a result of the EIR's confusing discussion, the draft decision before the CPUC to certify the EIR contains similar important ambiguities. For example, the draft decision states that Phase 2 of the Regional Project is not subject to the CPUC's approval at this time. (Draft Decision, rev. 1, p. 19.) However, the draft decision fails to clarify that Phase 1 of the Regional Project is also not subject to the CPUC's approval – either now or in the future – because the project proponents are not subject to CPUC jurisdiction. The project proponents – the local public agencies – can and plan to approve and carry out the Regional Project without CPUC involvement.

Only one week after the EIR was released, the ALJ issued a proposed draft decision certifying the EIR, which was later revised with minor non-substantive changes. The draft decision proposes that the CPUC make findings that are not authorized by CEQA, and proposes an order for which the CPUC has no authority. The Order states that the EIR is "certified for use by . . . responsible agencies in considering subsequent approvals of the project, or for portions thereof." (Draft decision, p. 24.) The CPUC does not have authority to make that order, and no supporting reference is provided. If local agencies approve the project or project components first, before the CPUC does or can, then the first local agency to act becomes the lead agency under CEQA. (See *City of Sacramento v. State Water Resources Control Board* (1992) 2 Cal.App.4th 960; *Citizens Task Force on Sohio v. Bd. of Harbor Commissioners of the Port of Long Beach* (1979) 23 Cal.3d 812.)

The draft decision asserts (p. 20) without legal support that "the lead agency must find that the document was (or will be) presented to the decisionmaking body for review and consideration prior to project approval." There is nothing in CEQA that requires a finding that the document "will be" presented to the decisionmaking body, and such a finding is both misleading and confusing. Further, with regard to the Regional Project, the CPUC has no authority over what documents will be presented to the various decision-making bodies who will act on project components. As another example, the proposed finding of fact #1 fails to state that the CPUC is not the lead agency for review of the Regional Project alternative. The CPUC has no authority over the local agencies who are the proponents of that project. The draft decision is also inaccurate in key respects, including the claim that the FEIR states that the Monterey Peninsula has experienced seawater intrusion for decades. The Monterey Peninsula

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 5

has no documented problems with seawater intrusion. Throughout this proceeding, the lack of familiarity with the on-the-ground conditions has been a significant problem.

The Final EIR Is Deeply Flawed and Does Not Comply with CEQA.

The project description has changed dramatically from the Notice of Preparation to the Draft EIR to the Final EIR. This violates the basic CEQA tenet that "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR. (*Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Ass'n.* (1986) 42 Cal.3d 929, 938, internal citations, quote marks and punctuation omitted.) Here, the changes from the Notice of Preparation, to the Draft EIR, to the Final EIR have violated this basic principle. As one example, a project alternative (the Regional Project) that was not proposed to be built by the project applicant (Cal Am) and was not subject to the CPUC's jurisdiction was added after the EIR was under way. Under the circumstances, the EIR's inclusion of the Regional Project was highly unusual and not adequately explained in the EIR, either substantively or procedurally. Other examples of the significant EIR flaws are provided here.

Lack of Compliance with Monterey County Code: No Alternative Water Supply:
The EIR fails to disclose Monterey County's requirement that each desalination plant include an alternative source of water supply (Monterey County Code, Ch. 10.72). The code requires that a permit be obtained for all desalination facilities (10.72.10), and states that the permit application shall include:

a contingency plan for alternative water supply which provides a reliable source of water assuming normal operations, and emergency shut down operations. Said contingency plan shall also set forth a cross connection control program.

(Monterey County Code, § 10.72.020.F, attached for reference.) None of the three proposed projects includes a "contingency plan for alternative water supply." As proposed, the City of Marina and the majority of the Monterey Peninsula population would rely on the project for their water supply. If that supply fails, either for a short term or for a long term, the community will not have a water supply. The EIR does not analyze the projects' inconsistencies with the County requirement for an alternative water supply. In response to the comment that the project should include an operations plan and a contingency plan, the EIR merely states "comment noted." (FEIR, G-SVWC-13 and response thereto.)

The EIR omission is significant due to CEQA's requirement that in order to fulfill CEQA requirements, environmental review is mandated "at the earliest possible stage." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282.) By failing to

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 6

include consideration of an alternative water supply in the project description, the EIR is piecemealing the environmental review, because such alternative supply is required.

The EIR omission is also significant due to the magnitude of the health and safety risk to the community which is the County Code intends to address. (See attached County documentation supporting the creation of Chapter 10.72.) Desalination plants have a very poor record of operations and maintenance. There is no record of any desalination plant of any size, such as proposed here, operating for any reliable period of time in the United States. The few that have been constructed have had very serious design, construction, and maintenance issues. For this reason, the success of the three proposed projects is pure speculation. If, as proposed, the vast majority of the Monterey Peninsula population and all of Marina -- including residents, industry and business -- rely on the desalination plant for their water supply, and the supply stops, or is interrupted, there would be very significant impacts and risks to public health and safety. The EIR does not address this issue.

Incorrect and Misleading Statements: The EIR contains incorrect and misleading material statements. The inaccuracies extend to basic information about the current environmental setting. For example, section 1.6 Project Setting (pp. 1-7 and 1-8) contains significant misstatements of fact. No support is provided for these misstatements which include (1) the claim that the MCWRA is a primary custodian of water supplies in North Monterey County (when in fact, MCWRA is not a water supplier and, critically, does not have appropriative rights), (2) the claim that the Salinas Valley Water Project will "stop seawater intrusion and provide adequate water supplies to meet current and future (2030) needs" (when in fact the SVWP EIR admits it may not achieve those goals), and (3) the claim that the San Clemente Dam is "the major point of surface water diversion from the [Carmel] river" (when in fact the San Clemente Dam provides no water supply because it is fully silted up and is proposed to be removed). These three examples early in the EIR set the stage for the myriad errors and misrepresentations that permeate the EIR document. There are many other problems which the public has been unable to present to the CPUC staff because of the expedited schedule, the length of the EIR, and the lack of availability of a hard copy of the EIR. The EIR preparer should correct all errors before the EIR is considered for certification.

As another material example, the EIR incorrectly identifies and discusses Zone 2C in a way that is misleading to the public and to decisionmakers. (See, e.g., FEIR, p. 6.2-16.) Zone 2C is not a groundwater scheme. It is a zone created for the purposes of tax assessments, and delineates the boundary of the area that would purportedly benefit from -- and therefore be assessed for -- the Salinas Valley Water Project, which is a surface water project. The distinction is critical.

Failure to Adequately Analyze Potential Environmental Impacts of Project; Failure to Adequately Describe or Analyze Environmental Setting; Failure to Adequately Describe or Analyze Cumulative and Growth-Inducing Impacts: These failures take many forms. As one significant example, the FEIR fails to adequately disclose that the local agencies' hybrid Regional Urban Water Augmentation Project (RUWAP) would produce up to 3,000 AFY, which is expected to be online between 2008 and 2015. The EIR describes the RUWAP as producing only 1,000 AFY. It fails to identify or investigate the additional 2,000 AFY of RUWAP supply that is currently under active implementation, and that would be provided to the MCWD and the Peninsula. As a result, the EIR fails to adequately analyze the potential growth-inducing environmental impacts of the proposed projects, fails to adequately describe or analyze environmental setting, and fails to adequately describe or analyze cumulative impacts. (See attachments for further documentation of the hybrid RUWAP project currently under way by local agencies.)

Failure to Adequately Investigate or Disclose Brine Disposal Impacts: The EIR fails to analyze the potential impacts of the proposed ocean outfall disposal of the brine that would be produced by the desalination plan. As one material example, the Regional Project proposes to use the treated water wastewater outfall owned by the MRWPCA. Studies indicate that MRWPCA's outfall capacity may not be available for all outfall flow conditions. It is unknown whether the outfall could accommodate all outfall operating parameters if the Regional Project is built. It is foreseeable that brine discharge would exceed outfall capacity during high-flow periods. There is no analysis of the availability of wastewater for the various demands of multiple projects. It is foreseeable that if all wastewater is used for disposal and brine dispersion, that commitment would cause significant impacts on the RUWAP (which uses recycled water from the MRWPCA) and the Ground Water Replenishment project that is an essential part of the Regional Project.

The EIR fails to disclose or investigate these issues or their potential significant impacts. The EIR fails to investigate important issues including: the capacity of the existing outfall to accommodate increased brine flow; the potential sacrifice of outfall capacity allocated for future development in the area in favor of allocating unused capacity for brine; minimization of stormwater capacity in the outfall and how this might be mitigated (e.g., storage tanks, ASR well, if mitigation is even possible, etc.); or blended water quality in light of applicable water quality parameters, including NPDES discharge limits for TDS. Further, the EIR fails to adequately describe or investigate the fate of desalination-facility cleaning chemicals and other project waste streams. This is not new information. It has been openly and publicly discussed since at least early 2008. (See February 20, 2008 report to MPWMD, attached.)

The local agencies have acknowledged that the CPUC's EIR does not adequately address brine disposal through their own actions to address the omission.

Even before the comment period on the CPUC's Draft EIR closed, one agency had already begun to prepare a separate environmental review of brine issues that should have been included in the CPUC's EIR. This fractured approach to environmental review of project components is piecemealing, which is prohibited by CEQA. The local agency's work is intended to allow the local agencies to move ahead with the Regional Project without the active involvement of the CPUC, and even if the CPUC intends to select a different project of the three analyzed in the EIR.

Piecemealing of Project Review: Another example of the EIR's inadequacy and piecemealing is the project description's failure to include the known cogeneration facility that is part of the project. That facility has been proposed at least since 2008, before the Draft EIR was released. (See attached references, including March 2009 presentation by Curtis Weeks of Monterey County Water Resources Agency.) As a result of this failure, the EIR fails to analyze the potential environmental impacts of that facility. The very brief EIR discussion (FEIR pp. 5-45 and 5-46) contemplates the new facility, but defers analysis to a future date. The new facility is foreseeable and would be built as part of the Regional Project, to enable the project. The environmental analysis should not have been deferred, and should have been included in the FEIR.

Unanalyzed Impacts on Overdrafted North County Aquifers: The FEIR is claiming the "modeling" indicates there will be no impacts of pumping 24,000+ AFY out of the 180-foot aquifer. However, a review of the well locations upon which the EIR modeling is based shows that none of them are located within any of North County's hydrological subareas.¹ For this reason, the wells could not show impacts to North County wells, because that information was not part of the model. The Salinas Valley Water Project was approved by the voters based on claims that it would improve the North County aquifers, which are uphill from the Salinas Valley Groundwater Basin. Several times, MCWRA general manager Curtis Weeks has publicly described that claim by likening the basin to a bathtub into which North County aquifers run, and when the water level of the bathtub increases, the aquifers do not run downhill to the same extent. Here, the EIR fails to analyze whether the pumping of 24,000+ AFY – or 88,000 AFY, as is foreseeable – on the North County hydrological subareas.

EIR Relies on False Assumption: The EIR uses the modeling presented by the project proponents. According to the EIR, project proponent's Regional Project impact analysis relied on a modeling assumption that the SWP Phase II would be in place.

¹ This can be determined by reviewing the mapping of North County's subareas in relation to major roadways, and comparing that information to the figures showing well locations in the EIR appendices in relation to those same roadways.

The SVIGSM modeling used to evaluate impacts of the Regional Project was based on a future baseline condition that assume complete implementation of Phase II of the SVWP.

(FEIR, p. 14.5-145.) However, no "Phase II of the Salinas Valley Water Project" is in place, and it is unclear what the EIR means. A second SVWP phase is not proposed, approved, funded or built. The Salinas Valley Water Project EIR did not use the term "Phase II," but it did envision an expanded distribution system to address the continuing water supply challenges in the Salinas Valley (e.g., SVWP EIR, p. 2-294). Because the modeling of the SVWP indicated that the SVWP may not halt seawater intrusion, the MCWRA contemplated a future expanded distribution system. Presumably that future expanded system is what the CWP EIR means when it refers to "Phase II of the SVWP." The SVWP EIR projected a cost of more than \$40 million for this distribution system, which presumably voters would need to approve, just as voters were required to approve the initial SVWP phase currently under construction. Since then, every distribution scheme the MCWRA has discussed dwarfs the \$40 million estimate found in the EIR.

The CWP EIR describes what is calls "Phase II" of the SVWP as "Increased diversion. Delivery could be directly to urban or could be expanded to CSIP with equivalent amount of pumped groundwater to urban." The CWP EIR also describes it as "urban supply." (FEIR, p. N-44.) The purported "Phase II" is also addressed at page 6.2-18. It is unclear to which Regional Project phase the CWP EIR discussion applies.

The EIR does not identify all of the assumptions used by the project proponents for their modeling, which is a significant concern. As a result, the public and the decision makers are not informed of the project proponents' assumptions, which can make a critical difference in the outcome of the modeling on which the EIR relied. The modeling and reliability is no better than the reliability of the underlying assumptions, and the assumptions are not adequately described.

Inadequate Investigation and Disclosure of Impacts to Overlying and Adjacent Properties: The EIR does not adequately investigate or discuss the impacts on overlying or adjacent properties. For this reason, the EIR fails as an informational document under CEQA.

The EIR even fails to clearly identify where the projects would be located, which is another aspect of the inadequate and changing project description. There is no reliable information as to where the wells or the pipelines would be located. Revised Figure 5-3 is the EIR's best depiction of the well and pipeline locations for the proposed seawater intake. The poster figure is a blurry generalized drawing. The figure fails to

identify the difference between the blue swath and the brown swath. The EIR does not identify property, parcels, or locations.

The EIR inappropriately defers that crucial investigation to a future date, and does not contemplate further CEQA review of that information. That was verified by Janet Brennan on December 11, 2009, in email communications with Eric Zigas, ESA (attached).

This deferred analysis is inappropriate under CEQA for several reasons. As one example, it fails to adequately address and identify the potential environmental impacts on the properties or potential property rights or taking issues. The Ag Land Trust has identified potential impacts and issues several times in its communications with the CPUC and ESA. It has not received any response other than a cursory and inadequate one in the EIR response to comments. The Ag Land Trust, which owns property underlying the blue swath on Figure 5-3, and possible the brown swath as well, has important property interests at stake, but never received notice from the CPUC, Cal Am, or the local agencies of the proposed certification of the EIR on December 17, 2009. The EIR claims that contacts were made with overlying landowners, but the Ag Land Trust was not contacted. (See the attached figures to show the Ag Land Trust properties with respect to the proposed Regional Project.)

In a related example, the EIR fails to adequately disclose or consider the projects' potential impacts on sensitive habitat. For example, the Martin Dunes property is included in the blue swath that identifies well locations and pipeline locations for the Regional Project (see FEIR Revised Figure 5-3 and figures attached to this letter).² The Martin Dunes property contains one of California's most ancient and intact dune ecosystems. It is located south of the Salinas River National Wildlife Refuge. At least six federally or state listed species are known to occur at the site, including Western snowy plover, Smith's blue butterfly, Monterey spineflower, Monterey gilia, Menzies' wallflower, and California legless lizard, as well as other special-status species. Maritime chaparral, which is also sensitive habitat, is also on the Martin Dunes site. The Martin Dunes are owned by the Big Sur Land Trust, which has made significant efforts to restore and protect the property and its resources. The North Monterey County Land Use Plan specifically addresses the site in several sections, including key policy 2.3.1, and specific policy 2.3.3.A.6, and recommended action 2.3.4.5, attached for reference. The EIR fails to identify or discuss these issues, which is a failure to adequately describe the environmental setting, as well as a failure to investigate potential

² That figure is not specific as to parcels or properties. When mapping information was requested of the EIR preparer ESA, ESA responded was that there was no more specific information available for the project location other than as shown on Revised Figure 5-3.

impacts. The EIR mitigations do not adequately mitigate for potential impacts. There are no mitigations to potential impacts on Western snowy plover, Monterey spineflower, Monterey gilia, Menzies' wallflower, and California legless lizard. Mitigation measure 4.4.1a proposed for Smith's blue butterfly are inadequate, because it is permissive and not mandatory. Subsections (2) and (3) merely state that certain actions "should" be made, without accountability by the project applicant or public agency if they do not happen, and without identifying the potential impacts if the actions are not taken. Further, FEIR Table 7-1 states that the expansion of the Salinas River Diversion Facility would be in Phase I of the Regional Project. That is incorrect; the expansion is in phase 2 of the Regional Project. FEIR Table 5-1 clearly shows the diversion facility in Phase 2. The internal inconsistencies in the EIR, like this one, make parts of the EIR impossible to understand because the information cannot be reconciled. For this reason as well, the EIR fails as an informational document.

Separately, the EIR figures are inconsistent with project depictions presented just last week to the local cities and agencies by Jim Heitzman, General Manager of MCWD and Curtis Weeks, General Manager of MCWRA. (See attached December 9, 2009 powerpoint presentation.) These agencies are the ones who will be implementing the project. If the EIR figures are inaccurate, as they appear to be, that also causes the EIR to fail as an informational document.

The Regional Project Would Export Groundwater from the Salinas Valley Groundwater Basin, Which is Prohibited by Law.

The MCWRA Act prohibits groundwater exportation due to concern about the "balance between extraction and recharge" within the Salinas Valley Groundwater Basin (MCWRA Act, § 52-21; FEIR p. 4.2-28). The EIR does not dispute that the Salinas Valley Groundwater Basin is in overdraft and has been increasingly in overdraft for decades, as shown by the steady inland progression of seawater intrusion. One of the three projects reviewed in the CWP EIR – the Regional Project – would pump groundwater directly from the overdrafted Salinas Valley Groundwater Basin. Another of the projects – the Cal Am North Marina project – would pump groundwater indirectly.

These two projects would violate the MCWRA Act because the project would extract groundwater and not recharge the basin. Instead, the groundwater would be put to use. The EIR claims that the amount of groundwater pumped would be returned in the same volume to the basin, either by providing the water for irrigation through CSIP (the Cal Am North Marina project) or for consumptive use by MCWD customers (the Regional Project). However, use of the "returned" water for irrigation would allow only 50% of that amount to recharge the basin. The County uses a 50% return water factor for irrigation in its standard water calculations. Both of these two methods – irrigation and consumption – would violate the Act's requirement for a "balance between extraction and recharge" because any recharge of the basin would be much less than

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 12

the amount extracted from the basin. Use of the pumped groundwater for MCWD connections would also violate the MCWRA Act, because such use results in far less than a 50% return to the basin, because much water is lost through irrigation and sewers. The EIR fails to adequately discuss these issues, impacts and inconsistencies.

The proposed desalination project would export Salinas Valley groundwater to the Monterey Peninsula. The proposed way around the prohibition on groundwater exportation is to "return" an "annual average" to the Salinas Valley Groundwater Basin by placing it in the 80-AF CSIP pond for irrigation of Salinas Valley agricultural lands. There are multiple problems with the EIR's analysis.

There is no question that Salinas Valley Groundwater would be exported to the Monterey Peninsula. Such groundwater would be pumped "at unspecified volumes" (FEIR, pp. 4.2-50, 6.2-16), desalinated, and sent through the Cal Am pipes to the Peninsula. It is misleading for the EIR to claim that the groundwater would stay in the basin. The groundwater would be mixed with the seawater as it comes up the pumps, through the pipelines, and through the treatment plant. The groundwater molecules cannot be separated from the seawater molecules. The treated water would be a blend of both kinds of water, and that blended water would be exported to the Monterey Peninsula.

The EIR does not describe how the "annual average" will be calculated, or who will verify it. The proposed use of an "average" means that in some years more water will be exported to the Peninsula than "returned" to the Salinas Valley basin, which means that in those years the basin would be further imbalanced (causing attendant harm) through the operation of the proposed project. The EIR fails to analyze this inconsistency with the MCWRA prohibition, and fails to analyze the potential environmental impacts of the scheme.

The EIR repeatedly uses the 85% seawater/15% groundwater proportions, although those proportions are projected only for the first 10 years (FEIR, Appendix Q, p. 24). The EIR fails to adequately discuss or investigate whether the proposed actions are feasible or effective in future project years, when the proportions change significantly to 60% seawater and 40% groundwater, or what potential impacts those actions may have. For example, in the years when the 24,870-AFY of pumped water is 40% groundwater, that 40% would be 9,947 AFY of desalinated water that must be returned to the SVGB. The desalination plant is intended to produce 10,700 AFY, under full operating conditions. The Monterey Peninsula (Cal Am system) will be depending on receiving 8,800 AFY of that amount during normal weather years. If 9,947 AF are returned to the SVGB, and Marina takes its 1,700 AF, that leaves only 553 AF for the Monterey Peninsula, far less than it would be depending on. Even if Marina decides to pump from its unsustainable Deep Aquifer during that year, and thereby does not use its 1,700, that would leave only 2,253 AF for the Monterey

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 13

Peninsula system, which is only a small fraction of Cal Am's needs under Order 95-10 and the Seaside Basin adjudication. This is a foreseeable scenario which the EIR fails to address.

The EIR states that Salinas Valley groundwater extracted by the Cal Am North Marina project would be returned using the CSIP 80-AF pond (FEIR p. 13.6-8). The EIR fails to investigate or explain whether the proposed "return" method can be accommodated by the 80-AF pond in all years through the life of the project, for all volumes of foreseeable water, both in wet and dry years, and what the environmental impacts would be. The water "returned" to the Salinas Valley would be surface water, and the recipients of that surface water may not have rights to that water.

For the Regional Project, the EIR states that the pumped Salinas Valley groundwater would be delivered to the MCWD service area within the Salinas Valley basin (FEIR p. 13.6-8). The EIR fails to discuss how the water in excess of the 1,700 AF required for use within the MCWD would be returned to the SVGB. In some years, the volume of the water to be returned would far exceed 1,700 AF. The EIR omits any analysis of whether adequate water rights are held by the proposed appropriator of the Salinas Valley groundwater for such actions.

Under the predicted 60% seawater/40% groundwater scenario, in order to provide the 8,800 AF to the Monterey Peninsula (Cal Am system), the intake wells would have to pump 88,000 AFY. Of that 88,000 AFY, the 40% to be returned to the Salinas Valley Groundwater Basin would be 35,200 AFY. Of that 88,000 AFY, the desalination plant would produce 44,000 AF of desalinated water. The proposed "return" to the Salinas Valley Groundwater Basin would be 35,200 AF. Assuming the MCWD 1,700 AF is part of the amount returned to the Salinas Valley Groundwater Basin, that would leave 8,800 AF for the Monterey Peninsula. The EIR fails to investigate this foreseeable scenario, or what the impacts would be of 88,000 AFY of pumping, or the fact that the desalination plant is not designed to process 88,000 AFY of untreated water or to produce 44,000 AF of desalinated water. And there is no discussion of whether returning 35,200 to the Salinas Valley Groundwater Basin is feasible, or how it would be done. There is no question this foreseeable scenario would cause significant impacts, none of which has been addressed in the EIR.

The EIR fails to analyze any potential impacts for the times when the EIR indicates that the proportions of the pumped water will be approximately 60% seawater and 40% groundwater. (FEIR Appendix E and Appendix Q [modeling shows TDS concentrations of from 21,300 mg/L to 34,500 mg/L over a 56-year period].) The EIR fails to investigate whether the project would be able to pump or deliver sufficient water to provide 12,500 AFY to the Monterey Peninsula every year under the foreseeable scenario requiring a "return" of up to 40% of the pumped water to the CSIP or requiring the distribution of up to 40% to the MCWD service area within the Salinas Valley basin

for years at a time. There is no evidence that there is current demand for 40% of the pumped water within that MCWD service area. Thus, at times, only 60% of the water would be available for export to the Monterey Peninsula, when that area requires – and is planned to receive under the proposed project – 85% of the desalinated water, assuming perfect and uninterrupted plant operations. The EIR fails to investigate or explain how the difference between the available desalinated water and the area's water demand will be met over the life of the project, and the potential impacts over time. The evidence is that the current MCWD demand within the Salinas Valley Groundwater Basin is less than the 40% of the pumped water that would be delivered to that MCWD area. The EIR has failed to investigate or disclose the impacts of the forced delivery of that amount of water to that area. That forced delivery would foreseeably cause growth which has not been analyzed in the EIR.

Another significant issue is the lack of accountability for the amount of groundwater pumped. As one example, for the North Marina project, the EIR assumes that Cal Am will keep track of the amount of water pumped, and the salinity of that water. There are no requirements with regard to frequency of monitoring, and no provision or mitigation requiring Cal Am to report its pumping and water quality information to any public agency. Therefore, Cal Am would not be accountable to any public agency, and could keep its number secret and unverified by the public and the government.

**The Project Proponents' Assumption of Continuous Pumping
Is Unsupported and Unreasonable.**

The EIR uses only modeling scenarios that assumed continuous pumping. (See, e.g., p. E-31, Appendix E, Appendix Q.) The models were prepared and submitted by the project proponents. The EIR claims that the applicants' models of continuous pumping of the desalination intake wells show the creation of an underground trough in the water level due to the volume of water being pumped. The EIR claim is that over time the pumping will decrease and/or halt the progression of inland seawater intrusion because the pumps will be sucking up seawater faster than the seawater intrudes. There was no modeling for anything other than continuous pumping, or cessation, including any scenario for the likely interruption of pumping (at any time, including at end of the project's lifetime).

An assumption of continuous pumping is not reasonable. Desalination facilities simply are not reliable. There are very poor track records of the two similarly sized plants in the United States (the Tampa Bay desalination plant and the Yuma Desalter). Large desalination plants as proposed here have proved to be unreliable and have been non-operable for long periods of time, and none has ever operated at full capacity. The EIR fails to investigate or disclose this information, or what would happen if the

proposed plant is non-operable for long periods of time (or even for short periods), and if it never operates at full capacity.

In addition to failing to adequately investigate the potential environmental impacts of non-continuous pumping throughout the life of the project, the EIR also fails to discuss the potential environmental impacts that may occur at the end of the plant's useable life, which the EIR anticipates to be approximately 50-56 years.

Groundwater has several unknowns. Unknown variables require assumptions to be made in each analysis. The unknowns and assumptions can be reduced through testing the groundwater system through pumping and monitoring wells. This has not been done here to the level that would provide usable data for reliable conclusions. The testing that was done for the EIR was minimal and based on an insufficient number of wells and locations. For that reason, the EIR conclusions are not reliable or adequate information. Even after test wells are used to validate assumptions, there remains the variable of time. Things change over time, yet the EIR does not recognize that basic fact of nature.

If water is removed from the aquifer by wells, then an equivalent amount of water will move in from one side or the other to fill the vacated space. Given the proximity of the ocean to the location of the wells, it is far more likely that the vacated space will be filled in by seawater than by groundwater. If the replacement water comes from off shore, that means increased seawater intrusion. The EIR claims that the replacement water will come from inland, which will halt or reverse seawater intrusion. However, that scenario can only occur if there is already a net flow of water from inland to offshore in the vicinity of the wells. Based on over 50 years of data (the seawater intrusion figures presented by Monterey County), that will not be the case unless either it is a temporary condition that occurs only in very wet years or the wells are located in an area that does not already have seawater intrusion. The EIR acknowledges that the wells will be located in an area that has seawater intrusion. Accordingly, the only time that the EIR claim would be valid would be during very wet years, when there is a net flow of water from inland to offshore in the Salinas Valley Groundwater Basin. In the vast majority of years – in other words, all years that are not "very wet" – the EIR claim would not be valid. The EIR fails to disclose or discuss these issues, and draws its conclusions based on its flawed assumption of continuous operations.

The EIR claim of a "trough" that would halt seawater intrusion is inconsistent with the theory behind the Castroville Seawater Intrusion Program (CSIP). The CSIP goal is to reduce pumping by coastal agricultural property owners because by doing so, the theory goes, seawater intrusion will be slowed. That theory is opposite to the one proposed in the CWP EIR, which is that significant continuous pumping at the coast will halt seawater intrusion. Both theories cannot be correct, and the EIR has failed to address the inconsistencies.

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 16

Critically, the EIR does not use any model runs that assumed a multi-year drought, which is a foreseeable scenario in the semi-arid Central Coast. The project impacts on the aquifers may be very different under those scenarios. The rigid assumptions used by the models relied upon by the EIR are not reasonable under the circumstances and the known likely variables.

It appears that the EIR uses only modeling runs presented by project proponents. For example, the July 25, 2008 model run was prepared by Geoscience, Cal Am's consultant. The June 5, 2009 and September 11, 2009 reports were prepared by RMC Water and Environment, which represents the Regional Project proponents. CEQA requires independent investigation and review of materials submitted by project proponents, to rest their validity and reliability. It appears that was not done here.

The EIR Responses to Comments Are Inadequate.

The responses to comments do not meet the requirements of CEQA for good faith, reasoned responses. There are many examples of this violation of CEQA mandates. For example, the response to L-PSMCS-2(b) fails to answer the issue and question clearly raised, and instead uses a semantic pretense about dates. As another example, the response to L-PSMCS-2(a) merely regurgitates the testimony of an attorney for a project proponent for more than two pages, without a reasonable independent investigation or discussion of the issues. In that response, the claimed legal basis is highly suspect and has not been confirmed under California law.

As another example, the responses to The Open Monterey Project (TOMP) comments are nonresponsive. For example, a TOMP comment is that future expansion of project facilities would be easier. The FEIR response (p. 14.5-201) states, "Therefore, construction of the plant would not substantially alter the character of the areas and any future expansion would required additional permitting and review." This inadequate response fails to address the ease of expansion from a technical, environmental and financial perspective, and the related growth-inducing impacts. Desalination plants are very costly to construct. Once the initial expense is invested, the expansion of the plant to accommodate increased production is relatively much less costly. This also means that the Peninsula ratepayers would be subsidizing growth for other areas in Monterey County.

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 17

The EIR Discussion of Water Rights is Inadequate under CEQA.

On November 6, 2006, and again on April 15, 2009, the Ag Land Trust notified the Public Utilities Commission of certain key flaws in the Coastal Water Project EIR. Specifically, the first full paragraph on page two of the Trust's November 6, 2006 letter (identified as "G_AgLTR-3" in the FEIR) states that Cal-Am, a water appropriator under California law, has no groundwater rights to appropriate water from the overdrafted Salinas Groundwater Basin. In an overdrafted, percolated groundwater basin, California groundwater law clearly and definitely holds that the doctrine of correlative overlying water rights applies (*Katz v. Walkinshaw* (1903) 141 Cal. 116), whereby no surplus water is available for new groundwater appropriators.

The FEIR response claims that an analysis of water rights is not necessary because "CalAm claims no rights to groundwater" and that "no Salinas Valley groundwater will be exported from the Basin." The FEIR attempts to bypass a central issue – the EIR's failure to analyze legal water rights – by claiming that the issue does not exist. On the contrary, the issue of legal water rights exists and should be analyzed.

Because the extracted water would be composed of both saltwater and groundwater, Cal-Am (under the North Marina project) or Monterey County (under the Regional Project) would be extracting groundwater from the overdrafted Salinas Valley Groundwater Basin. Those actions would represent an illegal appropriation of water. The EIR claims that water can be appropriated from under privately owned land in the overdrafted basin, so long as it promises to return the same amount of pumped groundwater to the basin. That claim is not enforceable, not subject to oversight and does not change the fact that the extraction of the water would be an illegal appropriation. In essence, the Cal Am North Marina desalination project and the Regional Project would rely on illegal extraction and appropriation of groundwater from the basin. The EIR does not analyze the significant impact of an illegal taking of groundwater from overlying landowners. Instead, the FEIR accepts as unquestionably true the flawed rationale that a purported return of a portion of the water somehow allows the illegal extraction of groundwater from the overdrafted basin. This deficiency in the EIR must be addressed, and the EIR should identify mitigations for the adverse impacts and proposed illegal actions and takings.

The principle is established that the water supply in a source may be augmented by artificial means. (See *Pomona Land & Water Co. v. San Antonio Water Co.* (1908) 152 Cal. 618.) We do not question that general statement of law.

However, when getting to the specifics of the abilities and limitations in regard to the augmented or developed water proposed for the Project, the EIR defaults on the necessary discussion. Instead of addressing the entire doctrine of water rights

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 18

applicable here, the FEIR (14.1-94, n. 4) defers entirely to the MCWD's legal counsel for the discussion of the essential factors. From page 14.1-94 to 14.1-96, MCWD's legal argument is presented without critical analysis or further comment as the FEIR's discussion. There is no independent review of the legal argument.

California law on the ability of an agency to claim the right to salvage any or all of any developed water in the circumstances here, and any limits on that claim, has not yet been defined by the Courts. The citations in the FEIR overstate the situation, and do not point to any California court case where the analysis presented in the FEIR has been upheld by the Court. The two cases relied upon by the MCWD's counsel (and therefore the FEIR) are cited in footnote 10 of FEIR page 14.1-96: *Pajaro Valley Water Mgt. Agency v. Amrhein* (2007) 150 Cal.App.4th 1364, 1370 and *Lanai Company, Inc. v. Land Use Commission* (S. Ct. Ha. 2004) 97 P.2d 372, 376. The citations in both cases are to portions of the introductory factual recitations in the cases, and not to Court holdings or legal analysis, and thus are not fairly considered precedents or statements of settled law. Other FEIR citations are to legal claims asserted in a staff report by the head of the Monterey County Water Resources Agency, who is not an attorney.

At the very least, the FEIR was required to evaluate the claims of MCWD and MCWRA, test them analytically, and provide the decisionmakers and the public with the analysis. Without the reasoned good faith analysis, the EIR fails as an informational document. (See, e.g., *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722.) "It is not enough for the EIR simply to contain information submitted by the public and experts." In particular, water "is too important to receive such cursory treatment." (*Id.*) CEQA requires a detailed analysis of water rights issues when such rights reasonably affect the project's supply. Assumptions about supply are simply not enough. (*Id.*, at p. 721; *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 131-134, 143 [EIR inadequate when it fails to discuss pertinent water rights claims and overdraft impacts]; see also, *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 94-95 [groundwater contamination issues].) The reasoning of the Court in *Cadiz* would also apply to the proper analysis of the rights associated with the overdraft here.

At the very least, the determinations of safe yield, surplus, the rights of the MCWRA, and of "persons with land in the zones of benefit for the projects" must be identified, discussed and analyzed. The analysis must be independent, and cannot simply be "extracted" (FEIR, p. 14.1-94, n. 4) from the argument of the attorney for the MCWD, a proponent of the Regional Project and potential owner of the desalination plant component of that project. Whether the project may take salvaged or developed water originating from onsite supplies depends on whether injury will result to existing

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 19

lawful users or those who hold vested rights. The FEIR response to comments does not fairly consider or investigate the actual on-the-ground issues.

Recirculation of the EIR Is Required.

Under CEQA Guidelines section 15088.5, the EIR should be recirculated because it contains significant new information. The Final EIR contains significant newly identified impacts and new information that leads to new unanalyzed impacts. Several examples of the unanalyzed impacts are identified throughout this letter.

The FEIR identifies new significant and unavoidable impacts that had not been disclosed in the Draft EIR. These impacts include greenhouse gases and air quality (PM10). The FEIR finds that PM10 construction emissions would exceed the local Air District thresholds. Greenhouse gas emissions and construction PM10 impacts of the Regional Project would be outside of the CPUC's jurisdiction. Both impacts would be significant and unavoidable. However, the EIR treats the two impacts differently and inconsistently. The EIR inappropriately pre-determines that the local agencies might find that the Regional Project's PM10 mitigation measures would be infeasible because of the "potential need to accelerate the construction schedule" for the project (e.g., p. ES-19). The EIR attempts to place mitigations on the Regional Project which are unenforceable, because the CPUC has no jurisdiction over the Regional Project. (E.g., FEIR p. 6.8-4, Mitigation Measure 6.8-11a.) The EIR approach is confusing and inconsistent, and misleads the public and decisionmakers as to which mitigations it can enforce and which it cannot enforce. This confusion continues in the EIR discussion of the environmentally superior alternative, where the EIR makes unsupported assumptions about mitigations and mitigation monitoring in order to affect its determination of the superior alternative. (FEIR p. 7-67.) Further, the EIR's announcement of new significant and unavoidable impacts is inconsistent with its response to the League of Women Voters' comments that there are no significant project impacts.

As a separate reason for recirculation, the FEIR reduced the DEIR's conclusions about the RUWAP project production from 1,700 to 1,000 AFY. That is significant new information, because it significantly affects the determination of the Regional Project water supply. In fact, the selected project now under way, the hybrid RUWAP, will produce 3,000 AFY. The FEIR used an incorrect 1,000-AFY figure to analyze cumulative and growth-inducing impacts, and the EIR analysis is incorrect. As another reason for recirculation, the EIR fails to include the planned cogeneration plant in the project description, or to analyze its impacts.

SWRCB Antidegradation Policy: CRWQCB Basin Plan.

The EIR fails to adequately investigate and disclose the extent of the proposed projects' violation of the State Water Resources Control Board's Antidegradation Policy. This policy, formally known as the Statement of Policy with Respect to Maintaining High Quality Waters in California (SWRCB Resolution No. 68-16), restricts degradation of surface and ground waters. The policy protects water bodies where existing quality is higher than necessary for the protection of beneficial uses. Under the Antidegradation Policy, any actions that can adversely affect water quality in all surface and ground waters must (1) be consistent with maximum benefit to the people of the State, (2) not unreasonably affect present and anticipated beneficial use of the water, and (3) not result in water quality less than that prescribed in water quality plans and policies. Any actions that can adversely affect surface waters are also subject to the Federal Antidegradation Policy (40 Code of Federal Regulations [CFR] section 131.12) developed under the Clean Water Act. The Central Regional Water Quality Control Board's Basin Plan implements the antidegradation policy. The EIR also fails to adequately investigate and disclose the proposed projects' violation of the Basin Policy.

Potential Takings Claims.

In comments to the DEIR, it was pointed out that it is reasonably possible that the proposed project, if approved, would result in the deterioration in, or elimination of, valuable water rights of the Armstrong Ranch property owned by the Ag Land Trust. Such action would result in a compensable taking of the Ag Land Trust's property. On a related point, the stripping of the water rights from this productive agricultural land is a physical change to the environment which must be addressed in the FEIR and, when feasible, mitigated to a level of insignificance or considered as part of the alternatives analysis of the FEIR. The FEIR fails to fairly consider and address these impacts. To the best the public can discern from the MCWRA's seawater intrusion depictions, the Ag Land Trust property overlies a part of the 400-foot aquifer that is not seawater intruded. (See attached figure.) The Regional Project could significantly affect the water quality in the 180-foot and 400-foot aquifer. The Ag Land Trust would lose valuable property rights if its ground water rights were affected.

The EIR fails to identify the potential eminent domain authority or actions that could be used to implement the project, or even to present the fact that eminent domain may be used or necessary for project implementation. For example, the FEIR (p. 5-50) states merely that private landowners may be affected by sale or lease of their property for project purposes. In fact, the public agency proponents of the project have eminent domain authority, and may choose to exercise it to implement the project. An eminent domain action is a "project" under CEQA (Pub. Resources Code, § 21065) and must be reviewed at the earliest possible stage for potential impacts. Because such eminent domain action is foreseeable, it should be disclosed and evaluated in the EIR.

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 21

Problems with Access to Final EIR.

CEQA states that draft EIRs for proposals of unusual scope or complexity should normally be less than 300 pages. (CEQA Guidelines, § 15141.) Here, the Draft EIR was approximately 1,500 pages, and the Final EIR is over 3,100 pages and contains significant new information. The Final EIR is not available in hard copy anywhere in the Monterey County. The local agencies, including Monterey County and Marina Coast Water District, have the FEIR available on disk only. For these reasons, it has been extremely difficult for the public to access and review the over 3,100 pages, much of which contained complex and interrelated new information, within the available time.

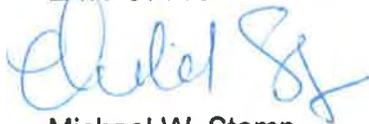
Efforts to Obtain and Provide Further Information.

Last week we contacted the project manager for the Coastal Water Project EIR³ and requested a return call, hoping to share these concerns with regard to the Coastal Water Project EIR. We did not receive a return call. On December 30, 2009, our Office made a records request to the CPUC, in accordance with the records request guidelines on the CPUC website. Our clients sought access under the California Public Records Act (Gov. Code, § 6250 et seq.) to the records for the Coastal Water Project EIR. The CPUC was required to respond to our request within ten days. (Gov. Code, § 6253, subd. (c).) We did not receive a response, and were not provided with an opportunity to inspect or copy documents.

Thank you for the opportunity to comment on the Coastal Water Project EIR.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP



Michael W. Stamp
Molly Erickson

Attorneys for Ag Land Trust

cc: Andrew Barnsdale

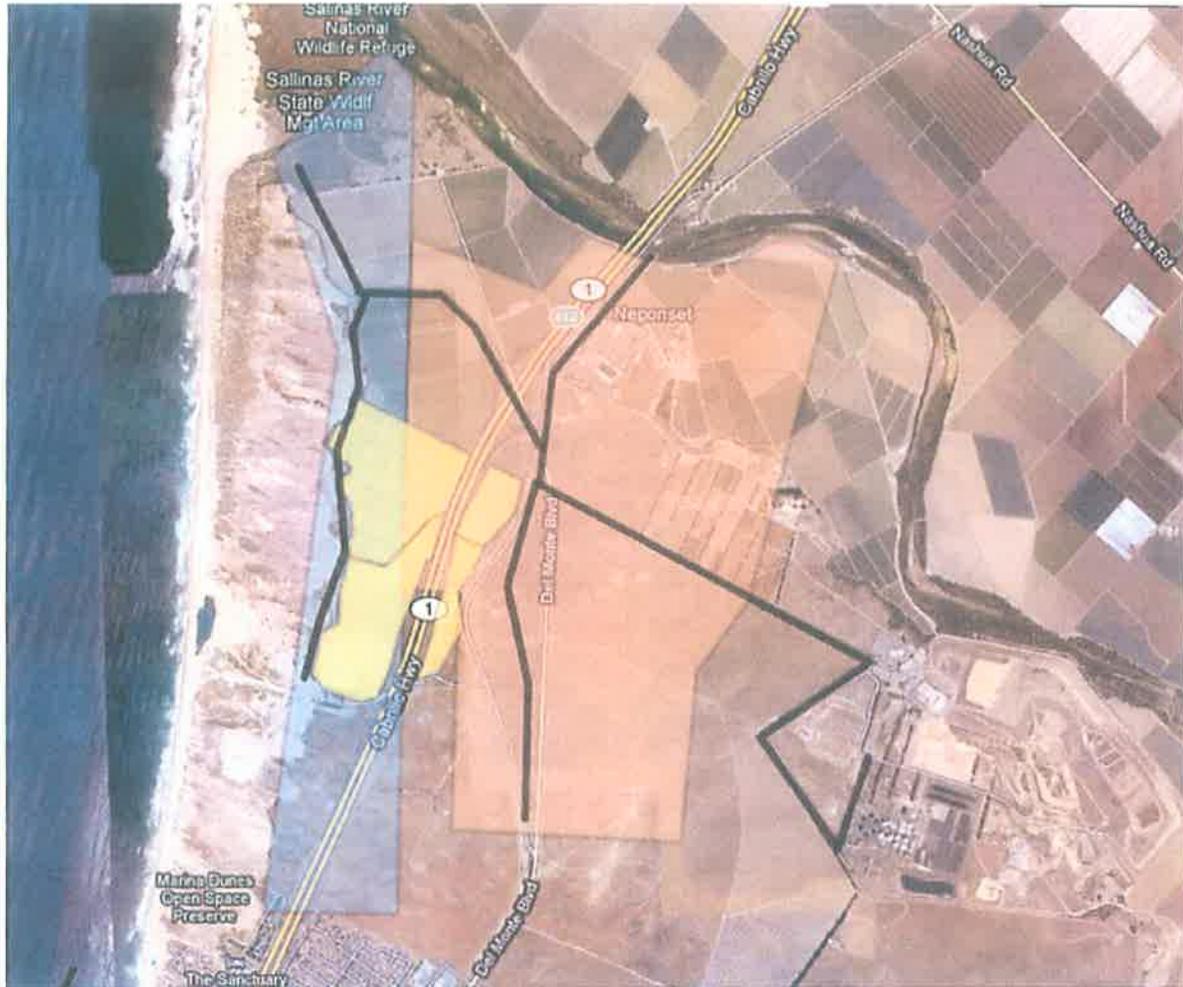
³ Years ago, when the CPUC took over as lead agency, our Office was informed that the CPUC had not previously managed the preparation of an EIR on a water supply project, which is why the task was handled by an Energy staff member.

**Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 22**

References attached by email:

- **Figures showing Ag Land Trust Properties in relation to proposed Regional Project**
- **Presentation on the Regional Water Supply Project presented by Curtis Weeks, Monterey County Water Resources Agency, and Jim Heitzman, Marina Coast Water District, made at the City and Agency Managers' meeting, December 9, 2009 (this and the other presentations in similar format are identified in the electronic file properties as being prepared by RMC)**

All other references to be delivered to the CPUC in hard copy on December 17, 2009.



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

AG LAND TRUST

Monterey County Agricultural and Historic Land Conservancy

P.O. Box 1731, Salinas CA 93902

www.aglandconservancy.org

Phone: 831-422-5868 Fax: 831-758-0460

April 25, 2009

TO: Monterey County Board of Supervisors

FROM: Monterey County Ag Land Trust

RE: Opposition to proposed MOU's for Monterey Regional Supply Planning and Coastal Water Project

By this letter, the Board of Directors of the Ag Land Trust unanimously and vehemently objects to the proposed MOUs and the Coastal Water Project that are recommended for your approval by the staff of the MCWRA. These proposed MOUs and the project that they expressly advance are wrongful, illegal acts that propose to take and convert our water and water rights for the benefit of a private company. We hereby incorporate by reference into this letter (as our own) each, every, and all facts, objections, statements, references, legal citations, and assertions located within each and every Attachment herewith attached to this correspondence. **Before your Board takes any action on these matters that will expose you to significant litigation from landowners with senior overlying percolated groundwater rights, you need to ask the question and receive a written answer from your staff, "If the Salinas Valley percolated groundwater basin has been in overdraft for sixty years, whose percolated groundwater and overlying percolated groundwater rights are you proposing that we take without compensation to benefit Cal-Am?"**

1. The proposed MOUs, and the projects which they include, violate and will result in an illegal, wrongful, "ultra vires", and unlawful "taking" of our percolated overlying groundwater rights. Our Trust owns (in fee) the large ranch (on which we grow artichokes and row crops) that lies between the ocean and the proposed "well field" that the California-American Water Company (a private, for profit appropriator) proposes to use to illegally divert percolated groundwater from the overdrafted Salinas groundwater basin. The so-called "environmentally superior alternative" in the Coastal Water Project EIR is based upon the illegal taking of our water rights and pumping of our percolated groundwater for the economic benefit of Cal-Am. The Salinas basin has been in overdraft for over 60 years and California law holds that, in an overdrafted percolated groundwater basin, there is no groundwater available for junior appropriators to take outside of the basin. In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies, (Katz v. Walkinshaw 141 Cal. 116). In an over-drafted basin, there is no surplus water available for new "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. This is the situation in the over-drafted Salinas percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Salinas aquifers. Moreover, no legal claim or relationship asserting that water from a distant water project (over 6 miles from the proposed Cal-Am well field to the rubber dam) may be credited for the over-drafted Salinas percolated

groundwater basin can be justified or sustained. California groundwater law refutes such “voodoo hydrology” by holding that “Waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are part of any definite underground stream, are percolating waters” (Vineland I.R. v. Azusa I.C. 126 Cal. 486). Not only does Cal-Am have no right to take ground water from under our lands, but neither does the MCWRA. **MCWRA HAS NO PERCOLATED OVERLYING GROUNDWATER RIGHTS THAT IT MAY USE TO GIVE TO CAL-AM FOR EXPORT OUT OF THE BASIN.** Our first objection to this illegal project and conduct was filed with the CPUC and MCWRA on November 6, 2006 (see herein incorporated Attachment 1). Your staff has not responded and our concerns have been ignored.

2. The recommended MOUs before the Board of Supervisors is a project under CEQA and the MCWRA staff recommendations to the Board violate the California Environmental Quality Act and the California Supreme Court decision in the “Tara” case. The California Supreme Court’s decision in *Save Tara v. City of West Hollywood*, Case No. S151402 (October 30, 2008), provides specific direction to public agencies entering into contingent agreements. In this opinion, the Supreme Court held that the City of West Hollywood (“City”) had violated CEQA by entering into a conditional agreement to sell land and provide financing to a developer before undertaking and completing environmental (CEQA) review. This is exactly what the MCWRA staff is asking the Board to do. They want you to approve their project without a certified EIR from the CPUC. One of the proposed MOUs even references the fact that it is contingent on the certification of the FEIR by the CPUC. Monterey County abdicated its role as the “lead” agency under CEQA years ago when it agreed to allow the CPUC to prepare the EIR on the Coastal Water Project. Monterey County is now a “responsible agency” and must wait while the CPUC staff deals with the fact that its draft EIR is woefully inadequate because of its failure to address that fact that none of the public agencies in Monterey County have the rights to pump groundwater from an overdrafted basin for the economic benefit of Cal-Am (see Attachment 2). Further, the Draft EIR acknowledges that the proposed MOUs and Coastal Water Project violate MULTIPLE provisions of the Monterey County General Plan, and the North County Local Coastal Plan, and contradicts the express purpose (ELIMINATION OF SEAWATER INTRUSION) of every water development project for which land owners have been assessed and charged (and continue to be charged) by Monterey County and the MCWRA for the past 50 years, including the Salinas Valley Water Project.

3. It is clear that the MOUs and the Coastal Water Project are being advanced by MCWRA staff and Cal-Am jointly as if they are already one entity. In fact, the proposed MOUs advanced by MCWRA staff advocate a governmental structure (JPA) that would be completely immune for the voters’ constitutional rights of initiative, recall, and referendum. Moreover, this plan to deny the Monterey County public’s right to public ownership of any new water project was also secretly advanced this month in Assembly Bill AB 419 (Caballero) wherein Cal-Am lobbyists got the Assemblywoman to try to change one hundred years of state law by “redefining a JPA with a private, for-profit utility (Cal-Am) member” as a “public agency”. (See Attachment 3). These actions by MCWRA staff and Cal-Am to circumvent and “short-circuit” the mandatory CEQA process for the MOUs and the Coastal Water Project are further reflected in Attachment 4 wherein counsel for MCWRA requested an extension of time from the SWRCB (on permits issued to address water shortages in the Salinas Valley) to develop “alternative plans”. Although the letter says that “there will be no export of groundwater outside of the Salinas basin”, that is exactly what the MOUs and the Coastal Water Project proposes... to pump and export thousands of acre feet of groundwater out of the Salinas basin for the benefit of Cal-Am.

4. Our wells and pumps on our ranch adjacent to the location of the proposed well field are maintained and fully operational. We rely on our groundwater and our overlying groundwater rights to operate and provide back-up supplies for our extensive agricultural activities. MCWRA nor the CPUC has never contacted our Board of Directors that includes farmers (including past

presidents of the Grower-Shippers Assn.), bankers, attorneys, and agricultural professionals to get our input on this proposed taking of our water rights. As a result of this lack of concern for our property rights, we must assume that the County has now assumed an adversary position toward our Land Trust and our groundwater rights. In 2001-2002, MCWRA staff recommended that you include the Gonzales area in the assessment district for the SVWP. The Gonzales farmers objected, your MCWRA staff ignored them, you got sued and the taxpayers ended up paying the bill. From 1999 – 2005, the owner of Water World objected to the conduct of MCWRA staff and was ignored by your staff. Thirty (30) million dollars later, you lost the lawsuit and the taxpayers paid the bill. When will the taxpayers stop having to pay for poorly conceived ideas from MCWRA and Cal-Am?

5. The draft CPUC EIR marginalizes the grave and significant environmental impacts on groundwater and groundwater rights, violations of the General Plan and Local Coastal Plan policies, and the illegal violations and takings of privately owned, usufructory water rights upon which the Coastal water Project depends. **These and the illegal appropriations of thousands of acre feet of groundwater from under privately owned land in an overdrafted basin ARE NOT A LESS THAN SIGNIFICANT IMPACTS! This is the project that the staff of the MCWRA staff wants the Board to approve without a certified EIR.** (see Attachment 5). Further, the Marina Coast Water Agency has used up all of its full allocation of groundwater from the Salinas Valley groundwater basin, and as an appropriator is not entitled to any more water from the overdrafted basin, contrary to the information presented to the Growers-Shippers Association by Mr. Curtis Weeks of MCWRA (see Attachment 6)..

The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. It has gone on for decades. That shortage does not justify the illegal taking of our water rights for the economic benefit of Cal-Am. We ask that the Board not approve the MOUs or the Coastal Water Project for the reasons stated herein.

Respectfully,

A handwritten signature in black ink that reads "Ed DeMare, Sec." with a long horizontal flourish extending to the right.

The Board of Directors of the Monterey County Ag Land Trust

CC: CPUC, MCWD, California Coastal Commission, and California-American Water Co.



Ag Land Trust

P.O. Box 1731
Salinas, CA 93902
tel. 831 422 5868
fax. 831 758 6053

To: California Public Utilities Commission
C/O CPUC Public Advisor
505 Van Ness Avenue, Room 2103,
San Francisco, CA 94102
Fax: 415.703.1758
Email: public.advisor@cpuc.ca.gov.

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 result 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

**'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 include 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,

A handwritten signature in cursive script that reads "Brian Rianda".

Brian Rianda, Managing Director

Luster, Tom@Coastal

From: Larry Parrish <lparrish@toast.net>
Sent: Friday, November 07, 2014 9:37 AM
To: Luster, Tom@Coastal
Subject: November 12, 2014 Hearing at Half Moon Bay

Agenda items 14(a), 15(a)
Larry Parrish

Dear Chairman Steve Kinsey and fellow Coastal Commissioners:

I am writing in regard to your upcoming hearing on Nov. 12 in Half Moon Bay. I strongly recommend that you deny both the Appeal (No. A-3-MRA-14-0050) from California-American Water Company (Cal-Am), and also the Coastal Permit Application (No.9-14-1735) also from Cal-Am. Here are my reasons for denial, and they apply to both the appeal and the application.

1. Not in Cal-Am district:

The proposed site at the Cemex facility is in Marina, California, which is NOT being served by Cal-Am. This is in fact a blatant attempt to invade and intrude into another water district that is being served by a public (not private) water purveyor, namely the Marina Coast Water District (MCWD), a public agency. Not only is this an infringement into MCWD's territorial boundaries, but MCWD has it's own plans for development of the very same site at the Cemex property for it's own use for a desalination (desal) plant in the future, albeit without a specific date for that process to begin. No doubt, you have probably read MCWD' s objections first hand.

2. No Water Rights:

Cal-Am does NOT have any rights to water at the Cemex site, nor to the property, nor any other right that would allow for development of either a slant well, or a desal. facility. Cemex itself has denied Cal-Am permission to use their property for a slant well test or any other future use for that matter. Cal-Am simply has no legal claim to use that site for anything whatsoever. And even if they did have permission from Cemex, the most water that can be obtained legally from that site, according to a prior written legal agreement, is 500 acre feet (AF) per year. Cal-Ams' proposed slant well would use several thousand AF per year, not to mention the production capacity of the final desal. plant, which would total tens of thousands of AF/yr..

3. Unproven technology:

Currently there are exactly ZERO slant wells in operation in the United States for the production and/or extraction of water - desalinated or otherwise. This is a totally unproven and unsubstantiated technology. However, there have been other attempts at implementation of this type of well technology. Right across the Monterey Bay from Marina is Santa Cruz, and the Santa Cruz Water District made an attempt at implementation of slant well technology, but to no avail. They (SCWD) determined, after several years of study, that slant wells are "NOT FEASIBLE". End of discussion. Also, down at Doheny Beach in Dana Point the South Coast Water District has installed a slant well, and the results were inconclusive and with several unresolved problems, including unacceptable variations in salinity of the extracted water, and sand clogging the screens. That well has been shut down and the project is not expected to be completed until 2027, at the earliest, if at all.

4. No local support:

When I say "local", I am referring to Marina. The City of Marina Planning Commission did NOT approve the permit for the slant well at the Cemex site. The Marina City Council voted to DENY the permit for the slant

well. And the MCWD has vehemently objected to the permit being granted, for many other reasons of their own that I assume you have previously heard or read in communications from MCWD or from prior testimony and/or documentation.

5. Not just a test well:

Cal-Am, and many others, in testimony given at the September 3, 2014 Marina City Council meeting, and elsewhere, have repeatedly stated that "it's only a test well". Well, this is basically a half truth, at best. In Cal-Am's very own appeal to the Coastal Commission (SECTION II, Item 2.: Brief description of development being appealed:) Cal-Am states, and I quote, "it is possible that California-American Water Company would apply for an additional Coastal Development Permit to convert it (the slant well) to a production well.". Obviously, that is the avenue Cal-Am will choose to take - to use that well, at that site, for the intake for their desal. project. Cal-Am even says so. And it's blatantly obvious that that is their desire, because if there was a different site available for the project, wouldn't Cal-Am have to construct ANOTHER test well at that other site? The answer is YES! Every site has it's own specific geological and hydrological characteristics and challenges, and no two sites are the same. What might work at one site, may not work at another. Obviously! If Cal-Am had a site, or actually owned a site, the situation would be different - BUT THEY DON'T.

6. A HUGE cost (and waste) of money to Monterey District ratepayers:

The Monterey Peninsula area ratepayers, served by Cal-Am Water, have effectively been punished financially for many years - by Cal-Am's failures to develop a new water source, by Cal-Am's incompetence, by Cal-Am's avaricious business model, and probably most of all by the stellar efforts of ratepayers to conserve water due to the threats from the State Water Resources Control Board via CDO 95-10. The more we conserve - the higher price we pay for our water. Currently, we are using very near the least amount of water per person in the State of California - and we're paying the highest rates for that water. What a payoff for conscientiousness. Whatever happened to the law of supply and demand? Lower demand (usage) should equal lower prices, should it not?

Basically, we've had enough and we're sick and tired of Cal-Am's extensive list of failures that we always have to end up paying for. And this slant well boondoggle is just one more giant failure in the making, which we will undoubtedly have to pay for. Just the other day we heard that the price for the test slant well has jumped from \$4 million to \$6 million. OVERNIGHT. And the bottom line is - everyone knows (including Cal-Am) that the slant well won't work. The geology won't work, they have no water rights, there is no aquatard which would prevent the well from drawing water from Salinas River aquifers, and the practically guaranteed lawsuits that will emanate from the Salinas Valley agriculture community et al. must certainly be considered. And that's just a few reasons why this well will not work - no doubt you will hear many others.

CONCLUSION:

Again, I strongly urge you to DENY both the appeal and the application at the proposed Cemex site. You've read my reasons - there are countless others. It's simply the wrong project at the wrong site by the wrong entity. Instead, please direct Cal-Am to move their aspirations northward to the area of Moss Landing. There are better sites, more willing agencies, more agreeable partnerships in the offing, and a much, much greater opportunity for success in their pursuit of a desal. project. Thank you for your time and consideration.

Sincerely,
Larry Parrish
Carmel, CA
831 622-7455

Luster, Tom@Coastal

From: Markey, Kristi A. x7576 <MarkeyKA@co.monterey.ca.us>
Sent: Friday, November 07, 2014 3:01 PM
To: Luster, Tom@Coastal
Subject: Comments on Appeal No. A-3-MRA-14-0050
Attachments: Condition proposed by staff.webarchive; Salt Water Intrusion 180 aquifer - reduced-2 copy.pdf

Dear Mr. Luster,

Monterey County Supervisor Jane Parker submits the following in regards to California American Water Company's appeal for a permit to conduct pumping tests for a desalination plant (A-3-MRA-14-0050). This appeal is scheduled to be heard at next week's meeting of the Coastal Commission. Regrettably, Supervisor Parker cannot attend in person, but hopes that due consideration may be given to this request to modify a proposed condition. The following is Supervisor Parker's message:

The Salinas Valley aquifer is in overdraft and has suffered significant salt water intrusion over many decades. The Water Resources Agency of Monterey County has wrestled with this problem and initiated projects to protect the aquifer, but the salt water intrusion has continued to march inland, and currently threatens the water supplies of regional communities. (See attached salt water intrusion map created by WRA)

For this reason, the pumping proposed by California American Water must be carefully monitored to avoid further damaging the aquifer. The question is how this can be accomplished. As a Supervisor for this area, I have spoken with hydrologists about the pattern of intrusion and potential effects of pumping. It is possible that pumping would cause increased salt water intrusion outside the 5,000 foot distance of the Cal Am's proposed monitoring wells, due to the geology of the land creating greater opportunity for sea water to flow inland further north of where the monitoring wells are planned. In other words, the area of the monitoring wells may be too small. I would suggest that Monterey County Water Resources Agency be given authority to halt pumping if there is evidence either via the monitoring wells or from wells outside the monitored zone that the pumping is damaging the aquifer. Perhaps a hearing could be held before the Commission if there is a dispute about halting the pumping. Such authority would need to be added to the condition. Additionally, in order for WRA to obtain the data from Cal Am's monitoring wells, I believe the condition would need to state a requirement that the data be provided to WRA weekly or monthly.

While creating new water projects is vitally important, protecting our existing water supply is equally important and must be given proper weight in your deliberations.

Finally, I wish to state that I am writing this letter as an individual Supervisor and am not representing the County or any other agency in sending these remarks. Thank you for your time and service to the State of California,

Submitted on behalf of Monterey County Supervisor Jane Parker Kristi Markey, Chief of Staff
(831) 883-7576

Luster, Tom@Coastal

From: MJDelPiero@aol.com
Sent: Monday, November 10, 2014 7:09 AM
To: sarahcoastalcom@yahoo.com; zimmerccc@gmail.com; mmclureccc@co.del-norte.ca.us; cgroom@smcgov.org; Gregcoastal@sdcounty.ca.gov; Luster, Tom@Coastal; Luster, Tom@Coastal; virginia.jameson@gmail.com
Subject: Objection to Cal-Am appeal/application for test slant well
Attachments: BoardofDirectors.pdf; Maps.pdf; NoticeofObjection.pdf; Oppositioncorrespondence.pdf

TO: The California Coastal Commission (Please Distribute/Forward This to All Members and Staff)

FROM: Monterey County Agricultural and Historic Lands Conservancy (THE AG LAND TRUST)

RE: Opposition to Proposed California American Water Company Appeal/Application to Acquire a Well Site to Violate Mandatory Policies of the Certified Local Coastal Plan and to Prescriptively "Take" Groundwater from the Overdrafted Salinas Valley Groundwater Basin and our Farm

Herewith enclosed, please accept this notice/letter of opposition to the appeal/application by the California American Water Company, along with the herewith attached EXHIBITS A, B, AND C.

Notice of Objection to proposed Cal-Am "test" slant well (11 pages)

Exhibit A - Board of Directors bios.

Exhibit B - Maps (showing induced seawater intrusion area and undisclosed A.L.T. wells)

Exhibit C - Prior objections correspondence (2006 - present)

The flawed Cal-Am appeal/application proposes to directly violate multiple mandatory Local Coastal Plan policies and state groundwater rights laws, and proposes an illegal "taking" of private property/groundwater rights, to economically benefit the privately held California American Water Company at the expense of the Ag Land Trust.

The application even fails to identify one of our agricultural groundwater wells on our farm property (the "Big Well"), which is the closest to the so-called Cal-Am "test well" and which will be the first to be permanently and irreparably contaminated by Cal-Am's illegal conduct. The proposed environmental review is incomplete and flawed.

No Coastal Commission staff review of these reasonably anticipated, immitigable adverse impacts on our protected coastal agricultural groundwater resources and farmland has been conducted or presented to the Commission in anticipation of this appeal hearing. The failure to even identify these unmitigated adverse impacts in the staff report, we assume, is because the Commission staff has relied exclusively on the flawed (by omission) Cal-Am appeal/application that has tried to "downplay" its intended "taking" of our groundwater supplies and its adverse environmental effects on our prime farmland. Coastal Commission staff has not contacted our Aq Land Trust in spite of our prior correspondence (see Exhibit C).

We anticipate presenting testimony pursuant to our attached Letter of Opposition and Exhibits at your Wednesday meeting in Half Moon Bay.

Please distribute our full comments and all attachments to each and all commissioners prior to the day of the meeting so that they may fully understand and consider the potential consequences of their actions.

Most Respectfully, Marc Del Piero, Director

Exhibit 1 – Ag Land Trust Exhibits -

Board of Directors bios.



Ag Land Trust Board of Directors

President Aaron Johnson

Mr. Johnson is a partner of the law firm Partner at L+G, LLP Attorneys At Law. With over 15 years of practice specializing in representing major agricultural business enterprises on the Central Coast, he has extensive real property, transactional, and litigation experience, particularly related to agricultural business and mineral rights.

Vice President David Gill

Co-owner and Founder of Rio Farms, Mr. Gill oversees current operations of over 14,500 acres of specialty vegetable crop production. He is a past president of the Western Growers Association of California. Mr. Gill is recognized nationally as an expert in California agricultural production and management systems.

Treasurer Louis Frizzell

Mr. Frizzell is a Certified Public Accountant and Certified Financial Planner who provides accounting and financial planning services to many of the largest agri-business enterprises in Central California. He joined the Board of Directors in 2007, and has served as Treasurer since that time, helping to manage the Ag Land Trust's finances, including serving as the chief liaison for audits.

Secretary Kellie Morgantini

Ms. Morgantini is an attorney, a founding member of the Board of Directors, and the decendent of a century old farming family in Monterey County. She formerly served as the Director of Planning for the City of Greenfield, and served in the coastal planning unit for the County of Monterey. She is currently the Executive Director of Legal Services for Seniors, Inc. of Monterey County.

Managing Director Sherwood Darington

A founding member of the Ag Land Trust and currently serving as Managing Director, Mr. Darington is a retired Vice-President of Bank of America specializing in agricultural finance and lending for Central California. His family has lived in Monterey County for over 150 years. Mr. Darington is a Licensed Certified Appraiser, specializing in

agricultural properties and currently the Public Member on the Local Agency Formation Commission of Monterey County.

Member Ed DeMars

A founding member of the Ag Land Trust Board of Directors, he served as the first Planning Director of Monterey County (33years). Additionally, he co-founded both the Big Sur Land Trust and the Elkhorn Slough Foundation.

Member Richard Nutter

Recognized throughout California as an expert in the areas of cultivated agriculture, pesticide regulations, and agricultural groundwater supply and quality protection, Mr. Nutter served as the President of the California Agricultural Commissioners Association. He served with distinction on NOAA's Monterey Bay National Marine Sanctuary advisory council for over a decade addressing coastal land use and water quality policies and protection strategies. Mr. Nutter served as Agricultural Commissioner for Monterey County from 1971 to 1998 (27 years). Mr. Nutter is now a partner at Agricultural Services Certified Organic, Inc., a company providing technical expertise to organic agri-business concerns throughout California.

Member Marc Del Piero

Mr. Del Piero, a Founder and the first President of the Ag Land Trust, is an attorney specializing in environmental and water law issues. He served formerly as the attorney member and Vice-Chair of the California State Water Resources Control Board (SWRCB 1992-1999), and is recognized throughout California as an expert in the areas of groundwater rights and the "public trust doctrine". From 1981-1992, he served on the Monterey County Board of Supervisors and co-authored the North Monterey County Local Coastal Plan that established the first mandatory groundwater protection policies within the coastal zone of Monterey County. An adjunct professor of water law at Santa Clara University School of Law from 1992-2011, he has represented public water agencies throughout California. For eight years, he represented the California Environmental Protection Agency on NOAA's Monterey Bay National Marine Sanctuary advisory council. He is best known for having produced the SWRCB Decision 1631 (The Mono Lake Decision - 1995) that ordered the Los Angeles Department of Water and Power to reduce its diversions and to restore the eco-systems of the lake and its tributary streams.

Member Virginia Jameson

Formerly the Associate Director of the Ag Land Trust, Ms. Jameson is recognized as an expert in multi-national agricultural production, international business, and "fair trade" issues. She holds a master's degree from American University in international economics and has formerly worked for both governmental agricultural organizations and NGO's both in Central America and in Monterey County.

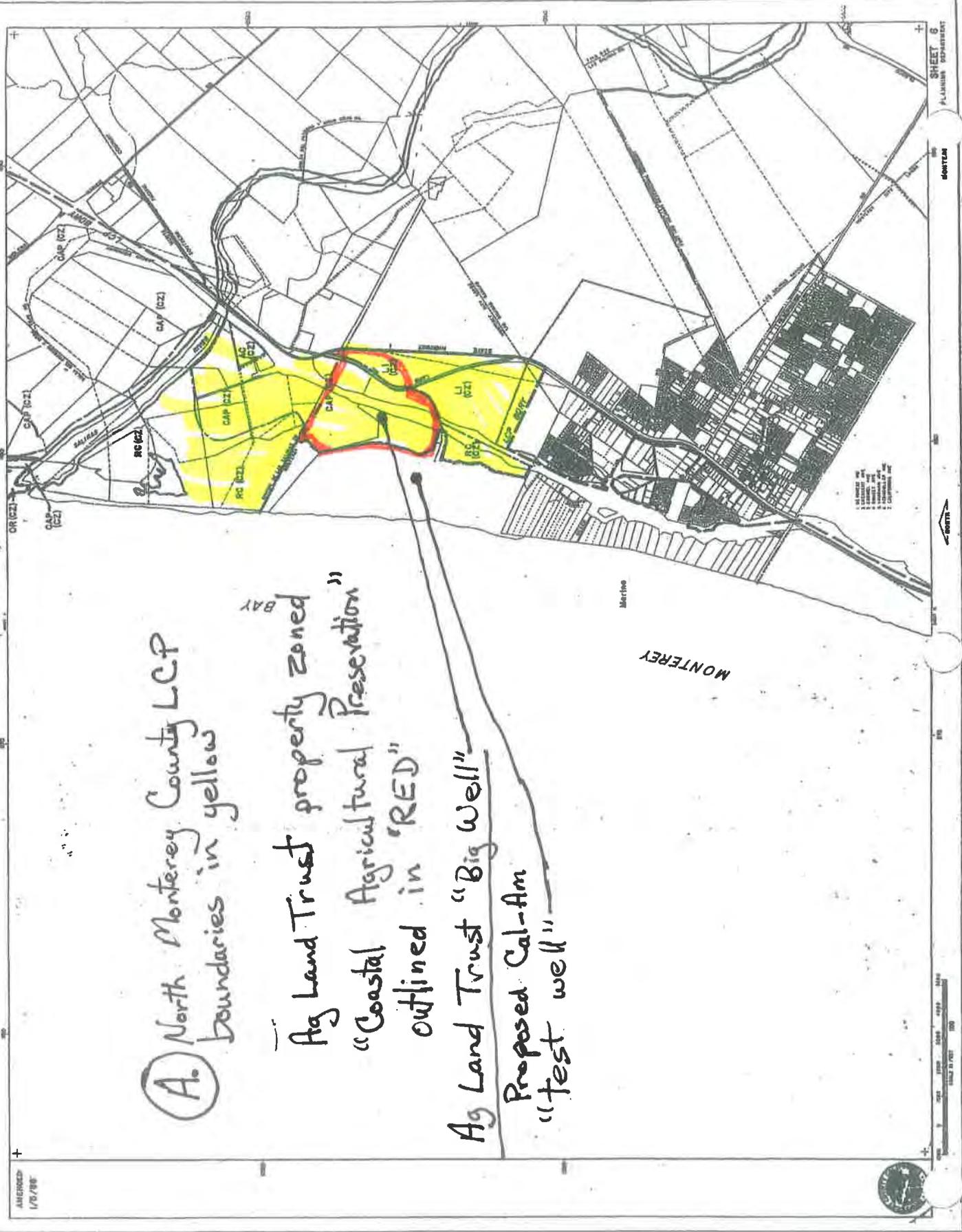
Exhibit 2 – Ag Land Trust Exhibits

Maps

- A. Map of North Monterey County LCP area (yellow) and Ag Land Trust farm (Armstrong Ranch zoned “Coastal Agricultural Preserve” CAP) outlined in RED. Proposed Cal-Am “test well” site shown in black. Ag Land Trust “Big Well” shown in black.
- B. Ag Land Trust Armstrong Ranch in YELLOW; early proposed alternate seawater wells locations by Cal-Am
- C. Cal-Am map that misrepresents the proposed location of the “test well” and the “drawdown” contours of the “cone of depression” from the “test well”. Map fails to identify Ag Land Trust “Big Well” west of Highway 1 and within cone of depression and subject to seawater contamination from Cal-Am’s proposed pumping.
- D. Cal-Am map with notation of corrected location for “test well” and location of Ag Land Trust “Big Well”. Adjusted “cone of depression” covers 75% of the Ag Land Trust property and shows seawater intrusion into “Big Well”.
- E. Cal-Am map that falsely indicated Ag Land Trust property as within the designated “Project Area”. Insert is not to scale.

A.

North Monterey County LCP
SECTION 6 OF THE ZONING PLAN OF THE COUNTY OF MONTEREY

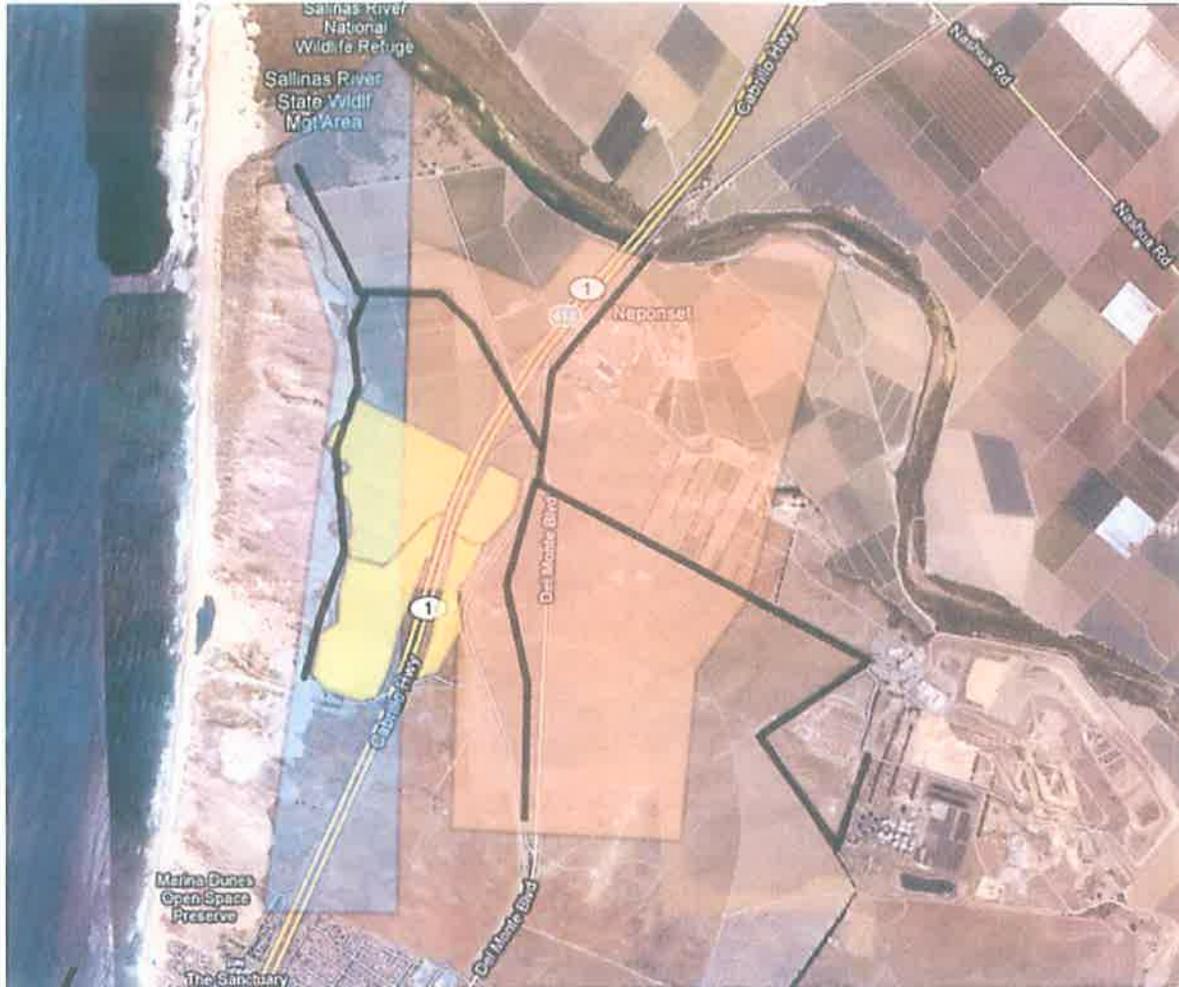


A. North Monterey County LCP
boundaries in yellow

Ag Land Trust property zoned
"Coastal Agricultural Preservation"
outlined in "RED"

Ag Land Trust "Big Well"
Proposed Cal-Am
"test well"

(B)



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

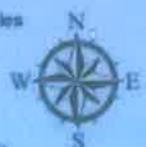
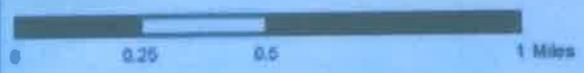
Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

C.

-  Project Area
-  CEMEX Parcel Boundary
-  -0.2 ft. Drawdown Contours after 6-Months of Pumping Test Slant Well at 2,500 GPM
-  Wells



Source: GEOSCIENCE Support Services, Inc.
Basemap: ESRI, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX,
Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

SWCA
ENVIRONMENTAL CONSULTANTS

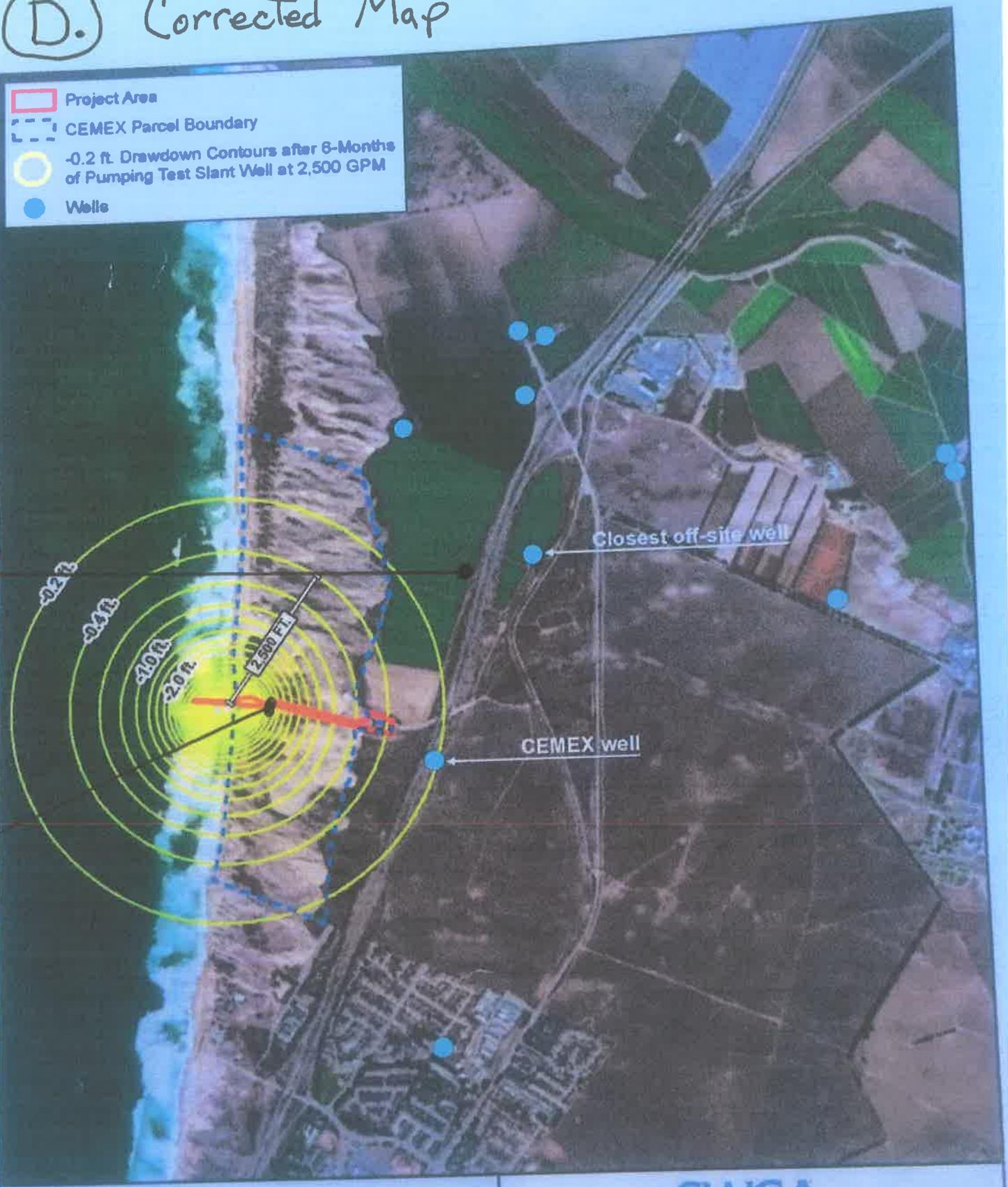
**Drawdown Contours Map
California American Water
Slant Test Well Project**

(D.) Corrected Map

- Project Area
- CEMEX Parcel Boundary
- 0.2 ft. Drawdown Contours after 6-Months of Pumping Test Slant Well at 2,500 GPM
- Wells

AgLand Trust "Big Well"

Actual Well Site for Cal-Am Test



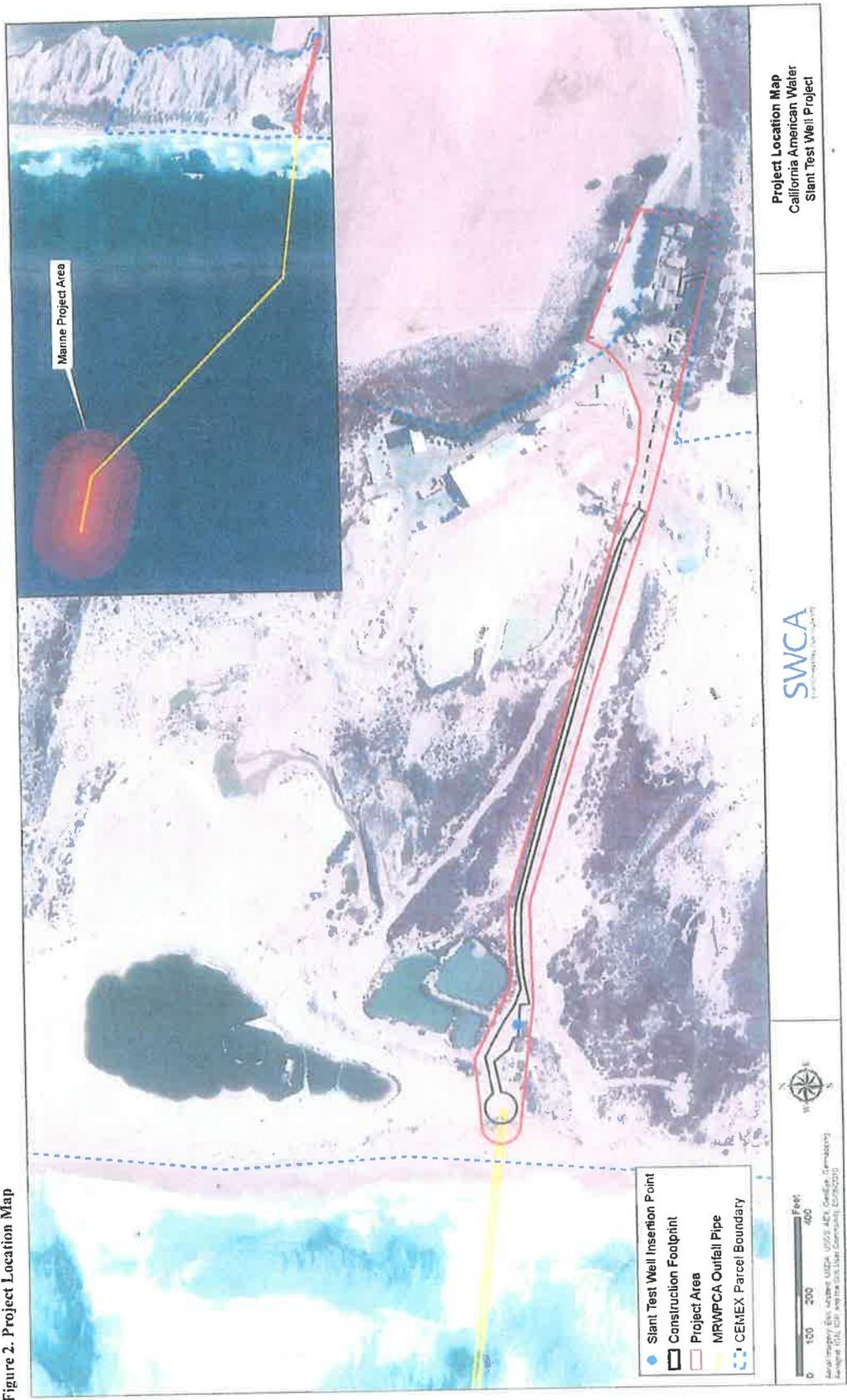
SWCA
ENVIRONMENTAL CONSULTANTS

Drawdown Contours Map
California American Water
Slant Test Well Project

Source: GEOSCIENCE Support Services, Inc.
Bavemap, ESRI, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX,
Getmapping, Aerogrid, IGN, IGR, swisstopo, and the GIS User Community

E.

Figure 2. Project Location Map



A-3-MRA-14-0050 / 9-14-1735
EXHIBIT 2



www.AgLandTrust.org
Location: 1263 Padre Drive | Salinas, CA
Mail Address: P.O. Box 1731 | Salinas, CA 93902
Tel.: 831.422.5868

12 NOVEMBER 2014

AGENDA ITEM 14 – copies provided to staff

TO: The California Coastal Commission

RE: Opposition to Proposed California American Water Company (Cal-Am) Appeal/Application to Acquire a Well Site to Violate Mandatory Policies of the Certified Local Coastal Plan and to Prescriptively Take Groundwater from the Overdrafted Salinas Valley Groundwater Basin

The Ag Land Trust is strongly objecting to the subject appeal and application because Cal-Am and the commission staff are asking the Commission to participate in an illegal project that violates an unprecedented number of coastal protection policies and state laws. The Coastal Commission, if it follows their wrongful advice, will be taking an “ultra vires” act and approving an illegal “test well” which violates CEQA, which fails to address the cumulative adverse impacts of the project as a whole, and which will result in an unlawful “taking” of groundwater rights from the Ag Land Trust and other rights holders.

We are writing this correspondence to you based upon our collective professional experience of over 80 years working in Monterey County on county groundwater rights and legal issues, California Coastal Act issues, agricultural water supply and water quality issues, potable water supplies and public health issues, and based upon our technical expertise in the areas of California groundwater rights law, agricultural regulatory and water supply issues, and environmental and public health issues related to potable groundwater supplies.

The Ag Land Trust of Monterey County (the Monterey County Agricultural and Historic Lands Conservancy) is a 501(c)(3) NON-PROFIT CORPORATION organized in 1984 for the purposes of owning, protecting, and permanently preserving prime and productive agricultural lands in Monterey County and within the California Coastal Zone. It is now the largest and most successful farmland preservation trust in the State of California, and it owns, either “in fee” or through permanent conservation easements, over 25,000 acres of prime farmlands and productive coastal agricultural lands throughout Monterey County and the Central Coast of the state. (**See attached Board of Directors roster – Exhibit 1**). Further, and of more particular importance, The Ag Land Trust has been the farmland conservancy that the California Coastal Commission has sought out to accept the dedications of prime and productive coastal farmlands in Monterey and San Mateo Counties as mitigations for the Coastal Commission’s issuance of development permits within those Local Coastal Planning areas.

The Ag Land Trust owns, in fee, the prime and productive coastal farmland (the Armstrong Ranch), and all of the overlying percolated groundwater rights thereunder, that is located immediately adjacent to (within 50 yards of) the California American Water Company’s (Cal-Am) proposed well site on the CEMEX

The Ag Land Trust is a 501 (c)(3) non profit organization.
Donations are welcome and tax deductible.

property. Our ranch was acquired with grant funds from the State of California and the United States (USDA) expressly to preserve its protected and irreplaceable prime and productive coastal farmland from development. We have over 160 acres under cultivation and use our potable groundwater wells for irrigation water.

Our property is in the unincorporated area of Monterey County. Our ranch lies within, and is subject to, the policies and regulations of the certified North Monterey County Local Coastal Plan area. Cal-Am has publicly stated that the huge cone of depression that will be created by its' massive proposed test well, and the excessive duration (two (2) years) of Cal-Am's intended proposed pumping, will result in the contamination of our wells and the unlawful "taking" of our potable groundwater from beneath our property in direct violation of the certified policies protecting our farmland in the North Monterey County Local Coastal Plan (NMCLCP – certified 1982). The appeal/application and the commission's staff analysis are fatally flawed because they have ignored the test well's immitigable operational and environmental violations and failed to address conflicts with the NMCLCP policies that Cal-Am's own documents have disclosed. **The proposed "test well" appeal/application directly violates the following policies/mandates of the certified North Monterey County Local Coastal Plan that the Coastal Commission is required to uphold and enforce:**

"NMCLCP 2.5.1 Key Policy

The water quality of the North County groundwater aquifers shall be protected, and new development shall be controlled to a level that can be served by identifiable, available, long term-water supplies. The estuaries and wetlands of North County shall be protected from excessive sedimentation resulting from land use and development practices in the watershed areas.

NMCLCP 2.5.3 Specific Policies

A. Water Supply

1. The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.

2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.

3. The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources."

Cal-Am's proposed illegal pumping and then its "wasting/dumping" of our protected potable groundwater resources will result in significant cumulative adverse impacts, immitigable permanent damage, a continuing nuisance, and irreversible seawater intrusion into the potable groundwater resources and

aquifers that belong to and which underlie the Ag Land Trust's Armstrong Ranch. Further, it will cause irreparable damage to our protected prime coastal farmlands in violation of our certified Local Coastal Plan. Cal-Am has no groundwater rights in the Salinas Valley and the North Monterey County Local Coastal Plan area and, pursuant to California groundwater rights law, is flatly prohibited from acquiring such rights in an overdrafted basin. **Importantly, Cal-Am's proposal, and Commission staff's recommendations directly violate the new mandates of Governor Brown's groundwater legislation that specifically identifies (and prohibits) "significant and unreasonable seawater intrusion" as an "Undesirable Result" that must be avoided in the management of potable groundwater basins, and specifically in the Salinas Valley. (See AB 1739 (Dickinson); SB1168 (Pavley); and SB 1319 (Pavley) signed by Governor Brown in October, 2014). The express legislative intent of these important pieces of legislation, in part, includes "respecting overlying and other proprietary rights to groundwater" by rights holders like the Ag Land Trust as against parties like Cal-Am (a junior, non-overlying, would-be prescriptive appropriator). Further, Cal-Am's proposed "test well", and its operation recommended by Commission staff, directly violates the new definition of "GROUNDWATER SUSTAINABILITY" as embodied in Governor Brown's new legislation.**

By this letter, the Board of Directors of the Ag Land Trust unanimously objects to the proposed coastal permit appeal and the application to the Commission initiated by the California American Water Company (Cal-Am) for a well site on the CEMEX property for Cal-Am's stated and prohibited reasons of wrongfully extracting potable groundwater from the overdrafted Salinas Valley Groundwater basin and our property. A significant portion of the groundwater that Cal-Am has expressly indicated it intends to wrongful "take" with its proposed "test well", without providing compensation for their resultant irreparable damage to our potable groundwater aquifers, belongs to the Ag Land Trust **(See attached Exhibit 2 - MAPS - by Cal-Am showing its' "drawdown" of groundwater by Cal-Am's well pumping on the adjacent Ag Land Trust property; Exhibit Map showing Ag Land Trust property in yellow right next to the proposed "test well"; Exhibit Maps (two copies - original and corrected) of Cal-Am maps misrepresenting the actual location of the proposed "test well" site, misrepresenting the actual impact area of Cal-Am's well pumping "cone of depression"; and failing to identify the closest agricultural well on the Ag Land Trust property which is in the "cone of depression" area.)**.

Cal-Am has been denied the prerequisite permits for a ground water well twice by both the City of Marina Planning Commission and the City Council of the City of Marina due, in part, to Cal-Am's failure to produce even one shred of evidence that it has any legal property or water right to pump groundwater from the overdrafted Salinas Valley Groundwater Basin, or that it can overcome its intended express violations of the farmland and groundwater protection policies of the certified North Monterey County Local Coastal Plan (NMCLCP). Unfortunately, these direct violations of existing mandatory NMCLCP protection policies are ignored in your staff report, in spite of the woefully inadequate condition that groundwater within 5000 feet of the well site be monitored for seawater intrusion. Further, there is no evidence produced by Cal-Am or the Commission's staff that the CEMEX well site is entitled to enough groundwater to satisfy Cal-Am's uncontrolled demand even if Cal-Am is successful in acquiring the well permit, and your staff has failed to disclose this issue for public review.

UNDER CALIFORNIA GROUNDWATER RIGHTS LAW, ACQUISITION OF A SURFACE WELL SITE DOES NOT RESULT IN THE ACQUISITION OF WATER RIGHTS TO PUMP GROUNDWATER FROM THE UNDERLYING OVERDRAFTED PERCOLATED GROUNDWATER BASIN. The over-drafted aquifers that are proposed to be exploited and contaminated by Cal-Am's self-serving pumping and dumping are required to be used by the NMCLCP "to protect groundwater supplies for coastal priority agricultural uses". **Has Cal-Am or the Commission staff explained how their proposed project does not violate the mandate to prevent adverse cumulative impacts upon coastal zone groundwater**

resources (North County LCP Sec. 2.5.3 (A) (3))? We can find no reference or consideration of this issue in your staff report. Moreover, the proposed appeal by Cal-Am, which is now being pushed by staff, directly violates the mandates of the certified North Monterey County Local Coastal Plan Sections 2.5.1, and 2.5.2.3, and 2.5.3.A.1-3; and 2.5.3.A.1.6, and 2.6.1; and 2.6.2.1; and 2.6.2.2; and 2.6.2.6. The impacts of the Cal-Am test well, by Cal-Am's own filings, will directly violate these policies in spite of the failure to have evaluated these significant and immitigable adverse impacts. We object to these obvious failures to comply with these mandated coastal protection policies and CEQA.

The Ag Land Trust objects to the Cal-Am appeal and application because Cal-Am, by omission, seeks to deceive the Commission as to its actual intent in pursuing the acquisition of the proposed "test well". Further, Cal-Am knows, but has failed to disclose to the Commission, that it intends to wrongfully and surreptitiously contaminate a potable groundwater aquifer and "take" the real property rights and the potable water rights of the Ag Land Trust, without compensation and in violation of over 100 years of California groundwater rights law. Cal-Am has been advised of this concern for at least eight (8) years by the Ag Land Trust. **(Exhibit 3 - See attached letters of objection from the Ag Land Trust).** Cal-Am intends to, and has admitted, that it intends to pump water from beneath the Ag Land Trust's property over the objection of the Trust since 2006. **(See Exhibit 2 - attached Cal-Am pumping map).**

Although our objections are not limited to those enumerated herein, The Ag Land Trust further objects to the Cal-Am proposal to use the CEMEX well site for the following reasons:

1. Cal-Am's assertions that it intends to pump seawater from the proposed "test well" is untrue. Cal-Am has conducted water quality sampling that already shows that its proposed extended pumping of that test well will intentionally and significantly draw water from "fresh", potable aquifers (180 ft. and 400 ft.) that underlie the Ag Land Trust property, and aggravate seawater intrusion below the Ag Land Trust property, thereby implementing a wrongful, uncompensated "taking" of our real property (aquifer storage and our well water) rights for Cal-Am's financial benefit. Cal-Am has disclosed this information to the City of Marina City Council. Moreover, Cal-Am has indicated that it intends to not use, but intends to "dump" the water it pumps from its "test well", including our potable water, back into the ocean, thereby constituting a prohibited "waste of water" and a direct violation of Article X, Sec.2 of the Constitution of California and the Doctrine of Reasonable Use (Peabody v. Vallejo 2 Cal. 2nd 351-371 (1935)). "The use of groundwater is a legally protected property right." (See Peabody). Cal-Am intends to do this to intentionally contaminate the aquifer and our wells so that it can avoid the legal penalties and financial consequences of its plan to illegally, prescriptively, and permanently take control of the groundwater aquifers underlying the Ag Land Trust's productive farmland for Cal-Am's sole economic benefit. Moreover, the granting of this appeal and the issuance of a permit by the Commission, now that this intended violation of the law has been disclosed, will likely expose the Coastal Commission to nuisance claims and "vicarious liability" for the taking of our groundwater rights, and the resultant damages flowing therefrom, along with Cal-Am (See Aransas v. Shaw 756 F.3rd 801 (2014)). Further, granting Cal-Am's appeal will directly violate Governor Brown's landmark groundwater legislative package that prohibits the taking of other parties' groundwater rights and prohibits the intentional contamination of identified potable groundwater supplies.

2. The Salinas Valley groundwater basin has been identified as being in overdraft by the California Department of Water Resources, the California Coastal Commission, and the Monterey County Water Resources Agency (MCWRA) for over 60 years. The sole source of recharge to the aquifer is rainfall and water percolated into the Salinas River from water supply projects paid for, pursuant to Proposition 218 requirements and provisions of the California Constitution, by overlying land owners (assesses) within the basin, including the Ag Land Trust. The overlying water rights holders have paid tens of millions of dollars to protect and restore their groundwater supplies. Cal-Am has not paid anything to protect and preserve the aquifers, and has acquired no groundwater rights in the basin or from those projects.

3. The overdraft was initially identified in Monterey County studies of the basin in the 1960's and 1970's, and has been repeatedly identified by more recent MCWRA hydrologic and hydro-geologic studies (U.S. ARCORPS, 1980; Anderson-Nichols, 1980-81; Fugro, 1995; Montgomery-Watson, 1998). The universally identified remedy for seawater intrusion specified in these studies is the reduction of well pumping near the coast. Further, the overdraft in the North County aquifers has been publicly acknowledged for decades by both the Monterey County Board of Supervisors and the California Coastal Commission in the certified "North County Local Coastal Plan" (1982), the "Monterey County General Plan" (1984 and 2010) and the "North County Area Plan" (1984). The Ag Land Trust and all other land owners within the basin have spent millions of dollars over the last sixty years to build water projects to reverse and remedy the overdraft and recharge the aquifers. Cal-Am has not spent anything to protect the groundwater resources of the Salinas Valley. Unfortunately, Cal-Am, in its continuing wrongful pursuit of "taking" other people's water rights, has failed to disclose to the Commission how it intends to violate the laws of groundwater rights that govern the basin. Moreover, Cal-Am and Commission staff, without any evidence to back up their assertions, now asks the Commission to blindly ignore 50 years of detailed hydro-geologic and engineering studies by independent, impartial public agencies, and asks the Commission to rely on Cal-Am's "voo doo hydrology" that its "test well" pumping results will not aggravate seawater intrusion in the Salinas Valley or "take" our potable water resources and water rights.

4. California law holds that, in an overdrafted percolated groundwater basin, there is no groundwater available for junior appropriators to take outside of the basin. In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies (Katz v. Walkinshaw 141 Cal. 116 (1902)). In an over-drafted basin, there is no surplus water available for new, junior "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. The clear, expansive, and often re-stated law controlling groundwater rights in an over-drafted basin has been reiterated by California courts for over a century (Katz v. Walkinshaw, 141 Cal. 116; Burr v. Maclay 160 Cal. 268; Pasadena v. Alhambra 33 Cal. 2nd 908; City of Barstow v. Mojave 23 Cal. 4th 1224 (2000)). This is the situation in the over-drafted Salinas Valley percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Salinas aquifers. Cal-Am is a junior appropriator that has

no rights to groundwater in the Salinas Valley, and can't get any. Moreover, Cal-Am's unsubstantiated assertions that it needs to drill a test well to satisfy the SWRCB ignores the fact that Cal-Am's actual intent and conduct is aimed at avoiding the SWRCB Cease and Desist order on the Carmel River (that has resulted from its constant illegal diversions of water over the past twenty years) by creating an even greater illegal diversion of "other peoples" groundwater from the overdrafted Salinas Valley. Cal-Am's shameless propensity to violate both the requirements of California water law and the water rights of other innocent property owners is legend, and is the reason that the SWRCB issued its enforcement SWRCB Order 95-10 and the Cease and Desist order against Cal Am.

5. Further, it is important for the Commission to know that the SWRCB is specifically prohibited by the Porter-Cologne Act (1967) from having any jurisdictional authority of non-adjudicated percolated groundwater basins like the Salinas Valley. Moreover, neither the CPUC, nor the Coastal Commission, nor the SWRCB can grant groundwater rights to Cal-Am. Such an approval would be a direct violation of California groundwater rights law. The SWRCB cannot, and has no authority to, order the installation of slant wells so that Cal-Am can wrongfully take other people's water and water rights without a full judicial adjudication of the entirety of the Salinas Valley groundwater basin among all landowners and existing water rights holders therein. Cal-Am's request for a test well site seeks to hide by omission the irrefutable legal impediments to its planned illegal taking of groundwater.
6. The Cal-Am desalination plant, and its proposed test wells and the appeal to which we object, are illegal and directly violate existing Monterey County Code Section 10.72.010 et seq (adopted by the Board of Supervisors in 1989) which states in part:

Chapter 10.72 - DESALINIZATION TREATMENT FACILITY (NMC LCP)

Sec. 10.72.010 - Permits required.

No person, firm, water utility, association, corporation, organization, or partnership, or any city, county, district, or any department or agency of the State shall commence construction of or operate any Desalination Treatment Facility (which is defined as a facility which removes or reduces salts from water to a level that meets drinking water standards and/or irrigation purposes) without first securing a permit to construct and a permit to operate said facility. Such permits shall be obtained from the Director of Environmental Health of the County of Monterey, or his or her designee, prior to securing any building permit.

Sec. 10.72.030 - Operation permit process.

All applicants for an operation permit as required by Section 10.72.010 shall:

- A. Provide proof of financial capability and commitment to the operation, continuing maintenance replacement, repairs, periodic noise studies and sound analyses, and emergency contingencies of said facility. Such proof shall be in the form approved by County Counsel, such as a bond, a letter of credit, or other suitable security including stream of income. For regional desalinization projects undertaken by any public agency, such proof shall be consistent with financial market requirements for similar capital projects.
- B. **Provide assurances that each facility will be owned and operated by a public entity.**

Cal-Am, by its own admission is not a "public entity", as defined under the Monterey County Code and the California Government Code. Cal-Am is a privately owned, for-profit corporation which is a regulated private company and taxed as a private company by the Internal Revenue Service. Further, the California Public Utilities Commission's power of eminent domain, which Cal-Am invoked to pursue its devious acquisition of the CEMEX well site, may not be used or invoked to take actions that are violations of existing state or local laws, ordinances, or regulations. Under California law, eminent domain may not be used to acquire unlimited groundwater pumping rights in an overdrafted basin. Cal-Am is attempting to pursue acquisition of a well site for a project that it is prohibited from owning and operating, and for which it has no groundwater rights. Neither Cal-Am nor the CPUC have pursued an action in declaratory relief. Further, the CPUC cannot grant groundwater rights nor waive the requirements of a local ordinance so as to exercise its power of eminent domain, either directly or indirectly. It certainly cannot grant other peoples' groundwater rights to Cal-Am for the sole financial benefit of Cal-Am. Nor can the SWRCB. Nor can the Coastal Commission. The granting of this appeal and application for the well site expressly to illegally appropriate and "take/steal" tens of thousands of acres feet of "other people's groundwater" from the overdrafted Salinas Valley groundwater basin, for a project that Cal-Am is legally prohibited from owning and operating, would constitute an illegal, "ultra vires" act that may not be facilitated by the Commission.

7. Cal-Am's appeal also fails to disclose to the Commission the legal limitations that will apply to its so-called "test well". The Doctrine of Correlative Overlying Water Rights, as created and interpreted by the California Supreme Court in Katz v. Walkinshaw 141 Cal. 116, and as reiterated for the last 110 years (most recently in City of Barstow v. Mojave 23 Cal. 4th 1224 (2000)), prohibits any land owner in an over-drafted percolated groundwater basin from pumping more than that land owner's correlative share of groundwater from the aquifer as against all other overlying water rights holders and senior appropriators. CEMEX is only allowed to pump a fixed (correlative) amount of water for beneficial uses solely on its' property. Given the size of the small easement pursued by Cal-Am, the Commission must limit the amount of water that Cal-Am may pump annually from that easement to that small fraction of the total available water amount that may be used by CEMEX pursuant to its deed restriction in favor of the Marina Coast Water District and the other land owners in the Salinas Valley basin and pursuant to the Doctrine as mandated by state law. If the Commission were to grant Cal-Am's appeal, it would be necessary to specifically, and in writing, limit the temporary permitted extraction to insure that Cal-Am does not conveniently forget its legal obligations like it has on the Carmel River for the past 20 years.

Uncontrolled pumping of Cal-Am's "test well" can and will reverse years of efforts to recharge and restore our aquifer, violate existing mandatory LCP policies, violate state groundwater law, and leave us permanently without a groundwater supply for our farm.

8. Cal-Am's proposed well and its uncontrolled pumping plan will intentionally contaminate the potable groundwater aquifers beneath the Ag Land Trust property and the potable aquifers of the Salinas Valley in violation of state law. Cal-Am, by its appeal for a well site, intends to intentionally contaminate a potable groundwater supply in violation of multiple state regulations and water quality laws. The California Regional Water Quality Control Board – Central Coast (CCRWQCB) is a division of the SWRCB and created pursuant to an act of the legislature known as the Porter-Cologne Act. One of the duties delegated to the CCRWQCB is the adoption and enforcement of the Water Quality Control Plan for the Central Coastal Basin. The Plan is mandated to meet the requirements of the federal Clean Water Act and the Porter-Cologne Act. It was adopted after numerous public hearings in June, 2011. This Plan is mandated by law to identify the potable groundwater resources of the Central Coast and Monterey County. At Chapter 2, Page II-1, the Plan states, "Ground water throughout the Central Coastal Basin, except for that found in the Soda Lake Sub-basin, is suitable for agricultural water supply, municipal and domestic water supply, and industrial use. Ground water basins are listed in Table 2-3. A map showing these ground water basins is displayed in Figure 2-2 on page II-19." This reference specifically included the potable groundwater supplies/aquifers under the Ag Land Trust property, adjacent to the CEMEX site, which is sought to be exploited by Cal-Am to supposedly pump "seawater". The Plan goes on to quote the SWRCB Non-Degradation Policy adopted in 1968 which is required to be enforced by the CCRWQCB. "Wherever the existing quality of water is better than the quality of water established herein as objectives, such existing quality shall be maintained unless otherwise provided by the provisions of the State Water Resources Control Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," (See Exhibit 3) including any revisions thereto. Cal-Am, in pursuing its well site, knowingly has ignored the above stated facts and law and withheld this information from the Commission so as to avoid having to compensate the Ag Land Trust for its irreparably damaged property, wells, and water rights and to avoid further legal enforcement actions against Cal-Am by federal and state regulatory agencies.
9. Cal-Am's flawed and self-serving real estate appraisal of the proposed well site and easement fails to evaluate, quantify, and value the exploitation of groundwater resources and the value of permanently lost water supplies and rights due to induced seawater intrusion into the potable aquifers by Cal-Am's wrongful pumping and its illegal exploitation of the Ag Land Trust's percolated, potable groundwater supply. The full price of Cal-Am's actions and "takings" has been significantly underestimated expressly for Cal-Am's prospective economic benefit.
10. Our wells (two wells) and pumps on our ranch adjacent to the location of the proposed well field are maintained and fully operational. **Cal-Am has failed to identify and disclose in their exhibits to the Commission the location of our largest well (900 ft.) which is located west of Highway 1 and within the "cone of depression" area of Cal-Am's proposed "taking" of our groundwater (See Exhibit 2). Its' water will be taken and contaminated by Cal-Am's actions that are endorsed by Commission staff.** We rely on our groundwater and our overlying groundwater rights to operate and provide back-up supplies for our extensive agricultural activities. Our property was purchased with federal grant funds and the U.S. Department of Agriculture has a reversionary interest in our prime farmland and our water rights and supplies that underlie our farm. Neither Cal-Am, nor the CPUC, nor the Coastal commission can acquire property or groundwater rights as against the federal government by regulatory takings or eminent domain. Cal-Am has intentionally omitted these facts from its appeal so as to avoid uncomfortable environmental questions that would invariably disclose Cal-Am's intended illegal acts and proposed "takings". Cal-Am's proposed "takings", as supported by Commission staff, will

intentionally and wrongfully contaminate our protected potable groundwater supplies, resources, and wells. Cal-Am's and staff's intent on "eliminating our right of use (through "public trust" inspired pumping to protect unidentified marine organisms) is akin to the drastic impact of physical invasion on real property, which categorically warrants compensation" (Loretto v. Teleprompter Manhattan 458 U.S. 419,421 (1982) (physical occupation of property requires compensation). Hence, such an impact on water rights should merit the same categorical treatment. (See Josh Patashnik, Physical Takings, Regulatory Takings, and Water Rights, 51 Santa Clara Law Review 365,367 (2011)).

11. The staff report admits that the test well site is an environmentally sensitive habitat area (ESHA) and that the project is not a resource dependent use. (Only resource dependent uses are permitted in ESHA). That should end the discussion and result in denial of the project. But, the staff report then states that this project qualifies for an exception under the Coastal Act for "industrial facilities." This is not an industrial facility under the Coastal Act. It might be a public works facility, except Cal-Am is not a California public/government agency. Cal-Am is a division of a for-profit, privately owned corporation from New Jersey. The Staff is relying on section 30260 which allows such industrial facilities if alternative locations are infeasible, it would be against the public welfare to not approve the project, and the impacts are mitigated to the maximum extent feasible. That exception is for industrial facilities, not public works facilities. This project is not an industrial facility. It is a privately owned water well. Section 30260 states that industrial facilities may be permitted contrary to other policies in the Coastal Act "in accordance with this section (30260) and Sections 30261 and 30262..." These latter sections concern oil and gas facilities. Public works are addressed in a different Article of the Coastal Act. The staff report at p. 57 characterizes the test well as an industrial activity because "It would be built within an active industrial site using similar equipment and methods as are currently occurring at the site." This is an unsustainable stretch of the definition. The staff report refers to a Santa Barbara County LCP provision regarding public utilities concerning natural gas exploration as support for the notion that the test well is an industrial facility. But, the Santa Barbara County provision notably concerns natural gas. Thus, development of the test well in ESHA would violate the Coastal Act.

12. Finally, Cal-Am touts its "so-called" settlement agreement with a few non-profit entities and politicians as some kind of alleged justification for the Commission to ignore Cal-Am's intended violations of law and approve their illegal taking of our property/water rights. Not one of the parties to the so-called settlement agreement holds any groundwater rights in the Salinas Valley that will be adversely taken by Cal-Am's proposed conduct. None of them have offered to compensate the Ag Land Trust for the "theft" of our groundwater rights that they have endorsed. Cal-Am has a history of unapologetic violations of California's water rights laws. Cal-Am's contrived reliance on "endorsements" by uninformed and unaffected parties to the "so-called" settlement agreement is akin to a convicted thief asserting a defense that his mother and grandmother both agree that he is "a good boy" who really did not mean to steal.

Since 1984, The Ag Land Trust's Board of Directors has been committed to the preservation of California's prime and productive farmland and the significant environmental benefits that flow therefrom. The Trust does not want to "pick a fight" with the Commission staff with whom we have worked cooperatively and successfully for many years. But the Commission staff and Cal-Am have produced no environmental evidence or facts to justify ignoring the mandates of the City of Marina in requiring the preparation of a full Environmental Impact Report (EIR) pursuant to the California Environmental Quality

Act (CEQA) prior to drilling a well meant to knowingly contaminate our water resources and wells. The staff has cited the Santa Barbara LCP to try to rationalize its recommendation, but they have produced no evidence to justify ignoring the multiple mandates of the North Monterey County Local Coastal Plan (just 50 yards from the well) that will be violated. The Commission's review of the test well must comply with CEQA since its' review is the functional equivalent of CEQA review. The staff report does not provide analysis of the impacts of the project on groundwater supply and rights. The Commission must perform analysis of the adverse effects of the project on the groundwater of adjacent overlying land owners and senior water rights holders. The test well is being used in place of environmental review. Its' significant, if not irreversible, adverse effects will not be identified until after the permanent damage to our aquifer and wells is done. This is antithetical to CEQA which requires the analysis to be performed prior to beginning the project. A test well that will operate for two years, without analysis of potential impacts, violates CEQA. Indeed, the City of Marina City Council (which includes three attorneys) recognized this fact when it voted to require an EIR prior to the considering the CDP.¹ Cal-Am and the staff have produced no comprehensive evidence that the damage that will result to protected coastal resources from the proposed "test well" is less than the damage that may be caused by other alternative sources of seawater. Further, Commission staff and the CPUC can no longer intentionally avoid the CEQA mandates of a full alternatives analysis in the EIR of all potential seawater sources, including seawater intakes at Moss Landing as identified as the "preferred site" for all of Monterey Bay (see directives, mandates, and findings of the California Legislature of Assembly Bill 1182 (Chapter 797, Statutes of 1998) which required the California Public Utilities Commission to develop the Plan B project, and the CPUC Carmel River Dam Contingency Plan – Plan B Project Report which was prepared for the Water Division of the California Public Utilities Commission and accepted and published in July, 2002 by the California Public Utilities Commission." "Plan B" identifies the Moss Landing Industrial Park and the seawater intake/outfall on the easement in the south Moss Landing Harbor as the optimal location for a regional desalination facility.) The staff report has chosen to ignore long standing and mandatory coastal protection policies to try to force us to give up our farm's water rights for the sole economic benefit of Cal-Am. This political position by staff is misguided and is a failure of the environmental protection policies and laws that are intended to protect all of our resources from immitigable, adverse effects of improperly analyzed and poorly considered development projects. The Coastal Commission staff simply has to do a lot more than take a political position at the expense of otherwise innocent adjacent land owners with real groundwater rights that are about to be wrongfully taken.

The cumulative impacts section of the staff report ignores the cumulative impacts of drawing more water from an overtaxed aquifer and the loss of prime farmland. This is a violation of CEQA. The cumulative impact analysis only addresses the impacts to dune habitat and it also addresses this cumulative impact in a very localized fashion. This is a special and rare habitat and the impacts to this habitat in the entire dune complex extending down to the Monterey Peninsula should be examined.

Furthermore, an EIR is being prepared by the PUC for the project. The Coastal Commission is approving the test well without really addressing the impacts of the project as a whole. Either the PUC should be the lead agency and finish the EIR, or the Commission should analyze the entire project as one. The

¹ The staff report makes an unwarranted and unfair assertion that the City of Marina set "poor precedent" when the City of Marina denied the CDP without making LCP consistency findings. The reason the findings were not made is because the Council was simply complying with CEQA and requiring adequate environmental review before making a final decision. The Commission's premature assumption of jurisdiction and lack of appropriate and detailed analysis simply thwarts the City's attempt to comply with CEQA, and the Commission's staff report fails to adequately address environmental impacts as the functional equivalent CEQA document.

Commission buries the analysis about the project as whole in the cumulative impacts section. (See p. 60-62). This is illegal piecemeal environmental review pursuant to CEQA.

In the case of Bennett v. Spear (520 U.S.154, at 176-177 (1997)), the United States Supreme Court ruled the following in addressing the enforcement of the protection of species under the federal Endangered Species Act: "The obvious purpose of the requirement that each agency "use the best scientific and commercial data available" is to ensure that the ESA not be implemented haphazardly, on the basis of speculation or surmise. While this no doubt serves to advance the ESA's overall goal of species preservation, we think it readily apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives." The Ag Land Trust believes that, absent preparation of a full and complete EIR with a full and complete seawater intake alternatives analysis BEFORE any well is permitted or drilled, the staff recommendation violates the laws of California and will result in the unlawful taking of our property rights for the benefit of a private party.

The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. We have not caused nor have we contributed to that problem. It has gone on for decades. The Ag Land Trust also recognizes that Coastal Commission staff desires an absolute prohibition of seawater intakes for desalination plants. The water shortage that is of Cal-Am making (by its failure to produce a water supply project in over 20 years) does not justify the Commission staff's proposed illegal taking of our groundwater and property rights, and the intentional contamination of our potable aquifers and wells, for the sole and private economic benefit of Cal-Am.

We hereby incorporate by reference all facts, statements, and assertions included in the documents, cases, laws, and articles referred to herein, and included in the attachments and exhibits hereto.

We ask that the Commission deny the Cal-Am's appeal and application and require that a full and complete EIR be prepared before any permit is considered by your Commission and for the other reasons stated herein.

Most Respectfully for the Ag Land Trust,



Marc Del Piero,

Attorney at Law



Richard Nutter, Monterey County

Monterey Co. Agricultural Commissioner (ret.)

cc: California Coastal Commission staff

Exhibit 3 – Ag Land Trust Exhibits -

Opposition correspondence – 2006 - Present



www.AgLandTrust.org
Location: 1263 Padre Drive | Salinas, CA
Mail Address: P.O. Box 1731 | Salinas, CA 93902
Tel.: 831.422.5868

3 September 2014

To: City Council of the City of Marina

From: Board of Directors of the Monterey County Ag Land Trust

RE: Cal-Am slant well application/Mitigated Negative Declaration

Dear Council members:

The Ag Land Trust owns prime irrigated farmland adjacent to the property where Cal-Am proposes to construct and operate a test well that is designed to remove approximately 8,000.0 acre feet of groundwater from the overdrafted Salinas Valley groundwater basin during its test period. The Ag Land Trust has met with the representatives of Cal-Am and others in an effort to develop a mitigation agreement if and when damage is caused to the Ag Land Trust's property and well water supply by the test well and future well field operation. No agreement has been reached at this time. Therefore, due to the lack of action and mitigation agreement between Ag Land Trust and Cal-Am, the Board of Directors of the Ag Land Trust is forced to re-iterate its opposition to the appeal by Cal-Am of the denial of Cal-Am's slant well application by the Planning Commission of the City of Marina.

We hereby incorporate by reference each and every prior submission provided by our attorneys and us to the City of Marina, and its consultants and staff, as correspondence and/or exhibits in opposition to the pending Cal-Am slant well application. We oppose the Cal-Am slant well application and test wells because these applications fail to comply with CEQA and totally lack any groundwater rights in the overdrafted groundwater basin. We further agree with and incorporate by reference, and adopt as our additional comments, all of the statements included in the letter of objection written to the City of Marina dated September 3, 2014 from the law firm of Remy, Moose, and Manley LLC on behalf of the Marina Coast Water District.

Due to the absence of mitigation agreement the Ag Land Trust continues to object to the application by Cal-Am, in part, based upon the following reasons:

1. The California American Water Company has no groundwater rights in the overdrafted Salinas Valley groundwater basin. As a proposed junior appropriator, and as a matter of both California case law and statutory law, Cal-Am cannot acquire groundwater rights in that overdrafted basin, and is prohibited from exporting any groundwater, including the water pumped from their proposed test well, from that basin. The statutory prohibition is absolute. Cal-Am's so-called "physical solution" is prohibited by statute. The proposed "test wells" are a shame to obfuscate Cal-Am's lack of property/water rights to legally pursue its proposal. Moreover, Cal-Am's application poses grave and unmitigated adverse impacts (including, but not limited to loss of agricultural productivity, loss of prime farmland, loss of existing jobs, loss of potable water supplies and ground water storage capacities, loss of beneficial results from regionally funded and publicly owned seawater intrusion reversal capital projects (i.e. CSIP and the "Rubber Dam"), and intentional contamination of potable groundwater supplies) upon the privately held overlying

The Ag Land Trust is a 501 (c)(3) non profit organization.
Donations are welcome and tax deductible.

groundwater rights, water supplies and resources, and property rights of the Ag Land Trust, other overlying land owners with senior groundwater rights in the Salinas Valley, and of the residents of the City of Marina and the Salinas Valley.

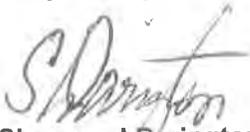
2. The current Cal-Am slant wells/test wells application has identified no mitigation for the groundwater contamination that it will induce into the Ag Land Trust's underlying groundwater resources and storage aquifers. Cessation of wrongful pumping by a non-water rights holder in an overdrafted basin IS NOT MITIGATION FOR THE DAMAGE THAT WILL BE INDUCED TO OUR GROUNDWATER RESOURCES. Failure to identify an appropriate mitigation for the groundwater contamination that will result from the pumping of the 8,000.0 acre feet of groundwater from the test wells is a violation of CEQA. Further, Cal-Am's plan of intentionally inducing seawater into a potable groundwater aquifer that underlies our property is an intentional violation of both the 1968 SWRCB Resolution 68-16, the California Non-Degradation Policy, and the Basin Plan as adopted by the Central Coast California Regional Water Quality Control Board. Such intentional "bad acts" may be prosecuted both civilly and criminally against parties who are complicit in such intentional potable water supply contamination.

3. The 1996 agreement between the City of Marina, the MCWD, the land owners of the CEMEX site, the Armstrong family and the County of Monterey/MCWRA prohibits the extraction of more than 500 acre feet of groundwater annually from any wells on the CEMEX site as a condition of the executed agreement/contract. It further mandates that such water be used only on-site at the CEMEX property, within the Salinas Valley groundwater basin, as mandated by statute. The Ag Land Trust is a third party beneficiary of this 1996 agreement because Ag Land Trust pays assessments to the County of Monterey expressly for the seawater intrusion reversal projects known as CSIP and "the Rubber Dam". Cal-Am is prohibited from pursuing its project because of this prior prohibition and because Cal-Am's proposed acts will cause an ongoing nuisance, will directly injure Ag Land Trust property rights, and will irreparably compromise the beneficial public purposes of the above reference publicly owned capital facilities.

4. The granting of Cal-Am appeal will result in a loss of groundwater resources by the City and MCWD, massive expenses to the residents of Marina, and the effective transfer of water resources to a private company that provides no benefit or service to the City of Marina or its citizens.

We respectfully request that the Cal-Am appeal be denied, and if not, that as a condition of approval, the approval is subject to a signed mitigation agreement between Cal-Am and the Ag Land Trust prior to the construction of any well or wells. Furthermore, we believe that the Marina Planning Commission's denial of the Cal-Am application was well reasoned and correct. If the Council chooses not to deny the Cal-Am application, the Ag Land Trust respectfully requests that a full and complete EIR on the proposed slant wells (and their significant and unmitigated impacts and threats to regional groundwater supplies and the communities of Marina and the Salinas Valley as well as the determination of Cal-Am's groundwater rights) be prepared as mandated by CEQA. Failure to fully and completely require Cal-Am to comply with CEQA by requiring a full EIR will expose the City and its residents to the loss of public funds due to attorney's fees, litigation expenses, damages awards, and costs that provide no benefit to the City or to its citizens.

Respectfully,



Sherwood Darington
Managing Director
Ag Land Trust



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

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

August 11, 2011

TO: California Coastal Commission

From: The Ag Land Trust of Monterey County

RE: Groundwater Rights and Submerged Lands

Tom Luster asked the question "Who owns the groundwater in the 180 ft. aquifer under the ocean?"

The answer is that, under California case law which controls the ownership and use of potable (fresh) groundwater rights in our state, each property owner with land that overlies a percolated fresh groundwater aquifer (including the State of California as the "public trust owner" of submerged lands that are overlying the Salinas Valley potable groundwater aquifer that extends into the Monterey Bay National Marine Sanctuary) is entitled only to its correlative share of the safe yield of the fresh groundwater that may be used without causing additional over-draft, adverse effects, waste and/or damage to the potable water resource or to the water rights of the other overlying land owners. (Katz v. Walkinshaw (141 Cal. 116); Pasadena v. Alhambra (33 Calif.2nd 908), and reaffirmed in the Barstow v. Mojave Water Agency case in 2000). The Commission has no right to authorize or allow the intentional contamination and waste of a potable aquifer which is also a Public Trust resource (see below), and such an act would be "ultra vires" and illegal.

The proposed slant "test" wells are intended to violate these laws and significantly induce saltwater and contamination into an overdrafted freshwater aquifer (a Public Trust resource) thereby causing depletion, contamination, waste, and direct and "wrongful takings" of the private water rights of other overlying land owners and farmers. Further, the project proponents, by their own admission, have no groundwater rights in

the Salinas Valley aquifer because they are not overlying land owners. Such a "taking" will constitute a direct and adverse impact and impairment of the public's health and safety by diminishing a potable groundwater aquifer and a Public Trust resource. It will also adversely affect protected coastal priority agricultural enterprises.

In an overdrafted potable groundwater basin, no property owner or user of water is entitled to pump or take any such actions as to waste, contaminate, impair, or diminish the quality or quantity of the freshwater resource. The overdrafted Salinas Valley fresh water groundwater aquifer that extends under the Monterey Bay National Marine Sanctuary is identified as a potable water resource by the State and is governed the SWRCB Groundwater Non-Degradation Policy, which finds its source in the California Constitution:

CALIFORNIA CONSTITUTION ARTICLE 10 - WATER

SEC. 2. It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.

In other words, the state has determined that the subject Salinas Valley potable groundwater aquifer is a protected natural resource. The state may use the fresh groundwater only to the extent that it has a correlative right that accrues to its public trust lands as against all other overlying land owners that are exercising their rights and using the fresh groundwater for beneficial uses, as mandated and protected in the California Constitution. Further, the 1968 SWRCB Non-Degradation Policy absolutely prohibits the intentional contamination and/or "waste" of a potable groundwater aquifer by any party. (See attached Resolution No. 68-16) The fact that the Salinas Valley aquifer is a potable supply is definitively established in the Central Coast Regional Water Quality Control Board "Basin Plan" for Central California

Additionally, the mandatory requirements of the California Coastal Act also control the conduct, powers, and authority of the Calif. Coastal Commission when addressing these Public Trust resources and this application.

The California Coastal Act - Section 30231 (California Public Resources Code Section 30231) requires of the Commission that:

Sec. 30231 - 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 water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed test wells directly and intentionally violate the mandatory statutory requirements, duties, and obligations imposed upon the California Coastal Commission by Section 30231 of the Coastal Act to protect and preserve and restore this potable water resource and protected coastal resource. The Salinas Valley potable groundwater aquifer, which is proposed to be wrongfully exploited by the project applicants' slant test wells, is a "coastal water", is producing potable water which is used and recognized for human consumption and coastal priority agricultural production, and shall be "protected from depletion" by the express language of the Coastal Act.

Finally, in the landmark Public Trust case of National Audubon Society v. Superior Court of Alpine County (1981), the California Supreme Court confirmed as part of its "Public Trust Doctrine" that the State retains continuing supervisory control over the navigable waters of California and the lands beneath them. This prevents any party from acquiring a vested right to appropriate water in a manner harmful to the uses protected by the Public Trust. (California Water Plan Update 2009, Vol. 4, Page 2 (1)).

The proposed slant test wells are designed to intentionally deplete, contaminate, and waste a protected potable water supply and a Public Trust resource. The project will violate statutory and regulatory mandates of the California Coastal Act, the California Water Code, the

California Public Resources Code, the California Constitution, and over 100 years of case law governing groundwater rights and the Public Trust Doctrine. It will result in the wrongful taking of water rights from farmers who are beneficially using the water for protected, coastal priority agricultural production and for human consumption. Besides that, the project applicants, by their own admission, have no appropriative groundwater rights. They should not even be entitled to a hearing.

This project should be denied, or at the very least continued until the Monterey County Superior Court can rule on the two lawsuits that are pending over these issues.

A handwritten signature in cursive script, appearing to read "Marc DePaulo". The signature is written in dark ink and is positioned below the second paragraph of text.

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 68-16

STATEMENT OF POLICY WITH RESPECT TO
MAINTAINING HIGH QUALITY OF WATERS IN CALIFORNIA

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

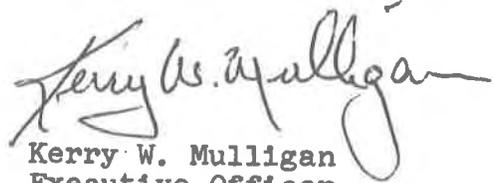
1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.
2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
3. In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Secretary of the Interior as part of California's water quality control policy submission.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 24, 1968.

Dated: October 28, 1968

A handwritten signature in cursive script, appearing to read "Kerry W. Mulligan".

Kerry W. Mulligan
Executive Officer
State Water Resources
Control Board

LAW OFFICES OF
MICHAEL W. STAMP

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Telephone
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July 26, 2011

Via Email

Thomas Luster
Energy, Ocean Resources, and Federal Consistency Division
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

Dan Carl, District Manager
Michael Watson, Coastal Planner
California Coastal Commission
Central Coast District Office
725 Front Street, Suite 300
Santa Cruz, CA 95060

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

Dear Mr. Luster, Mr. Carl and Mr. Watson:

This Office represents Ag Land Trust, which owns agricultural properties in the Salinas Valley. For years, Ag Land Trust has pointed out that the Regional Desalination Project does not have valid water rights. The environmental documents to date have failed to point to valid groundwater rights for the project, and instead took various inconsistent positions on water rights.

This letter responds to new claims made by Downey Brand LLP, attorneys for the proponents of the Regional Project, in a letter dated May 20, 2011 to Lyndel Melton, P.E., of RMC Water and Environment. The Downey Brand letter was submitted to the Coastal Commission as part of the Regional Project proponents' response to the Commission's incomplete letter.

The Downey Brand letter raises various claims which may have superficial appeal but in reality 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" (Downey Brand letter, sec. 1, pp. 1-4) are addressed briefly here. Of the four different Downey Brand claims, none has merit, and none provides the necessary proof of water rights.

Downey Brand's General Claims about Water Rights

Monterey County Water Resources Agency has no groundwater storage rights, no overlying groundwater rights, and no "imported water rights." The Salinas Valley is

not an adjudicated groundwater basin. 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 of Salinas, according to the latest (2009) mapping. (Historic Seawater Intrusion Map Pressure 180-Foot Aquifer, attached as Exhibit A to this letter.)

The EIR for the Coastal Water Project did not comprehensively or 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, 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, 2011 [<http://www.thecalifornian.com/article/20100331/NEWS01/3310307/280M+-desalination-plant-10-mile-pipeline-agreed-on-for-Monterey-Peninsula>].) The Regional Project intake wells would be owned and operated by MCWRA.

The Coastal Commission should not be misled by the claims of Downey Brand, starting with the claim that the 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. .)

The general claims made in the Downey Brand letter about water rights (at p. 1, bottom paragraph) should be disregarded because they are devoid of specific citation to law or to specific water rights. The specific claims made 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, p. 2) While that may be true, MCWRA's powers do not include groundwater rights that it can use 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 intentionally abandons and "loses management and control" of that surface water when the MCWRA releases the water into the rivers and subsequently lost to percolation. "Management and control" are prerequisites to maintain the use of any right to water. In its letter, 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. Downey Brand's approach is inconsistent with basic California groundwater law which holds that waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are

what the Regional Project would do. An overlying right is the owner's right to take water from the ground underneath for use on his land within the basin. An overlying right it 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.)

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." (Downey Brand letter, p. 2.) There is no cognizable legal support given by Downey Brand for that claim in the sole case it cites: the California Supreme Court in *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 ("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 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 those rights which attach to water that does not originate within 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 claim of "developed" water. 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, 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. (Wells A. Hutchins, *The California Law of Water Rights* (1956) at pp. 383-385.) Appropriative rights to salvaged water depend on the original source of the water supply. (*Pomona Land and Water Company v. San Antonio Water Company* (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 and the interests of other vested rights must be protected. (*Ibid.*, at p. 623.)

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

Downey Brand cites the doctrine of salvaged water as discussed in *Pomona Land and Water Company v. San Antonio Water Company*, *supra*, 152 Cal. 618 (*Pomona*), but that case does not help the Regional Project. *Pomona* involved a dispute between two water companies who appropriated water from a creek. The companies had existing water rights and a contractual agreement on how the waters flowing in the creek were to be divided between them. San Antonio Water built a pipeline in the creek and "saved" some water that would otherwise had been lost due to seepage, percolation, and evaporation. When Pomona claimed half of this saved water, 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 ruled for San Antonio, holding that Pomona was entitled only to the natural flow, and that San Antonio was entitled to any amount saved by its economical method of impounding the water.

The Regional 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 – water which is fully appropriated. 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.

Thomas Luster, Dan Carl, Michael Watson
July 26, 2011
Page 6

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

The claim regarding the use of desalinated water (Downey Brand letter, 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 take it to 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 groundwater rights that can be applied to the Regional Project. The Water Purchase Agreement does not award water rights to anyone.

Conclusion

None of the Downey Brand claims provide proof of groundwater rights. In an overdrafted basin, proof of water rights is essential before groundwater can be appropriated. The Coastal Commission does not have the authority to grant groundwater rights or to grant approval of a project that relies on the illegal taking of groundwater that belongs solely to the overlying landowners of the Salinas Valley. We urge the Coastal Commission to consult with its own expert water rights counsel with regard to this critical issue.

Thank you for the opportunity to respond to the Downey Brand letter. Feel free to contact me with any questions.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP

Molly Erickson

- Exhibit A: "Historic Seawater Intrusion Map Pressure 180-Foot Aquifer" showing intrusion as of 2009, dated November 16, 2010 (available at <http://www.mcwra.co.monterey.ca.us/SVWP/01swi180.pdf>)
- Exhibit B: Salinas Californian article, March 31, 2011
- Exhibit C: Letter from MCWRA to Molly Erickson, March 24, 2010

FAX TRANSMISSION



MONTEREY COUNTY WATER RESOURCES AGENCY
P. O. BOX 930
SALINAS, CA 93902
831.755.4860
FAX: 831.424.7935

FOR IMMEDIATE DELIVERY

DATE: 3/25/10

To: Molly Erickson

From: David Kimbrough

C/O:

FAX: 373-0242 ()

Re: PRAR-3/3/10

MONTEREY COUNTY

WATER RESOURCES AGENCY

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CURTIS V. WEEKS
GENERAL MANAGER



STREET ADDRESS
893 BLANCO CIRCLE
SALINAS, CA 93801-4456

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.

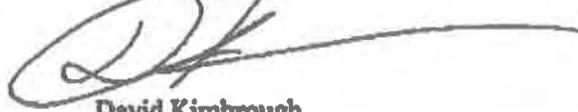
As to MCWD, it was previously annexed into Zones 2 & 2A and as such has a right to ground water. These documents are hereby attached PDF files.

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

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

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March 3, 2010

Via Facsimile

Les Girard
Assistant County Counsel
County of Monterey
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Irv Grant
Deputy County Counsel
Monterey County Water Resource Agency
168 W. Alisal Street, 3d Floor
Salinas, CA 93901

Subject: Public Records Request

Dear Mr. Girard and Mr. Grant:

This Office would like to inspect the following County records and County Water Resources Agency records, and possibly copy some of them.

1. All records that reference the groundwater rights held by Monterey County Water Resources Agency or by Marina Coast Water District, as asserted at the Board of Supervisors hearing on Friday afternoon, February 26, 2010, by Curtis Weeks, General Manager of the County Water Resources Agency.

As further information, we seek all records on which Mr. Weeks based his response to Supervisor Calcagno's question regarding whether the Water Resources Agency has rights to pump groundwater for the proposed Regional Project. Mr. Weeks responded as follows:

"As to wells that are developing basin water, both ourselves and Marina Coast Water District are organizations that can pump groundwater within the Salinas basin. Every drop of water that we pump that is Salinas groundwater will stay in the Salinas groundwater basin. After the implementation, which will begin . . . actually, the operation of the Salinas Valley Water Project on the 22nd of April, we'll be fully in balance. There will be no harm to any pumpers in the Salinas Valley."

2. All records that show that after the initiation of the operation of the Salinas Valley Water Project, the Salinas Groundwater basin will "be fully in balance," as Mr. Weeks asserted.

March 3, 2010
Les Girard, Assistant County Counsel
Irv Grant, Deputy County Counsel
Page 2

The request includes all email communications of all kinds, including those, for example, residing on personal computers, on shared drive(s), and in archived form. We request access to the emails in the same format held by the County. (Gov. Code, § 6253.9, subd. (a).) Instead of printing out electronic records, please place them on CDs. If the records are kept individually, please copy them as individual emails, and include attachments attached to the respective emails.

If you produce an EIR or any lengthy documents in response, please identify the specific pages on which the responsive information is presented.

If there are records that you think might be eliminated from the County production, please let me know. If the County has any questions regarding this request, please contact me. We will be happy to assist the County in making its response as complete and efficient as possible.

I draw the County's attention to Government Code section 6253.1, which requires a public agency to assist the public in making a focused and effective request by (1) identifying records and information responsive to the request, (2) describing the information technology and physical location of the records, and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought.

If the County determines that any or all of the information is exempt from disclosure, I ask the County to reconsider that determination in view of Proposition 59, which amended the state Constitution to require that all exemptions be "narrowly construed." Proposition 59 may modify or overturn authorities on which the County has relied in the past. If the County determines that any requested records are subject to a still-valid exemption, I ask that: (1) the County exercise its discretion to disclose some or all of the records notwithstanding the exemption, and (2) with respect to records containing both exempt and non-exempt content, the County redact the exempt content and disclose the rest.

Should the County deny part or all of this request, the County is required to provide a written response describing the legal authority on which the County relies.

Please respond at your earliest opportunity. If you have any questions, please let me know promptly. Thank you for your professional courtesy.

Very truly yours,


Molly Erickson

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December 16, 2009

Via Email

Michael R. Peevey, President,
and Members of the Commission
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

**Subject Coastal Water Project EIR Does Not Comply with CEQA; Illegal
Piecemealing of Environmental Review; Potential Takings Claim**

Dear President Peevey and Member of the California Public Utilities Commission:

This Office represents the Ag Land Trust, which owns property that would be affected by the proposed Regional Project. (See attached figure.) The Ag Land Trust was formerly known as the Monterey County Agricultural and Historic Land Conservancy. On the Commission's December 17, 2009 agenda, there is a request to certify the Environmental Impact Report (EIR) for the Coastal Water Project.

The Ag Land Trust urges the Commission to delay the proposed certification of the EIR for many reasons, including these:

1. If the CPUC certifies the EIR now, local public agencies plan to use it to approve one of the project alternatives, thereby taking away the authority of the CPUC to select a project based on this EIR.
2. The Public has had inadequate time to review the EIR, which is over 3,100 pages and is not available in hard copy anywhere in Monterey County. The Public was told that the EIR certification would be considered in January 2010. The certification was expedited to December 2009 with inadequate notice to the Public.
3. The EIR is deeply flawed. The public needs more time to advise the Commission as to the flaws, so the EIR can be corrected to address key issues adequately.

**As Soon as the EIR is Certified, the Local Agencies Plan to
Jump Ahead of the CPUC and Approve the Regional Project.**

The Regional Project is the third of the three projects analyzed in the EIR. As soon as the CPUC certifies the EIR, the local public agencies that are the proponents of the Regional Project plan to rely on the EIR to approve the Regional Project on an

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 2

expedited basis, as the attached December 9, 2009 powerpoint documents show (see p. 5). The project proponents have already determined that the CPUC's EIR is inadequate as to specific known potential impacts, including brine disposal. Given the EIR omission, a local agency plans to issue a supplemental environmental document to address brine disposal, and the local agencies can then be under way with the Regional Project, making the CPUC's future scheduled action to select a project meaningless.

The local agencies would be able to do this because they are not subject to CPUC authority. They are seeking grant funding which would provide project financing. Once the local agencies approve the Regional Project, the CPUC would not be able to rely on its certified EIR to select either of the two projects proposed by Cal Am. The reason is that to select either of the Cal Am projects would mean the CPUC would be allowing a second project to be built, in addition to the Regional Project. The EIR does not evaluate the environmental impacts of two projects being built. It addresses the impacts of only one of three projects being built. If the local agencies approve the Regional Project first, as they plan to do, then when the CPUC in April 2010 considers selecting a project, the CPUC could not rely on its own EIR to do so because the EIR does not envision two projects being built. A second project would have significant cumulative and growth-inducing impacts that have not been analyzed in the EIR.

The CPUC cannot certify an EIR for a project over which it has no jurisdiction. Under CEQA, "lead agency" is defined as "the public agency which has the *principal* responsibility for carrying out or approving a project which may have a significant effect upon the environment." (Pub. Resources Code, § 21067, italics added.) The CPUC is not the lead agency for the Regional Project, because the CPUC would have no role in approving or carrying out the desalination plant, the source water wells and pipelines, or the brine disposal, which are the principal facilities of the Regional Project. The desalination plant would be owned and operated by the Marina Coast Water District (MCWD), a local public agency. Monterey County Water Resources Agency (MCWRA) would own and operate the wells. The brine disposal would be through facilities owned by the Monterey Regional Water Pollution Control Agency (MRWPCA). The public agencies would carry out and approve the project. The lead agency for the Regional Project should be a local agency.

As the Court of Appeal held in addressing the issue of the lead agency, "Our threshold question here is which agency . . . has the principal responsibility for the activity." (*Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District* (1994) 28 Cal.App.4th 419, 427.) The specific facts of a case determine who is lead agency. (*Id.*, at p. 428.)

The Legislature enacted CEQA in 1970 as a means to force public agency decisionmakers to document and consider the environmental implications of their actions. (§ 21000,

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 3

21001; *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 254-256, criticized on another ground in *Kowis v. Howard* (1992) 3 Cal.4th 888, 896.) CEQA and its Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) constitute a comprehensive scheme to evaluate potential adverse environmental effects of discretionary projects proposed to be carried out or approved by public agencies. (§ 21080, subd. (a); *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 437.) "The foremost principle under CEQA is that the Legislature intended the act 'to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.' " (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390, quoting *Friends of Mammoth v. Board of Supervisors, supra*, 8 Cal.3d at p. 259.)

The issue here is . . . [which public agency] was the public agency required under the act to evaluate potential adverse environmental effects of this activity. Or, using the applicable terms of art under CEQA, the issue is whether the District was the "lead agency."

(*Friends of Cuyamaca Valley v. Lake Cuyamaca Recreation and Park District, supra*, 28 Cal.App.4th 419, 426, internal parallel citations omitted.)

Under CEQA, a local agency must be lead agency for the Regional Project due to (1) the CPUC's lack of jurisdiction over the Regional Project's primary components, (2) the local agencies' ownership interests in the proposed desalination plant, source wells and pipeline, and brine disposal, and (3) the local agencies will be the first to act on the project approvals (see FEIR Figure 5-6 and presentations attached to this letter for reference).

EIR Discussion of "Lead Agency" is Inconsistent and Misleading.

The EIR does not clearly present this issue. Instead, the EIR discussion of agency roles under CEQA is inaccurate and fails to disclose the material facts or the issues. The EIR lacks the required comprehensive discussion of the issues to inform the public and decisionmakers. At best, the EIR creates a significant ambiguity.

The EIR repeatedly describes the CPUC as the lead agency, and the local agencies (such as the MCWD, MCWRA, and MRWPCA) as responsible agencies (e.g., FEIR Master Response 13.3). The EIR does not directly address whether those roles

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 4

would be different for any of the project alternatives. Instead, in discussing the Regional Project, the EIR merely alludes to the CPUC as not having direct authority or jurisdiction over the project proponents. The EIR never addresses a key CEQA issue: that the CPUC is not the lead agency for the Regional Project. The EIR never identifies which agency would be lead agency for the Regional Project.

The ALJ'S Draft Decision Compounds the Problems.

Perhaps as a result of the EIR's confusing discussion, the draft decision before the CPUC to certify the EIR contains similar important ambiguities. For example, the draft decision states that Phase 2 of the Regional Project is not subject to the CPUC's approval at this time. (Draft Decision, rev. 1, p. 19.) However, the draft decision fails to clarify that Phase 1 of the Regional Project is also not subject to the CPUC's approval – either now or in the future – because the project proponents are not subject to CPUC jurisdiction. The project proponents – the local public agencies – can and plan to approve and carry out the Regional Project without CPUC involvement.

Only one week after the EIR was released, the ALJ issued a proposed draft decision certifying the EIR, which was later revised with minor non-substantive changes. The draft decision proposes that the CPUC make findings that are not authorized by CEQA, and proposes an order for which the CPUC has no authority. The Order states that the EIR is "certified for use by . . . responsible agencies in considering subsequent approvals of the project, or for portions thereof." (Draft decision, p. 24.) The CPUC does not have authority to make that order, and no supporting reference is provided. If local agencies approve the project or project components first, before the CPUC does or can, then the first local agency to act becomes the lead agency under CEQA. (See *City of Sacramento v. State Water Resources Control Board* (1992) 2 Cal.App.4th 960; *Citizens Task Force on Sohio v. Bd. of Harbor Commissioners of the Port of Long Beach* (1979) 23 Cal.3d 812.)

The draft decision asserts (p. 20) without legal support that "the lead agency must find that the document was (or will be) presented to the decisionmaking body for review and consideration prior to project approval." There is nothing in CEQA that requires a finding that the document "will be" presented to the decisionmaking body, and such a finding is both misleading and confusing. Further, with regard to the Regional Project, the CPUC has no authority over what documents will be presented to the various decision-making bodies who will act on project components. As another example, the proposed finding of fact #1 fails to state that the CPUC is not the lead agency for review of the Regional Project alternative. The CPUC has no authority over the local agencies who are the proponents of that project. The draft decision is also inaccurate in key respects, including the claim that the FEIR states that the Monterey Peninsula has experienced seawater intrusion for decades. The Monterey Peninsula

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 5

has no documented problems with seawater intrusion. Throughout this proceeding, the lack of familiarity with the on-the-ground conditions has been a significant problem.

The Final EIR Is Deeply Flawed and Does Not Comply with CEQA.

The project description has changed dramatically from the Notice of Preparation to the Draft EIR to the Final EIR. This violates the basic CEQA tenet that "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR. (*Concerned Citizens of Costa Mesa v. 32nd Dist. Agric. Ass'n.* (1986) 42 Cal.3d 929, 938, internal citations, quote marks and punctuation omitted.) Here, the changes from the Notice of Preparation, to the Draft EIR, to the Final EIR have violated this basic principle. As one example, a project alternative (the Regional Project) that was not proposed to be built by the project applicant (Cal Am) and was not subject to the CPUC's jurisdiction was added after the EIR was under way. Under the circumstances, the EIR's inclusion of the Regional Project was highly unusual and not adequately explained in the EIR, either substantively or procedurally. Other examples of the significant EIR flaws are provided here.

Lack of Compliance with Monterey County Code: No Alternative Water Supply:
The EIR fails to disclose Monterey County's requirement that each desalination plant include an alternative source of water supply (Monterey County Code, Ch. 10.72). The code requires that a permit be obtained for all desalination facilities (10.72.10), and states that the permit application shall include:

a contingency plan for alternative water supply which provides a reliable source of water assuming normal operations, and emergency shut down operations. Said contingency plan shall also set forth a cross connection control program.

(Monterey County Code, § 10.72.020.F, attached for reference.) None of the three proposed projects includes a "contingency plan for alternative water supply." As proposed, the City of Marina and the majority of the Monterey Peninsula population would rely on the project for their water supply. If that supply fails, either for a short term or for a long term, the community will not have a water supply. The EIR does not analyze the projects' inconsistencies with the County requirement for an alternative water supply. In response to the comment that the project should include an operations plan and a contingency plan, the EIR merely states "comment noted." (FEIR, G-SVWC-13 and response thereto.)

The EIR omission is significant due to CEQA's requirement that in order to fulfill CEQA requirements, environmental review is mandated "at the earliest possible stage." (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282.) By failing to

include consideration of an alternative water supply in the project description, the EIR is piecemealing the environmental review, because such alternative supply is required.

The EIR omission is also significant due to the magnitude of the health and safety risk to the community which is the County Code intends to address. (See attached County documentation supporting the creation of Chapter 10.72.) Desalination plants have a very poor record of operations and maintenance. There is no record of any desalination plant of any size, such as proposed here, operating for any reliable period of time in the United States. The few that have been constructed have had very serious design, construction, and maintenance issues. For this reason, the success of the three proposed projects is pure speculation. If, as proposed, the vast majority of the Monterey Peninsula population and all of Marina -- including residents, industry and business -- rely on the desalination plant for their water supply, and the supply stops, or is interrupted, there would be very significant impacts and risks to public health and safety. The EIR does not address this issue.

Incorrect and Misleading Statements: The EIR contains incorrect and misleading material statements. The inaccuracies extend to basic information about the current environmental setting. For example, section 1.6 Project Setting (pp. 1-7 and 1-8) contains significant misstatements of fact. No support is provided for these misstatements which include (1) the claim that the MCWRA is a primary custodian of water supplies in North Monterey County (when in fact, MCWRA is not a water supplier and, critically, does not have appropriative rights), (2) the claim that the Salinas Valley Water Project will "stop seawater intrusion and provide adequate water supplies to meet current and future (2030) needs" (when in fact the SVWP EIR admits it may not achieve those goals), and (3) the claim that the San Clemente Dam is "the major point of surface water diversion from the [Carmel] river" (when in fact the San Clemente Dam provides no water supply because it is fully silted up and is proposed to be removed). These three examples early in the EIR set the stage for the myriad errors and misrepresentations that permeate the EIR document. There are many other problems which the public has been unable to present to the CPUC staff because of the expedited schedule, the length of the EIR, and the lack of availability of a hard copy of the EIR. The EIR preparer should correct all errors before the EIR is considered for certification.

As another material example, the EIR incorrectly identifies and discusses Zone 2C in a way that is misleading to the public and to decisionmakers. (See, e.g., FEIR, p. 6.2-16.) Zone 2C is not a groundwater scheme. It is a zone created for the purposes of tax assessments, and delineates the boundary of the area that would purportedly benefit from -- and therefore be assessed for -- the Salinas Valley Water Project, which is a surface water project. The distinction is critical.

Failure to Adequately Analyze Potential Environmental Impacts of Project; Failure to Adequately Describe or Analyze Environmental Setting; Failure to Adequately Describe or Analyze Cumulative and Growth-Inducing Impacts: These failures take many forms. As one significant example, the FEIR fails to adequately disclose that the local agencies' hybrid Regional Urban Water Augmentation Project (RUWAP) would produce up to 3,000 AFY, which is expected to be online between 2008 and 2015. The EIR describes the RUWAP as producing only 1,000 AFY. It fails to identify or investigate the additional 2,000 AFY of RUWAP supply that is currently under active implementation, and that would be provided to the MCWD and the Peninsula. As a result, the EIR fails to adequately analyze the potential growth-inducing environmental impacts of the proposed projects, fails to adequately describe or analyze environmental setting, and fails to adequately describe or analyze cumulative impacts. (See attachments for further documentation of the hybrid RUWAP project currently under way by local agencies.)

Failure to Adequately Investigate or Disclose Brine Disposal Impacts: The EIR fails to analyze the potential impacts of the proposed ocean outfall disposal of the brine that would be produced by the desalination plan. As one material example, the Regional Project proposes to use the treated water wastewater outfall owned by the MRWPCA. Studies indicate that MRWPCA's outfall capacity may not be available for all outfall flow conditions. It is unknown whether the outfall could accommodate all outfall operating parameters if the Regional Project is built. It is foreseeable that brine discharge would exceed outfall capacity during high-flow periods. There is no analysis of the availability of wastewater for the various demands of multiple projects. It is foreseeable that if all wastewater is used for disposal and brine dispersion, that commitment would cause significant impacts on the RUWAP (which uses recycled water from the MRWPCA) and the Ground Water Replenishment project that is an essential part of the Regional Project.

The EIR fails to disclose or investigate these issues or their potential significant impacts. The EIR fails to investigate important issues including: the capacity of the existing outfall to accommodate increased brine flow; the potential sacrifice of outfall capacity allocated for future development in the area in favor of allocating unused capacity for brine; minimization of stormwater capacity in the outfall and how this might be mitigated (e.g., storage tanks, ASR well, if mitigation is even possible, etc.); or blended water quality in light of applicable water quality parameters, including NPDES discharge limits for TDS. Further, the EIR fails to adequately describe or investigate the fate of desalination-facility cleaning chemicals and other project waste streams. This is not new information. It has been openly and publicly discussed since at least early 2008. (See February 20, 2008 report to MPWMD, attached.)

The local agencies have acknowledged that the CPUC's EIR does not adequately address brine disposal through their own actions to address the omission.

Even before the comment period on the CPUC's Draft EIR closed, one agency had already begun to prepare a separate environmental review of brine issues that should have been included in the CPUC's EIR. This fractured approach to environmental review of project components is piecemealing, which is prohibited by CEQA. The local agency's work is intended to allow the local agencies to move ahead with the Regional Project without the active involvement of the CPUC, and even if the CPUC intends to select a different project of the three analyzed in the EIR.

Piecemealing of Project Review: Another example of the EIR's inadequacy and piecemealing is the project description's failure to include the known cogeneration facility that is part of the project. That facility has been proposed at least since 2008, before the Draft EIR was released. (See attached references, including March 2009 presentation by Curtis Weeks of Monterey County Water Resources Agency.) As a result of this failure, the EIR fails to analyze the potential environmental impacts of that facility. The very brief EIR discussion (FEIR pp. 5-45 and 5-46) contemplates the new facility, but defers analysis to a future date. The new facility is foreseeable and would be built as part of the Regional Project, to enable the project. The environmental analysis should not have been deferred, and should have been included in the FEIR.

Unanalyzed Impacts on Overdrafted North County Aquifers: The FEIR is claiming the "modeling" indicates there will be no impacts of pumping 24,000+ AFY out of the 180-foot aquifer. However, a review of the well locations upon which the EIR modeling is based shows that none of them are located within any of North County's hydrological subareas.¹ For this reason, the wells could not show impacts to North County wells, because that information was not part of the model. The Salinas Valley Water Project was approved by the voters based on claims that it would improve the North County aquifers, which are uphill from the Salinas Valley Groundwater Basin. Several times, MCWRA general manager Curtis Weeks has publicly described that claim by likening the basin to a bathtub into which North County aquifers run, and when the water level of the bathtub increases, the aquifers do not run downhill to the same extent. Here, the EIR fails to analyze whether the pumping of 24,000+ AFY – or 88,000 AFY, as is foreseeable – on the North County hydrological subareas.

EIR Relies on False Assumption: The EIR uses the modeling presented by the project proponents. According to the EIR, project proponent's Regional Project impact analysis relied on a modeling assumption that the SWP Phase II would be in place.

¹ This can be determined by reviewing the mapping of North County's subareas in relation to major roadways, and comparing that information to the figures showing well locations in the EIR appendices in relation to those same roadways.

The SVIGSM modeling used to evaluate impacts of the Regional Project was based on a future baseline condition that assume complete implementation of Phase II of the SVWP.

(FEIR, p. 14.5-145.) However, no "Phase II of the Salinas Valley Water Project" is in place, and it is unclear what the EIR means. A second SVWP phase is not proposed, approved, funded or built. The Salinas Valley Water Project EIR did not use the term "Phase II," but it did envision an expanded distribution system to address the continuing water supply challenges in the Salinas Valley (e.g., SVWP EIR, p. 2-294). Because the modeling of the SVWP indicated that the SVWP may not halt seawater intrusion, the MCWRA contemplated a future expanded distribution system. Presumably that future expanded system is what the CWP EIR means when it refers to "Phase II of the SVWP." The SVWP EIR projected a cost of more than \$40 million for this distribution system, which presumably voters would need to approve, just as voters were required to approve the initial SVWP phase currently under construction. Since then, every distribution scheme the MCWRA has discussed dwarfs the \$40 million estimate found in the EIR.

The CWP EIR describes what is calls "Phase II" of the SVWP as "Increased diversion. Delivery could be directly to urban or could be expanded to CSIP with equivalent amount of pumped groundwater to urban." The CWP EIR also describes it as "urban supply." (FEIR, p. N-44.) The purported "Phase II" is also addressed at page 6.2-18. It is unclear to which Regional Project phase the CWP EIR discussion applies.

The EIR does not identify all of the assumptions used by the project proponents for their modeling, which is a significant concern. As a result, the public and the decision makers are not informed of the project proponents' assumptions, which can make a critical difference in the outcome of the modeling on which the EIR relied. The modeling and reliability is no better than the reliability of the underlying assumptions, and the assumptions are not adequately described.

Inadequate Investigation and Disclosure of Impacts to Overlying and Adjacent Properties: The EIR does not adequately investigate or discuss the impacts on overlying or adjacent properties. For this reason, the EIR fails as an informational document under CEQA.

The EIR even fails to clearly identify where the projects would be located, which is another aspect of the inadequate and changing project description. There is no reliable information as to where the wells or the pipelines would be located. Revised Figure 5-3 is the EIR's best depiction of the well and pipeline locations for the proposed seawater intake. The poster figure is a blurry generalized drawing. The figure fails to

identify the difference between the blue swath and the brown swath. The EIR does not identify property, parcels, or locations.

The EIR inappropriately defers that crucial investigation to a future date, and does not contemplate further CEQA review of that information. That was verified by Janet Brennan on December 11, 2009, in email communications with Eric Zigas, ESA (attached).

This deferred analysis is inappropriate under CEQA for several reasons. As one example, it fails to adequately address and identify the potential environmental impacts on the properties or potential property rights or taking issues. The Ag Land Trust has identified potential impacts and issues several times in its communications with the CPUC and ESA. It has not received any response other than a cursory and inadequate one in the EIR response to comments. The Ag Land Trust, which owns property underlying the blue swath on Figure 5-3, and possible the brown swath as well, has important property interests at stake, but never received notice from the CPUC, Cal Am, or the local agencies of the proposed certification of the EIR on December 17, 2009. The EIR claims that contacts were made with overlying landowners, but the Ag Land Trust was not contacted. (See the attached figures to show the Ag Land Trust properties with respect to the proposed Regional Project.)

In a related example, the EIR fails to adequately disclose or consider the projects' potential impacts on sensitive habitat. For example, the Martin Dunes property is included in the blue swath that identifies well locations and pipeline locations for the Regional Project (see FEIR Revised Figure 5-3 and figures attached to this letter).² The Martin Dunes property contains one of California's most ancient and intact dune ecosystems. It is located south of the Salinas River National Wildlife Refuge. At least six federally or state listed species are known to occur at the site, including Western snowy plover, Smith's blue butterfly, Monterey spineflower, Monterey gilia, Menzies' wallflower, and California legless lizard, as well as other special-status species. Maritime chaparral, which is also sensitive habitat, is also on the Martin Dunes site. The Martin Dunes are owned by the Big Sur Land Trust, which has made significant efforts to restore and protect the property and its resources. The North Monterey County Land Use Plan specifically addresses the site in several sections, including key policy 2.3.1, and specific policy 2.3.3.A.6, and recommended action 2.3.4.5, attached for reference. The EIR fails to identify or discuss these issues, which is a failure to adequately describe the environmental setting, as well as a failure to investigate potential

² That figure is not specific as to parcels or properties. When mapping information was requested of the EIR preparer ESA, ESA responded was that there was no more specific information available for the project location other than as shown on Revised Figure 5-3.

impacts. The EIR mitigations do not adequately mitigate for potential impacts. There are no mitigations to potential impacts on Western snowy plover, Monterey spineflower, Monterey gilia, Menzies' wallflower, and California legless lizard. Mitigation measure 4.4.1a proposed for Smith's blue butterfly are inadequate, because it is permissive and not mandatory. Subsections (2) and (3) merely state that certain actions "should" be made, without accountability by the project applicant or public agency if they do not happen, and without identifying the potential impacts if the actions are not taken. Further, FEIR Table 7-1 states that the expansion of the Salinas River Diversion Facility would be in Phase I of the Regional Project. That is incorrect; the expansion is in phase 2 of the Regional Project. FEIR Table 5-1 clearly shows the diversion facility in Phase 2. The internal inconsistencies in the EIR, like this one, make parts of the EIR impossible to understand because the information cannot be reconciled. For this reason as well, the EIR fails as an informational document.

Separately, the EIR figures are inconsistent with project depictions presented just last week to the local cities and agencies by Jim Heitzman, General Manager of MCWD and Curtis Weeks, General Manager of MCWRA. (See attached December 9, 2009 powerpoint presentation.) These agencies are the ones who will be implementing the project. If the EIR figures are inaccurate, as they appear to be, that also causes the EIR to fail as an informational document.

The Regional Project Would Export Groundwater from the Salinas Valley Groundwater Basin, Which is Prohibited by Law.

The MCWRA Act prohibits groundwater exportation due to concern about the "balance between extraction and recharge" within the Salinas Valley Groundwater Basin (MCWRA Act, § 52-21; FEIR p. 4.2-28). The EIR does not dispute that the Salinas Valley Groundwater Basin is in overdraft and has been increasingly in overdraft for decades, as shown by the steady inland progression of seawater intrusion. One of the three projects reviewed in the CWP EIR – the Regional Project – would pump groundwater directly from the overdrafted Salinas Valley Groundwater Basin. Another of the projects – the Cal Am North Marina project – would pump groundwater indirectly.

These two projects would violate the MCWRA Act because the project would extract groundwater and not recharge the basin. Instead, the groundwater would be put to use. The EIR claims that the amount of groundwater pumped would be returned in the same volume to the basin, either by providing the water for irrigation through CSIP (the Cal Am North Marina project) or for consumptive use by MCWD customers (the Regional Project). However, use of the "returned" water for irrigation would allow only 50% of that amount to recharge the basin. The County uses a 50% return water factor for irrigation in its standard water calculations. Both of these two methods – irrigation and consumption – would violate the Act's requirement for a "balance between extraction and recharge" because any recharge of the basin would be much less than

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 12

the amount extracted from the basin. Use of the pumped groundwater for MCWD connections would also violate the MCWRA Act, because such use results in far less than a 50% return to the basin, because much water is lost through irrigation and sewers. The EIR fails to adequately discuss these issues, impacts and inconsistencies.

The proposed desalination project would export Salinas Valley groundwater to the Monterey Peninsula. The proposed way around the prohibition on groundwater exportation is to "return" an "annual average" to the Salinas Valley Groundwater Basin by placing it in the 80-AF CSIP pond for irrigation of Salinas Valley agricultural lands. There are multiple problems with the EIR's analysis.

There is no question that Salinas Valley Groundwater would be exported to the Monterey Peninsula. Such groundwater would be pumped "at unspecified volumes" (FEIR, pp. 4.2-50, 6.2-16), desalinated, and sent through the Cal Am pipes to the Peninsula. It is misleading for the EIR to claim that the groundwater would stay in the basin. The groundwater would be mixed with the seawater as it comes up the pumps, through the pipelines, and through the treatment plant. The groundwater molecules cannot be separated from the seawater molecules. The treated water would be a blend of both kinds of water, and that blended water would be exported to the Monterey Peninsula.

The EIR does not describe how the "annual average" will be calculated, or who will verify it. The proposed use of an "average" means that in some years more water will be exported to the Peninsula than "returned" to the Salinas Valley basin, which means that in those years the basin would be further imbalanced (causing attendant harm) through the operation of the proposed project. The EIR fails to analyze this inconsistency with the MCWRA prohibition, and fails to analyze the potential environmental impacts of the scheme.

The EIR repeatedly uses the 85% seawater/15% groundwater proportions, although those proportions are projected only for the first 10 years (FEIR, Appendix Q, p. 24). The EIR fails to adequately discuss or investigate whether the proposed actions are feasible or effective in future project years, when the proportions change significantly to 60% seawater and 40% groundwater, or what potential impacts those actions may have. For example, in the years when the 24,870-AFY of pumped water is 40% groundwater, that 40% would be 9,947 AFY of desalinated water that must be returned to the SVGB. The desalination plant is intended to produce 10,700 AFY, under full operating conditions. The Monterey Peninsula (Cal Am system) will be depending on receiving 8,800 AFY of that amount during normal weather years. If 9,947 AF are returned to the SVGB, and Marina takes its 1,700 AF, that leaves only 553 AF for the Monterey Peninsula, far less than it would be depending on. Even if Marina decides to pump from its unsustainable Deep Aquifer during that year, and thereby does not use its 1,700, that would leave only 2,253 AF for the Monterey

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 13

Peninsula system, which is only a small fraction of Cal Am's needs under Order 95-10 and the Seaside Basin adjudication. This is a foreseeable scenario which the EIR fails to address.

The EIR states that Salinas Valley groundwater extracted by the Cal Am North Marina project would be returned using the CSIP 80-AF pond (FEIR p. 13.6-8). The EIR fails to investigate or explain whether the proposed "return" method can be accommodated by the 80-AF pond in all years through the life of the project, for all volumes of foreseeable water, both in wet and dry years, and what the environmental impacts would be. The water "returned" to the Salinas Valley would be surface water, and the recipients of that surface water may not have rights to that water.

For the Regional Project, the EIR states that the pumped Salinas Valley groundwater would be delivered to the MCWD service area within the Salinas Valley basin (FEIR p. 13.6-8). The EIR fails to discuss how the water in excess of the 1,700 AF required for use within the MCWD would be returned to the SVGB. In some years, the volume of the water to be returned would far exceed 1,700 AF. The EIR omits any analysis of whether adequate water rights are held by the proposed appropriator of the Salinas Valley groundwater for such actions.

Under the predicted 60% seawater/40% groundwater scenario, in order to provide the 8,800 AF to the Monterey Peninsula (Cal Am system), the intake wells would have to pump 88,000 AFY. Of that 88,000 AFY, the 40% to be returned to the Salinas Valley Groundwater Basin would be 35,200 AFY. Of that 88,000 AFY, the desalination plant would produce 44,000 AF of desalinated water. The proposed "return" to the Salinas Valley Groundwater Basin would be 35,200 AF. Assuming the MCWD 1,700 AF is part of the amount returned to the Salinas Valley Groundwater Basin, that would leave 8,800 AF for the Monterey Peninsula. The EIR fails to investigate this foreseeable scenario, or what the impacts would be of 88,000 AFY of pumping, or the fact that the desalination plant is not designed to process 88,000 AFY of untreated water or to produce 44,000 AF of desalinated water. And there is no discussion of whether returning 35,200 to the Salinas Valley Groundwater Basin is feasible, or how it would be done. There is no question this foreseeable scenario would cause significant impacts, none of which has been addressed in the EIR.

The EIR fails to analyze any potential impacts for the times when the EIR indicates that the proportions of the pumped water will be approximately 60% seawater and 40% groundwater. (FEIR Appendix E and Appendix Q [modeling shows TDS concentrations of from 21,300 mg/L to 34,500 mg/L over a 56-year period].) The EIR fails to investigate whether the project would be able to pump or deliver sufficient water to provide 12,500 AFY to the Monterey Peninsula every year under the foreseeable scenario requiring a "return" of up to 40% of the pumped water to the CSIP or requiring the distribution of up to 40% to the MCWD service area within the Salinas Valley basin

for years at a time. There is no evidence that there is current demand for 40% of the pumped water within that MCWD service area. Thus, at times, only 60% of the water would be available for export to the Monterey Peninsula, when that area requires – and is planned to receive under the proposed project – 85% of the desalinated water, assuming perfect and uninterrupted plant operations. The EIR fails to investigate or explain how the difference between the available desalinated water and the area's water demand will be met over the life of the project, and the potential impacts over time. The evidence is that the current MCWD demand within the Salinas Valley Groundwater Basin is less than the 40% of the pumped water that would be delivered to that MCWD area. The EIR has failed to investigate or disclose the impacts of the forced delivery of that amount of water to that area. That forced delivery would foreseeably cause growth which has not been analyzed in the EIR.

Another significant issue is the lack of accountability for the amount of groundwater pumped. As one example, for the North Marina project, the EIR assumes that Cal Am will keep track of the amount of water pumped, and the salinity of that water. There are no requirements with regard to frequency of monitoring, and no provision or mitigation requiring Cal Am to report its pumping and water quality information to any public agency. Therefore, Cal Am would not be accountable to any public agency, and could keep its number secret and unverified by the public and the government.

**The Project Proponents' Assumption of Continuous Pumping
Is Unsupported and Unreasonable.**

The EIR uses only modeling scenarios that assumed continuous pumping. (See, e.g., p. E-31, Appendix E, Appendix Q.) The models were prepared and submitted by the project proponents. The EIR claims that the applicants' models of continuous pumping of the desalination intake wells show the creation of an underground trough in the water level due to the volume of water being pumped. The EIR claim is that over time the pumping will decrease and/or halt the progression of inland seawater intrusion because the pumps will be sucking up seawater faster than the seawater intrudes. There was no modeling for anything other than continuous pumping, or cessation, including any scenario for the likely interruption of pumping (at any time, including at end of the project's lifetime).

An assumption of continuous pumping is not reasonable. Desalination facilities simply are not reliable. There are very poor track records of the two similarly sized plants in the United States (the Tampa Bay desalination plant and the Yuma Desalter). Large desalination plants as proposed here have proved to be unreliable and have been non-operable for long periods of time, and none has ever operated at full capacity. The EIR fails to investigate or disclose this information, or what would happen if the

proposed plant is non-operable for long periods of time (or even for short periods), and if it never operates at full capacity.

In addition to failing to adequately investigate the potential environmental impacts of non-continuous pumping throughout the life of the project, the EIR also fails to discuss the potential environmental impacts that may occur at the end of the plant's useable life, which the EIR anticipates to be approximately 50-56 years.

Groundwater has several unknowns. Unknown variables require assumptions to be made in each analysis. The unknowns and assumptions can be reduced through testing the groundwater system through pumping and monitoring wells. This has not been done here to the level that would provide usable data for reliable conclusions. The testing that was done for the EIR was minimal and based on an insufficient number of wells and locations. For that reason, the EIR conclusions are not reliable or adequate information. Even after test wells are used to validate assumptions, there remains the variable of time. Things change over time, yet the EIR does not recognize that basic fact of nature.

If water is removed from the aquifer by wells, then an equivalent amount of water will move in from one side or the other to fill the vacated space. Given the proximity of the ocean to the location of the wells, it is far more likely that the vacated space will be filled in by seawater than by groundwater. If the replacement water comes from off shore, that means increased seawater intrusion. The EIR claims that the replacement water will come from inland, which will halt or reverse seawater intrusion. However, that scenario can only occur if there is already a net flow of water from inland to offshore in the vicinity of the wells. Based on over 50 years of data (the seawater intrusion figures presented by Monterey County), that will not be the case unless either it is a temporary condition that occurs only in very wet years or the wells are located in an area that does not already have seawater intrusion. The EIR acknowledges that the wells will be located in an area that has seawater intrusion. Accordingly, the only time that the EIR claim would be valid would be during very wet years, when there is a net flow of water from inland to offshore in the Salinas Valley Groundwater Basin. In the vast majority of years – in other words, all years that are not "very wet" – the EIR claim would not be valid. The EIR fails to disclose or discuss these issues, and draws its conclusions based on its flawed assumption of continuous operations.

The EIR claim of a "trough" that would halt seawater intrusion is inconsistent with the theory behind the Castroville Seawater Intrusion Program (CSIP). The CSIP goal is to reduce pumping by coastal agricultural property owners because by doing so, the theory goes, seawater intrusion will be slowed. That theory is opposite to the one proposed in the CWP EIR, which is that significant continuous pumping at the coast will halt seawater intrusion. Both theories cannot be correct, and the EIR has failed to address the inconsistencies.

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 16

Critically, the EIR does not use any model runs that assumed a multi-year drought, which is a foreseeable scenario in the semi-arid Central Coast. The project impacts on the aquifers may be very different under those scenarios. The rigid assumptions used by the models relied upon by the EIR are not reasonable under the circumstances and the known likely variables.

It appears that the EIR uses only modeling runs presented by project proponents. For example, the July 25, 2008 model run was prepared by Geoscience, Cal Am's consultant. The June 5, 2009 and September 11, 2009 reports were prepared by RMC Water and Environment, which represents the Regional Project proponents. CEQA requires independent investigation and review of materials submitted by project proponents, to rest their validity and reliability. It appears that was not done here.

The EIR Responses to Comments Are Inadequate.

The responses to comments do not meet the requirements of CEQA for good faith, reasoned responses. There are many examples of this violation of CEQA mandates. For example, the response to L-PSMCS-2(b) fails to answer the issue and question clearly raised, and instead uses a semantic pretense about dates. As another example, the response to L-PSMCS-2(a) merely regurgitates the testimony of an attorney for a project proponent for more than two pages, without a reasonable independent investigation or discussion of the issues. In that response, the claimed legal basis is highly suspect and has not been confirmed under California law.

As another example, the responses to The Open Monterey Project (TOMP) comments are nonresponsive. For example, a TOMP comment is that future expansion of project facilities would be easier. The FEIR response (p. 14.5-201) states, "Therefore, construction of the plant would not substantially alter the character of the areas and any future expansion would required additional permitting and review." This inadequate response fails to address the ease of expansion from a technical, environmental and financial perspective, and the related growth-inducing impacts. Desalination plants are very costly to construct. Once the initial expense is invested, the expansion of the plant to accommodate increased production is relatively much less costly. This also means that the Peninsula ratepayers would be subsidizing growth for other areas in Monterey County.

The EIR Discussion of Water Rights is Inadequate under CEQA.

On November 6, 2006, and again on April 15, 2009, the Ag Land Trust notified the Public Utilities Commission of certain key flaws in the Coastal Water Project EIR. Specifically, the first full paragraph on page two of the Trust's November 6, 2006 letter (identified as "G_AgLTR-3" in the FEIR) states that Cal-Am, a water appropriator under California law, has no groundwater rights to appropriate water from the overdrafted Salinas Groundwater Basin. In an overdrafted, percolated groundwater basin, California groundwater law clearly and definitely holds that the doctrine of correlative overlying water rights applies (*Katz v. Walkinshaw* (1903) 141 Cal. 116), whereby no surplus water is available for new groundwater appropriators.

The FEIR response claims that an analysis of water rights is not necessary because "CalAm claims no rights to groundwater" and that "no Salinas Valley groundwater will be exported from the Basin." The FEIR attempts to bypass a central issue – the EIR's failure to analyze legal water rights – by claiming that the issue does not exist. On the contrary, the issue of legal water rights exists and should be analyzed.

Because the extracted water would be composed of both saltwater and groundwater, Cal-Am (under the North Marina project) or Monterey County (under the Regional Project) would be extracting groundwater from the overdrafted Salinas Valley Groundwater Basin. Those actions would represent an illegal appropriation of water. The EIR claims that water can be appropriated from under privately owned land in the overdrafted basin, so long as it promises to return the same amount of pumped groundwater to the basin. That claim is not enforceable, not subject to oversight and does not change the fact that the extraction of the water would be an illegal appropriation. In essence, the Cal Am North Marina desalination project and the Regional Project would rely on illegal extraction and appropriation of groundwater from the basin. The EIR does not analyze the significant impact of an illegal taking of groundwater from overlying landowners. Instead, the FEIR accepts as unquestionably true the flawed rationale that a purported return of a portion of the water somehow allows the illegal extraction of groundwater from the overdrafted basin. This deficiency in the EIR must be addressed, and the EIR should identify mitigations for the adverse impacts and proposed illegal actions and takings.

The principle is established that the water supply in a source may be augmented by artificial means. (See *Pomona Land & Water Co. v. San Antonio Water Co.* (1908) 152 Cal. 618.) We do not question that general statement of law.

However, when getting to the specifics of the abilities and limitations in regard to the augmented or developed water proposed for the Project, the EIR defaults on the necessary discussion. Instead of addressing the entire doctrine of water rights

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 18

applicable here, the FEIR (14.1-94, n. 4) defers entirely to the MCWD's legal counsel for the discussion of the essential factors. From page 14.1-94 to 14.1-96, MCWD's legal argument is presented without critical analysis or further comment as the FEIR's discussion. There is no independent review of the legal argument.

California law on the ability of an agency to claim the right to salvage any or all of any developed water in the circumstances here, and any limits on that claim, has not yet been defined by the Courts. The citations in the FEIR overstate the situation, and do not point to any California court case where the analysis presented in the FEIR has been upheld by the Court. The two cases relied upon by the MCWD's counsel (and therefore the FEIR) are cited in footnote 10 of FEIR page 14.1-96: *Pajaro Valley Water Mgt. Agency v. Amrhein* (2007) 150 Cal.App.4th 1364, 1370 and *Lanai Company, Inc. v. Land Use Commission* (S. Ct. Ha. 2004) 97 P.2d 372, 376. The citations in both cases are to portions of the introductory factual recitations in the cases, and not to Court holdings or legal analysis, and thus are not fairly considered precedents or statements of settled law. Other FEIR citations are to legal claims asserted in a staff report by the head of the Monterey County Water Resources Agency, who is not an attorney.

At the very least, the FEIR was required to evaluate the claims of MCWD and MCWRA, test them analytically, and provide the decisionmakers and the public with the analysis. Without the reasoned good faith analysis, the EIR fails as an informational document. (See, e.g., *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722.) "It is not enough for the EIR simply to contain information submitted by the public and experts." In particular, water "is too important to receive such cursory treatment." (*Id.*) CEQA requires a detailed analysis of water rights issues when such rights reasonably affect the project's supply. Assumptions about supply are simply not enough. (*Id.*, at p. 721; *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 131-134, 143 [EIR inadequate when it fails to discuss pertinent water rights claims and overdraft impacts]; see also, *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 94-95 [groundwater contamination issues].) The reasoning of the Court in *Cadiz* would also apply to the proper analysis of the rights associated with the overdraft here.

At the very least, the determinations of safe yield, surplus, the rights of the MCWRA, and of "persons with land in the zones of benefit for the projects" must be identified, discussed and analyzed. The analysis must be independent, and cannot simply be "extracted" (FEIR, p. 14.1-94, n. 4) from the argument of the attorney for the MCWD, a proponent of the Regional Project and potential owner of the desalination plant component of that project. Whether the project may take salvaged or developed water originating from onsite supplies depends on whether injury will result to existing

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 19

lawful users or those who hold vested rights. The FEIR response to comments does not fairly consider or investigate the actual on-the-ground issues.

Recirculation of the EIR Is Required.

Under CEQA Guidelines section 15088.5, the EIR should be recirculated because it contains significant new information. The Final EIR contains significant newly identified impacts and new information that leads to new unanalyzed impacts. Several examples of the unanalyzed impacts are identified throughout this letter.

The FEIR identifies new significant and unavoidable impacts that had not been disclosed in the Draft EIR. These impacts include greenhouse gases and air quality (PM10). The FEIR finds that PM10 construction emissions would exceed the local Air District thresholds. Greenhouse gas emissions and construction PM10 impacts of the Regional Project would be outside of the CPUC's jurisdiction. Both impacts would be significant and unavoidable. However, the EIR treats the two impacts differently and inconsistently. The EIR inappropriately pre-determines that the local agencies might find that the Regional Project's PM10 mitigation measures would be infeasible because of the "potential need to accelerate the construction schedule" for the project (e.g., p. ES-19). The EIR attempts to place mitigations on the Regional Project which are unenforceable, because the CPUC has no jurisdiction over the Regional Project. (E.g., FEIR p. 6.8-4, Mitigation Measure 6.8-11a.) The EIR approach is confusing and inconsistent, and misleads the public and decisionmakers as to which mitigations it can enforce and which it cannot enforce. This confusion continues in the EIR discussion of the environmentally superior alternative, where the EIR makes unsupported assumptions about mitigations and mitigation monitoring in order to affect its determination of the superior alternative. (FEIR p. 7-67.) Further, the EIR's announcement of new significant and unavoidable impacts is inconsistent with its response to the League of Women Voters' comments that there are no significant project impacts.

As a separate reason for recirculation, the FEIR reduced the DEIR's conclusions about the RUWAP project production from 1,700 to 1,000 AFY. That is significant new information, because it significantly affects the determination of the Regional Project water supply. In fact, the selected project now under way, the hybrid RUWAP, will produce 3,000 AFY. The FEIR used an incorrect 1,000-AFY figure to analyze cumulative and growth-inducing impacts, and the EIR analysis is incorrect. As another reason for recirculation, the EIR fails to include the planned cogeneration plant in the project description, or to analyze its impacts.

SWRCB Antidegradation Policy: CRWQCB Basin Plan.

The EIR fails to adequately investigate and disclose the extent of the proposed projects' violation of the State Water Resources Control Board's Antidegradation Policy. This policy, formally known as the Statement of Policy with Respect to Maintaining High Quality Waters in California (SWRCB Resolution No. 68-16), restricts degradation of surface and ground waters. The policy protects water bodies where existing quality is higher than necessary for the protection of beneficial uses. Under the Antidegradation Policy, any actions that can adversely affect water quality in all surface and ground waters must (1) be consistent with maximum benefit to the people of the State, (2) not unreasonably affect present and anticipated beneficial use of the water, and (3) not result in water quality less than that prescribed in water quality plans and policies. Any actions that can adversely affect surface waters are also subject to the Federal Antidegradation Policy (40 Code of Federal Regulations [CFR] section 131.12) developed under the Clean Water Act. The Central Regional Water Quality Control Board's Basin Plan implements the antidegradation policy. The EIR also fails to adequately investigate and disclose the proposed projects' violation of the Basin Policy.

Potential Takings Claims.

In comments to the DEIR, it was pointed out that it is reasonably possible that the proposed project, if approved, would result in the deterioration in, or elimination of, valuable water rights of the Armstrong Ranch property owned by the Ag Land Trust. Such action would result in a compensable taking of the Ag Land Trust's property. On a related point, the stripping of the water rights from this productive agricultural land is a physical change to the environment which must be addressed in the FEIR and, when feasible, mitigated to a level of insignificance or considered as part of the alternatives analysis of the FEIR. The FEIR fails to fairly consider and address these impacts. To the best the public can discern from the MCWRA's seawater intrusion depictions, the Ag Land Trust property overlies a part of the 400-foot aquifer that is not seawater intruded. (See attached figure.) The Regional Project could significantly affect the water quality in the 180-foot and 400-foot aquifer. The Ag Land Trust would lose valuable property rights if its ground water rights were affected.

The EIR fails to identify the potential eminent domain authority or actions that could be used to implement the project, or even to present the fact that eminent domain may be used or necessary for project implementation. For example, the FEIR (p. 5-50) states merely that private landowners may be affected by sale or lease of their property for project purposes. In fact, the public agency proponents of the project have eminent domain authority, and may choose to exercise it to implement the project. An eminent domain action is a "project" under CEQA (Pub. Resources Code, § 21065) and must be reviewed at the earliest possible stage for potential impacts. Because such eminent domain action is foreseeable, it should be disclosed and evaluated in the EIR.

Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 21

Problems with Access to Final EIR.

CEQA states that draft EIRs for proposals of unusual scope or complexity should normally be less than 300 pages. (CEQA Guidelines, § 15141.) Here, the Draft EIR was approximately 1,500 pages, and the Final EIR is over 3,100 pages and contains significant new information. The Final EIR is not available in hard copy anywhere in the Monterey County. The local agencies, including Monterey County and Marina Coast Water District, have the FEIR available on disk only. For these reasons, it has been extremely difficult for the public to access and review the over 3,100 pages, much of which contained complex and interrelated new information, within the available time.

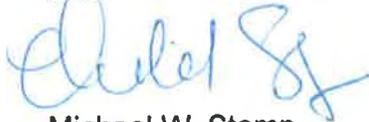
Efforts to Obtain and Provide Further Information.

Last week we contacted the project manager for the Coastal Water Project EIR³ and requested a return call, hoping to share these concerns with regard to the Coastal Water Project EIR. We did not receive a return call. On December 30, 2009, our Office made a records request to the CPUC, in accordance with the records request guidelines on the CPUC website. Our clients sought access under the California Public Records Act (Gov. Code, § 6250 et seq.) to the records for the Coastal Water Project EIR. The CPUC was required to respond to our request within ten days. (Gov. Code, § 6253, subd. (c).) We did not receive a response, and were not provided with an opportunity to inspect or copy documents.

Thank you for the opportunity to comment on the Coastal Water Project EIR.

Very truly yours,

LAW OFFICES OF MICHAEL W. STAMP



Michael W. Stamp
Molly Erickson

Attorneys for Ag Land Trust

cc: Andrew Barnsdale

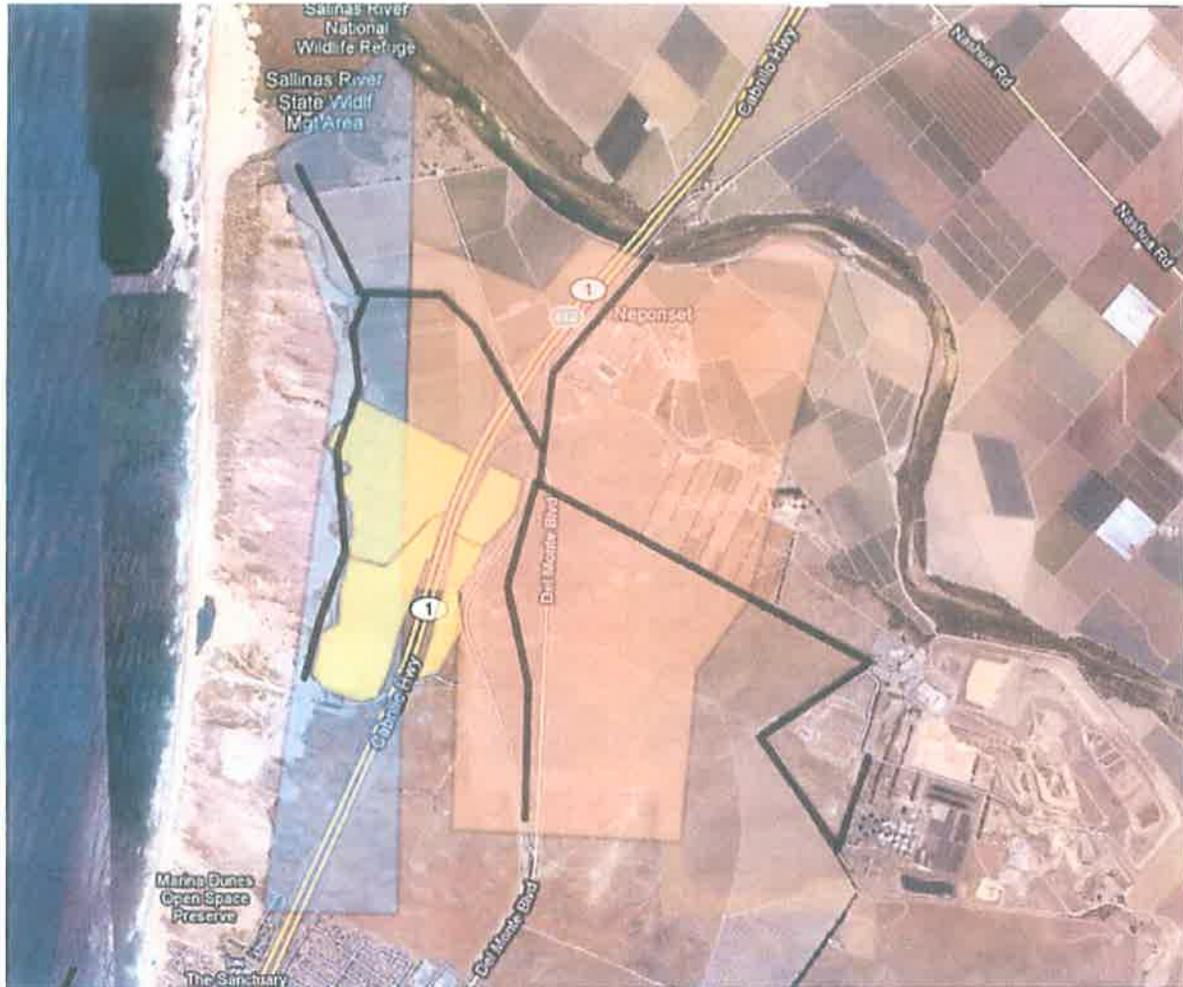
³ Years ago, when the CPUC took over as lead agency, our Office was informed that the CPUC had not previously managed the preparation of an EIR on a water supply project, which is why the task was handled by an Energy staff member.

**Michael R. Peevey, President,
and Members of the Public Utilities Commission
December 16, 2009
Page 22**

References attached by email:

- **Figures showing Ag Land Trust Properties in relation to proposed Regional Project**
- **Presentation on the Regional Water Supply Project presented by Curtis Weeks, Monterey County Water Resources Agency, and Jim Heitzman, Marina Coast Water District, made at the City and Agency Managers' meeting, December 9, 2009 (this and the other presentations in similar format are identified in the electronic file properties as being prepared by RMC)**

All other references to be delivered to the CPUC in hard copy on December 17, 2009.



Yellow— Ag Land Trust (Monterey County Agricultural and Historic Land Conservancy) properties.

Pale Blue and Brown -- potential sea water wells and pipeline locations as extracted from Coastal Water Project FEIR Revised Figure 5-3.

NOTE: EIR Revised Figure 5-3 provides only a generalized representation of the sea water well areas with no references to properties included within their boundaries. Precise spatial data was not provided by the applicant or available from the EIR preparer.

This document was professionally prepared by a GIS Professional, using spatially accurate imagery, known physical features and property lines to provide a reliable representation of the Conservancy properties as they relate to the proposed sea well areas. Lack of access to the spatial data, if any, used in Revised Figure 5-3, has required some locational interpretation, which was performed using professional best practices.

AG LAND TRUST

Monterey County Agricultural and Historic Land Conservancy

P.O. Box 1731, Salinas CA 93902

www.aglandconservancy.org

Phone: 831-422-5868 Fax: 831-758-0460

April 25, 2009

TO: Monterey County Board of Supervisors

FROM: Monterey County Ag Land Trust

RE: Opposition to proposed MOU's for Monterey Regional Supply Planning and Coastal Water Project

By this letter, the Board of Directors of the Ag Land Trust unanimously and vehemently objects to the proposed MOUs and the Coastal Water Project that are recommended for your approval by the staff of the MCWRA. These proposed MOUs and the project that they expressly advance are wrongful, illegal acts that propose to take and convert our water and water rights for the benefit of a private company. We hereby incorporate by reference into this letter (as our own) each, every, and all facts, objections, statements, references, legal citations, and assertions located within each and every Attachment herewith attached to this correspondence. **Before your Board takes any action on these matters that will expose you to significant litigation from landowners with senior overlying percolated groundwater rights, you need to ask the question and receive a written answer from your staff, "If the Salinas Valley percolated groundwater basin has been in overdraft for sixty years, whose percolated groundwater and overlying percolated groundwater rights are you proposing that we take without compensation to benefit Cal-Am?"**

1. The proposed MOUs, and the projects which they include, violate and will result in an illegal, wrongful, "ultra vires", and unlawful "taking" of our percolated overlying groundwater rights. Our Trust owns (in fee) the large ranch (on which we grow artichokes and row crops) that lies between the ocean and the proposed "well field" that the California-American Water Company (a private, for profit appropriator) proposes to use to illegally divert percolated groundwater from the overdrafted Salinas groundwater basin. The so-called "environmentally superior alternative" in the Coastal Water Project EIR is based upon the illegal taking of our water rights and pumping of our percolated groundwater for the economic benefit of Cal-Am. The Salinas basin has been in overdraft for over 60 years and California law holds that, in an overdrafted percolated groundwater basin, there is no groundwater available for junior appropriators to take outside of the basin. In an over-drafted, percolated groundwater basin, California groundwater law holds that the Doctrine of Correlative Overlying Water Rights applies, (Katz v. Walkinshaw 141 Cal. 116). In an over-drafted basin, there is no surplus water available for new "groundwater appropriators", except those prior appropriators that have acquired or gained pre-existing, senior appropriative groundwater water rights through prior use, prescriptive use, or court order. This is the situation in the over-drafted Salinas percolated groundwater basin, there is no "new" groundwater underlying the over-drafted Salinas aquifers. Moreover, no legal claim or relationship asserting that water from a distant water project (over 6 miles from the proposed Cal-Am well field to the rubber dam) may be credited for the over-drafted Salinas percolated

groundwater basin can be justified or sustained. California groundwater law refutes such “voodoo hydrology” by holding that “Waters that have so far left the bed and other waters of a stream as to have lost their character as part of the flow, and that no longer are part of any definite underground stream, are percolating waters” (Vineland I.R. v. Azusa I.C. 126 Cal. 486). Not only does Cal-Am have no right to take ground water from under our lands, but neither does the MCWRA. **MCWRA HAS NO PERCOLATED OVERLYING GROUNDWATER RIGHTS THAT IT MAY USE TO GIVE TO CAL-AM FOR EXPORT OUT OF THE BASIN.** Our first objection to this illegal project and conduct was filed with the CPUC and MCWRA on November 6, 2006 (see herein incorporated Attachment 1). Your staff has not responded and our concerns have been ignored.

2. The recommended MOUs before the Board of Supervisors is a project under CEQA and the MCWRA staff recommendations to the Board violate the California Environmental Quality Act and the California Supreme Court decision in the “Tara” case. The California Supreme Court’s decision in *Save Tara v. City of West Hollywood*, Case No. S151402 (October 30, 2008), provides specific direction to public agencies entering into contingent agreements. In this opinion, the Supreme Court held that the City of West Hollywood (“City”) had violated CEQA by entering into a conditional agreement to sell land and provide financing to a developer before undertaking and completing environmental (CEQA) review. This is exactly what the MCWRA staff is asking the Board to do. They want you to approve their project without a certified EIR from the CPUC. One of the proposed MOUs even references the fact that it is contingent on the certification of the FEIR by the CPUC. Monterey County abdicated its role as the “lead” agency under CEQA years ago when it agreed to allow the CPUC to prepare the EIR on the Coastal Water Project. Monterey County is now a “responsible agency” and must wait while the CPUC staff deals with the fact that its draft EIR is woefully inadequate because of its failure to address that fact that none of the public agencies in Monterey County have the rights to pump groundwater from an overdrafted basin for the economic benefit of Cal-Am (see Attachment 2). Further, the Draft EIR acknowledges that the proposed MOUs and Coastal Water Project violate MULTIPLE provisions of the Monterey County General Plan, and the North County Local Coastal Plan, and contradicts the express purpose (ELIMINATION OF SEAWATER INTRUSION) of every water development project for which land owners have been assessed and charged (and continue to be charged) by Monterey County and the MCWRA for the past 50 years, including the Salinas Valley Water Project.

3. It is clear that the MOUs and the Coastal Water Project are being advanced by MCWRA staff and Cal-Am jointly as if they are already one entity. In fact, the proposed MOUs advanced by MCWRA staff advocate a governmental structure (JPA) that would be completely immune for the voters’ constitutional rights of initiative, recall, and referendum. Moreover, this plan to deny the Monterey County public’s right to public ownership of any new water project was also secretly advanced this month in Assembly Bill AB 419 (Caballero) wherein Cal-Am lobbyists got the Assemblywoman to try to change one hundred years of state law by “redefining a JPA with a private, for-profit utility (Cal-Am) member” as a “public agency”. (See Attachment 3). These actions by MCWRA staff and Cal-Am to circumvent and “short-circuit” the mandatory CEQA process for the MOUs and the Coastal Water Project are further reflected in Attachment 4 wherein counsel for MCWRA requested an extension of time from the SWRCB (on permits issued to address water shortages in the Salinas Valley) to develop “alternative plans”. Although the letter says that “there will be no export of groundwater outside of the Salinas basin”, that is exactly what the MOUs and the Coastal Water Project proposes... to pump and export thousands of acre feet of groundwater out of the Salinas basin for the benefit of Cal-Am.

4. Our wells and pumps on our ranch adjacent to the location of the proposed well field are maintained and fully operational. We rely on our groundwater and our overlying groundwater rights to operate and provide back-up supplies for our extensive agricultural activities. MCWRA nor the CPUC has never contacted our Board of Directors that includes farmers (including past

presidents of the Grower-Shippers Assn.), bankers, attorneys, and agricultural professionals to get our input on this proposed taking of our water rights. As a result of this lack of concern for our property rights, we must assume that the County has now assumed an adversary position toward our Land Trust and our groundwater rights. In 2001-2002, MCWRA staff recommended that you include the Gonzales area in the assessment district for the SVWP. The Gonzales farmers objected, your MCWRA staff ignored them, you got sued and the taxpayers ended up paying the bill. From 1999 – 2005, the owner of Water World objected to the conduct of MCWRA staff and was ignored by your staff. Thirty (30) million dollars later, you lost the lawsuit and the taxpayers paid the bill. When will the taxpayers stop having to pay for poorly conceived ideas from MCWRA and Cal-Am?

5. The draft CPUC EIR marginalizes the grave and significant environmental impacts on groundwater and groundwater rights, violations of the General Plan and Local Coastal Plan policies, and the illegal violations and takings of privately owned, usufructory water rights upon which the Coastal water Project depends. **These and the illegal appropriations of thousands of acre feet of groundwater from under privately owned land in an overdrafted basin ARE NOT A LESS THAN SIGNIFICANT IMPACTS! This is the project that the staff of the MCWRA staff wants the Board to approve without a certified EIR.** (see Attachment 5). Further, the Marina Coast Water Agency has used up all of its full allocation of groundwater from the Salinas Valley groundwater basin, and as an appropriator is not entitled to any more water from the overdrafted basin, contrary to the information presented to the Growers-Shippers Association by Mr. Curtis Weeks of MCWRA (see Attachment 6)..

The Ag Land Trust understands that there is a water shortage on the Monterey Peninsula. It has gone on for decades. That shortage does not justify the illegal taking of our water rights for the economic benefit of Cal-Am. We ask that the Board not approve the MOUs or the Coastal Water Project for the reasons stated herein.

Respectfully,

A handwritten signature in black ink that reads "Ed DeMare, Sec." with a long horizontal flourish extending to the right.

The Board of Directors of the Monterey County Ag Land Trust

CC: CPUC, MCWD, California Coastal Commission, and California-American Water Co.



Ag Land Trust

P.O. Box 1731
Salinas, CA 93902
tel. 831 422 5868
fax. 831 758 6053

To: California Public Utilities Commission
C/O CPUC Public Advisor
505 Van Ness Avenue, Room 2103,
San Francisco, CA 94102
Fax: 415.703.1758
Email: public.advisor@cpuc.ca.gov.

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 result 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

**'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 include 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,

A handwritten signature in cursive script that reads "Brian Rianda".

Brian Rianda, Managing Director

Luster, Tom@Coastal

From: Ron Weitzman <ronweitzman@redshift.com>
Sent: Thursday, November 06, 2014 8:28 PM
To: Luster, Tom@Coastal
Cc: Californian; Carmel Pine Cone; Cedar Street Times; Channel 11; Monterey County Herald; Jim Johnson; KCBA NEWS; KSMS TV; MC Weekly Editor; Sara Rubin; Monterey County Herald Editor; Bruce Delgado; David Brown; Frank O'Conneell; Gail Morton; Nancy Amadeo; Bill Lee; Howard Gistafson; Janet Shriner; Peter Le; Tom Moore
Subject: Newspaper Commentary on Why a Test Well is a Waste of Time and Money
Attachments: Ron Weitzman Commentary in Monterey Herald.4 October 2014.pdf

Tom Luster
California Coastal Commission

Dear Mr. Luster:

District Director Dan Carl referred me to you. I had asked him to present two documents to the Coastal Commission for its November 12 hearing of Cal Am's appeal of Marina's denial of a permit for the company to construct and operate a test-well facility at the Cemex site in the city. WaterPlus, the ratepayer organization I represent, opposes the test well for reasons indicated in the two documents, which Mr. Carl assured me would come to the attention of the commissioners on time for the November 12 hearing.

My understanding is that the commission staff is going to recommend approval of Cal Am's appeal primarily on grounds related to the city's local coastal plan. While the argument based on those grounds may be persuasive, sound reasons exist outside that limited scope of concern for the commission to reject Cal Am's appeal. My two documents focus on these reasons, which were among those considered by the Marina City Council when it denied Cal Am's permit.

In reversing Marina's decision, the Coastal Commission would possibly be making a decision on arbitrarily limited grounds which may exclude valid and sufficient reasons to deny Cal Am's appeal. A city has much more to consider than its local coastal plan in making its decisions on permit requests. That is why the city is in the permit chain. Otherwise, why have it there? To substantiate my position on this issue as a ratepayer advocate, I am attaching a commentary by me that appeared recently in the Monterey Herald. Please see that this document, along with this letter, also receives the attention of the commissioners for the November 12 hearing on Cal Am's appeal. Thank you.

Very respectfully,

Ron Weitzman
President, WaterPlus

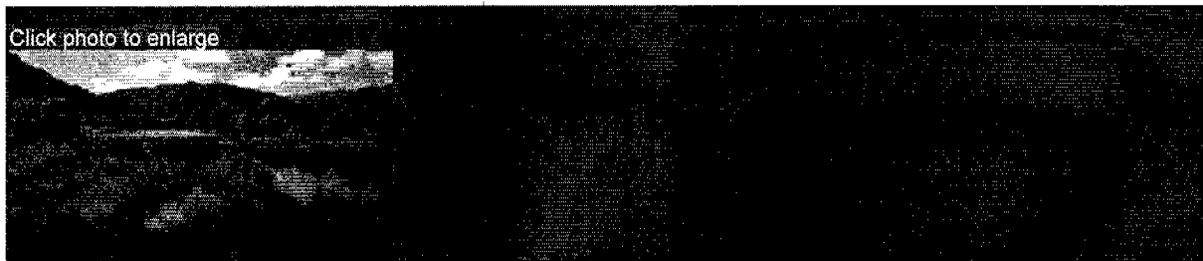
Ron Weitzman: Slant-well test waste of time, money

By Ron Weitzman

Guest commentary

POSTED: 10/03/2014 03:48:57 PM PDT1 COMMENT

UPDATED: 10/03/2014 03:48:59 PM PDT



The Carmel River upriver from the San Clemente Dam on the Carmel River in Carmel Valley on April...

The Herald's Sept. 14 editorial critical of Marina's rejection of Cal Am's test-well request attributed the request's opposition to people rather than reasons: "Many of the critics speaking at the meeting are longtime foes of Cal Am "

The opposition consisted of different groups having different and cogent reasons to oppose the request. The editorial's argument could have been more persuasive if it had challenged those reasons rather than just being dismissive of the opposing groups as consisting of the usual suspects.

As president of WaterPlus, I cannot speak for the other groups, but I can indicate why WaterPlus opposes the test-well project. Before I do that, I am going to describe what we as a public benefit, nonprofit, four-year-old group advocating for ratepayers are generally for and against in our local water scene.

We are for Cal Am as a local water purveyor, but we are against it as a water supplier. Reason: \$1 billion in greater cost to ratepayers if Cal Am rather than a public agency supplies the water. We support the public purchase of Cal Am as a means to assure public ownership of our water supply.

We support Cal Am's efforts to make money for its shareholders, but not at our — ratepayers — expense, particularly for failed projects like the San Clemente Dam and the Regional Desalination Project and, now, for the slant-well project that available and persuasive evidence indicates is doomed to fail.

We oppose the slant-well-test project because we are the ones who will pay its cost of upward of \$4 million when (a) ratepayers are not a charitable organization in the business of funding research projects; (b) the test proposed is not a true test because it lacks a go-no-go criterion like the existence or non-existence of an aquitard separating aquifers under the sea; and (c) by showing no such aquitard exists at the proposed Cemex site, the borehole study has already demonstrated that slant wells will not pass muster.

The state Agency Act prohibits the exportation of groundwater from the Salinas Valley, whose aquifers extend miles outward under the sea. The sole purpose of the proposed test is to show the state water board due diligence in following its guidelines — show no harm — in the hope that the board will extend its cease-and-desist-order deadline. Cal Am has persuaded the hospitality industry and Monterey Peninsula mayors that our local economy will literally dry up if we fail in that effort.

That on its face is a baseless fear. In the first place, the issue is the illegality of exporting groundwater from the Salinas Valley, not whether that exportation may or may not cause harm. In the second place and equally apt, the decision is not the state water board's. It is Cal Am's: Either severely cut the water taken from the Carmel River or pay a drastic fine for failing to do so.

Facing that choice, Cal Am has requested the Public Utilities Commission to allow it to track the fine it might choose to pay so that it can later recover it from ratepayers. Public Water Now is circulating a petition to the PUC to turn down that request. WaterPlus urges all ratepayers to sign that petition.

The slant-well test is a waste of time and money, and delaying the CDO deadline will only lengthen the time Cal Am is ravaging the Carmel River and endangering the life it supports. Cal Am should move without delay to Plan B, whatever that might be.

Meanwhile, the mayors may better serve their constituents by exploring and promoting the other water-supply options that are out there. After all, this is America, where competition is king.

Ron Weitzman is president of WaterPlus.

SAM FARR
20TH DISTRICT, CALIFORNIA

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Agenda Item No. A-3-MRA-14-0050

November 5, 2014

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CALIFORNIA
COASTAL COMMISSION

The Honorable Steve Kinsey
Chair
California Coastal Commission
45 Fremont St #2000
San Francisco, CA 94105

RE: SUPPORT California American Water's Slant Well Project, Agenda Item No. A-3-MRA-14-0050

Dear Mr. Chairman:

I am writing today to urge the California Coastal Commission to support and approve the required Coastal Development Permits for California American Water's slant test well project. The Monterey Peninsula community has a significant stake in the future of water supply on the Monterey Peninsula, in the health of the Carmel River and our groundwater supplies; and in the protection of our Monterey Bay Marine Sanctuary and our community's beautiful coastline.

I have taken an active role in Monterey County water policy since the mid 1970s. I crafted the original legislation authorizing the creation of the Monterey Peninsula Water management District. More recently, I have helped fund the construction of the Castroville area agricultural water reclamation project. And in just the last few years I have worked with Cal Am, the nature Conservancy, NOAA Fisheries, and others to shepherd the San Clemente Dam removal project to construction. So in light of these and many other success stories, it has been a great disappointment that that in the last forty years the local politics of the Monterey Peninsula have not coalesced around a solution to the Carmel River overdraft problem. That is why I have been so excited by the leadership and progress of the Monterey Peninsula Mayors' group to build a consensus behind a viable water supply option.

The Monterey Peninsula Water Supply Project is a portfolio of water projects that will protect both our regional environment and economy. The largest of which is the Cal Am desalination plant. The Monterey Peninsula Water Management District and the Monterey Regional Water Pollution Control Agency are also pursuing an advanced-treatment recycled water project that would produce water that would be stored in the Seaside Groundwater Basin for subsequent recovery.

The Honorable Steve Kinsey

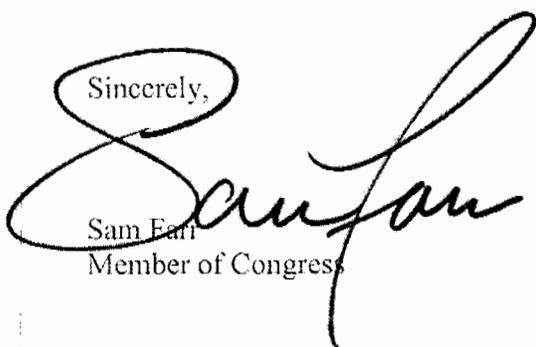
November 5, 2014

Page Two

The continued progress of this comprehensive solution is now hung up on the question of approving a test slant well for the desalination plant. The site of the proposed slant test well was agreed upon after numerous meetings with local, state, and federal permitting agencies. The test has been designed through a collaborative technical working group to gather information on the technical feasibility of operating a desalination plant with slant well technology. In essence the slant test well is an experiment whose data is critical to making a good decision on the ultimate viability of the Monterey Peninsula Water Supply Project. I can see no reason why the test slant well should not be approved. It is time to get the ball rolling again. I therefore urge the Commission to approve the Coastal Development Permits required for Cal Am's Slant Test Well Project.

Thank you for your time and attention to this matter.

Sincerely,


Sam Farr
Member of Congress

SF/aa

COMMITTEES
JUDICIARY
BUDGET
BUDGET SUBCOMMITTEE #5 ON
PUBLIC SAFETY
NATURAL RESOURCES
ENVIRONMENTAL SAFETY AND
TOXIC MATERIALS

CHAIR, SELECT COMMITTEE ON
COASTAL PROTECTION

Assembly
California Legislature



MARK STONE
CHAIR, HUMAN SERVICES
ASSEMBLYMEMBER, TWENTY-NINTH DISTRICT

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FAX (831) 425-2570

99 PACIFIC STREET #555D
MONTEREY, CA 93940
(831) 649-2832
FAX (831) 649-2935

Appeal No. A-3-MRA-14-0050

October 29, 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: SUPPORT Appeal No. A-3-MRA-14-0050 (California American Water Co., Marina)

Dear Chair Kinsey and Commissioners:

As the Assemblymember for the Monterey Bay Area, Chair of the Assembly Select Committee on Coastal Protection, and Co-Chair of the Legislative Environmental Caucus, I submit this letter to urge you to grant the appeal and the required Coastal Development Permits for the proposed Slant Test Well Project. The Monterey Peninsula community has a significant stake in the future of the region's water supply, the health of the Carmel River, and the protection of our Monterey Bay National Marine Sanctuary and beautiful coastline.

The appeal and proposal are consistent with information provided to the Assembly Select Committee on Coastal Protection during its hearing on September 24th, 2014 in Sacramento on the topic of seawater desalination and its impacts on coastal resources. Extensive evidence was presented regarding the harm of open ocean intakes, including entrainment and impingement of marine organisms. However, the proposed subsurface intakes could reduce or eliminate that environmental harm and is largely considered as the best available technology in that regard.

The proposed solution is a part of a portfolio of water projects intended to minimize the environmental and ratepayer impacts as well as allow for a reduction in the size of the desalination plant. Existing aggressive conservation measures will continue, which have resulted in some of the lowest water use in the state of approximately 60 gallons per person per day.

The information that will be gathered from the slant test well on source water and feasibility is an important step and will serve to further the state of knowledge with respect to alternatives to open ocean intakes. For these reasons, I urge you to grant the appeal and approve the Coastal Development Permits required for this Slant Test Well Project.

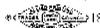
Sincerely,

Mark Stone
Assemblymember
Twenty-Ninth District

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OCT 31 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA





OFFICE OF THE MAYOR

440 Harcourt Avenue
Seaside, CA 93955

Telephone (831) 899-6706

FAX (831) 899-6227

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 30, 2014

California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Appeal to the California Coastal Commission – Cal Am Test Well

Dear California Coastal Commission Members:

The overall Monterey Peninsula Water Supply Project is a critical environmental project aimed at protecting the Carmel River and threatened species such as the South Central Coast Steelhead and California-Red Legged Frog, while maintaining a water supply for the residents and businesses of the Monterey Peninsula.

The State has issued a Cease and Desist Order against Cal Am to reduce their pumping of the Carmel River, which is currently the primary water supply for the Monterey Peninsula. The test well is a critical component of identifying and developing an alternative water supply so the reductions on the Carmel River can be accomplished. If a solution not developed in time to meet the State's required cutbacks on the river, it is estimated the potential regional economic loss could be over \$1 billion. The cutbacks, without a replacement water supply, would have a devastating impact on jobs and the quality of life for people throughout the region.

The Monterey Peninsula, at 60 gallons per person per day, already conserves more (uses less) water per capita than most parts of the state and country.

Completion and operation of the test well is a critical step in determining the feasibility of the overall project. The test well, and the subsurface intake methodology it seeks to validate, are supported by a broad coalition of local governments and environmental organizations, which includes 15 organizations, including major environmental organizations.

Subsurface intakes are also preferred by key regulatory agencies, including the California Coastal Commission, the State Water Resources Control Board, and the Monterey Bay National Marine Sanctuary. Sanctuary Guidelines require a desalination project proponent to investigate the feasibility of using subsurface intakes, and that is the specific purpose of the test well project.

California Coastal Commission

RE: Appeal to the California Coastal Commission – Cal Am Test Well

October 30, 2014

Page 2

While the Marina City Council denied the CDP application for the test well on a 3 – 2 vote, that decision was based on the belief by three Councilmembers that a different type of environmental review was required under CEQA. The City Council did not address whether the proposed project conforms to the standards of the LCP or the coastal access provisions of the Coastal Act.

The City's Planning Department, outside CEQA consultant and counsel, and the Sierra Club all agreed that the type of environmental review that was conducted was appropriate under CEQA.

The City's Planning Department Staff and outside CEQA consultant found that the proposed *is consistent* with the LCP and in no way restricts coastal access.

The test well project would be completed in the active mining area of the CEMEX property to minimize impact.

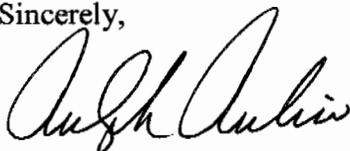
The test well is temporary and for research purposes only. The test well will operate for up to two years. If the full project is approved, Cal Am will seek to turn the test well into a permanent well. Otherwise, the well will be abandoned and destroyed. The test well will gather data on the feasibility of slant wells at the CEMEX site. The data is needed for final design and will help determine what impacts, if any, slant wells will have on the Salinas Groundwater Basin.

Independent review concluded the environmental impacts of this project are insignificant or can be mitigated. The City of Marina's consultant, in concert with local, state and federal agencies, conducted an in-depth review of all the potential environmental, cultural and historic resource impacts of the test well and determined that, with appropriate mitigation, there were no significant impacts.

For the above reasons, the City of Seaside joins with many organizations in requesting that the Coastal Commission approve the Coastal Development Permits required for California American Water Company's test well project.

Thank you for your consideration of our request.

Sincerely,



Ralph Rubio
Mayor
City of Seaside

Cc: Chuck Della Sala, Mayor – Monterey
Jerry Edelen, Mayor – Del Rey Oaks
Jason Burnett, Mayor – Carmel
Bill Kampe, Mayor – Pacific Grove
David Pendergrass, Mayor – Sand City

City of Carmel-by-the-Sea

POST OFFICE BOX CC
CARMEL-BY-THE-SEA, CA 93921
(831) 620-2000

November 6, 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: SUPPORT Agenda Item No. 14 (Appeal No. A-3-MRA-14-0050)

Hon. Chair Kinsey and Commissioners:

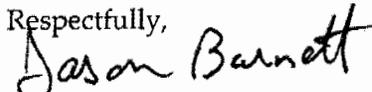
I am writing today to urge you to support and approve the required Coastal Development Permits for California American Water's (Cal Am) Slant Test Well Project. Approval of the Slant Test Well Project will be a significant step forward in our community's efforts to find new water supplies while reducing pumping from the Carmel River.

The Carmel-by-the-Sea community values and works to protect the Carmel River, our marine resources including the Monterey Bay National Marine Sanctuary and enjoys hosting millions of visitors who come to experience the California central coast. We support new environmentally responsible water supplies so that Cal Am can reduce its pumping from the Carmel River and we can continue hosting visitors to the coast.

After extensive analysis and debate, we have concluded that a portfolio of water projects, including a desalination plant, will best serve the community. Use of subsurface intakes for desalination plants is a clear policy preference of the SWRCB, the Monterey Bay National Marine Sanctuary, and the California Coastal Commission itself, among other agencies that will need to approve the overall project before it can be constructed. The proposed Slant Test Well Project is intended to help satisfy these policy requirements.

Carmel-by-the-Sea is proud to join with the broad and large coalition of environmental groups, businesses, farming organizations, consumer and community advocates and other local governments who have concluded the information gathered from the Slant Test Well Project will help make more informed decisions in our efforts to solve our community's water supply crisis and protect the Carmel River ecosystem. For the reasons discussed above, the City of Carmel-by-the-Sea urges you to approve the Coastal Development Permits required for Cal Am's Slant Test Well Project.

Respectfully,



Jason Burnett

Mayor of Carmel-by-the-Sea



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30 RAGSDALE DRIVE, SUITE 200
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JODY HANSEN
AGENDA ITEMS:
W14a AND W15a

November 4, 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attention: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

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CALIFORNIA
COASTAL COMMISSION

Re: SUPPORT - Appeal No. A-3-MRA-15-0050 and Application No. 9-14-1735

Dear Chair Kinsey and Commissioners:

On behalf of the Monterey Peninsula Chamber of Commerce—which represents 800 members in 12 communities and which is also a member of the Coalition of Peninsula Businesses—we urge you to approve the Coastal Development Permits (CDP) required for California American Water Company's (Cal Am) Test Well Project referenced above.

The Test Well Project is critical to identifying and developing an alternative water supply to the Carmel River to comply with the State Water Resources Control Board's looming Cease and Desist Order (CDO) - No. WR 95-10. A water supply solution must be developed in time to meet the prescribed CDO deadlines, otherwise our region faces devastating water supply cutbacks, which could result in a potential economic loss of over \$1 billion. The cutbacks, without a replacement water supply, would drastically impact jobs and quality of life for people throughout the region.

To meet the CDO deadlines, the Test Well Project must be completed in an expeditious manner to gather critical data on water quality and quantity, as well as the feasibility of the slant wells at the CEMEX property in Marina. These slant wells are the preferred subsurface intakes recommended by the California Coastal Commission, the State Water Resources Control Board, and the Monterey Bay National Marine Sanctuary.

Regarding environmental impacts, independent consultants reviewing the project have found the scope of the Proposed Test well Project: (1) is consistent with the Local Coast Plan (LCP); (2) will have minimal environmental as well as cultural and historical resource impacts; and, (3) those stated impacts can be mitigated so that there are no significant impacts.

Given these facts, we again urge you to approve Cal Am's CDP's required for the Test Well Project. Thank you for your favorable consideration.

Sincerely,

Jody Hansen
President and CEO



CALIFORNIA COASTAL PROTECTION NETWORK
2920 Ventura Drive, Santa Barbara, CA 93105 • 805-637-3037
WWW.COASTALADVOCATES.COM

November 6th, 2014

Chair Steve Kinsey
Members of the California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

RE: Appeal No. A-3-MRA-14-0050 (California-American Water Company)
Application No. 9-14-1735 (California American Water Company)

Dear Chair Kinsey and Members of the Commission,

The California Coastal Protection Network (CCPN) is writing to support the application of the California American Water Company's (Cal-Am) request for a permit to construct, test, and decommission a temporary test slant well at the CEMEX site in the City of Marina.

The purpose of the test is to gather data for a potential desalination facility as part of the Monterey Peninsula Water Supply project. If the results of the test are positive, Cal-Am may apply for additional permits to convert to a production well subject to certification of an Environmental Impact Report by the California Public Utilities Commission (CPUC).

The purpose of the project is to test the overall feasibility and location for a proposed full-scale project, most notably available yield and the hydrological effect of extracting water at this site on the two aquifers that have been subject to seawater intrusion. However, the application before you is only for a discrete test and an approval does not extend any influence over future permitting decisions by the Commission related to any larger project.

Without opining on the suitability of any larger project, CCPN would like to take note of the significant differences between Cal-Am's approach to a potential desalination facility and that of some other proposed desalination applicants that have appeared before the Coastal Commission, most notably Poseidon Resources:

- Cal-Am has openly acknowledged that subsurface intakes are the preferred intake technology given their ability to virtually eliminate the significant adverse impacts on marine life that result from the use of screened open ocean intakes. Poseidon has vigorously denied that subsurface intakes are the preferred technology.
- Cal-Am has engaged in an extensive stakeholder process at the local level under the regulatory guidance of the CPUC. This process included an examination of possible alternatives and a search for the best site available that would facilitate the construction of subsurface intakes. In addition, the larger Monterey Peninsula Water Supply Project includes a proposal for a water recycling facility. In contrast, Poseidon refused to engage the public in considering preferred alternatives for local water reliability, selected its site without stakeholder input and has so far refused to consider alternative locations that would facilitate the use of subsurface intakes.

- As staff noted, the project is proposed in an area that has no imported water sources and where local supplies are sometimes limited. Further, the water agencies, as well as consumers in the Monterey area, have made significant efforts to reduce demand, explore rainwater harvesting, and propose recycled wastewater and more. Poseidon's Huntington Beach facility is proposed in an area that has ample imported, groundwater and recycling resources – and much more can be done to meet local reliability without the need to develop a large scale seawater desalination facility.
- Any future production of desalinated water at this site will result in a guaranteed reduction in the over-pumping of the Carmel River to ensure in-stream flows for wildlife habitat, as ordered by the State Water Resources Control Board. Poseidon's Huntington Beach facility will not result in any concomitant reduction in imported water and as designed would result in significant marine life mortality and habitat degradation.

Commission staff has taken a conservative approach in this application. And despite the fact that the Marina Local Coastal Program identifies two levels of habitat (primary and secondary) and the site has long been disturbed by the CEMEX sand mining operation, it is staff's opinion that the site is comprised of primary habitat and is deserving of the protections afforded for ESHA under the Coastal Act. However, given that the project is a coastal dependent industrial facility that is allowed in this location, the Commission can approve it if:

- alternative locations are infeasible or more environmentally damaging;
- denial is not in the public interest; and
- the impacts have been mitigated to the maximum extent feasible

While seawater intakes are clearly "coastal dependent" -- not all future seawater desalination treatment facilities need to be constructed in the coastal zone. Nonetheless, CCPN believes that this test project is coastal dependent, has met those three criteria and supports approval as conditioned by staff.

To adhere to the tight timelines imposed in part due to Snowy Plover nesting season, CCPN hopes that the Commission will approve the project at its November hearing as any further delay could push the project start date into 2016 and potentially result in continued over-pumping in the Carmel River and habitat and wildlife degradation.

CCPN intends to appear at the hearing and testify in support of Cal-Am's application for this slant well test for the reasons described above.

Sincerely,



Susan Jordan

CC: Tom Luster and Alison Dettmer, California Coastal Commission

MCAR

MONTEREY COUNTY ASSOCIATION OF REALTORS®

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November 5, 2014

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CALIFORNIA
COASTAL COMMISSION

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Appeal No. A-3-MRA-15-0050 & Application No. 9-14-1735 | Agenda No. W14a & 15a

Honorable Chair Kinsey and Commissioners:

Thank you for the opportunity to contribute comments as they relate to California American Water Company's ("Cal-Am") test slant well application before you for consideration. On behalf of The Monterey County Association of REALTORS® ("MCAR"), representing over 1300 REALTORS® throughout Monterey County, we wish to express our strong collective support for the test slant well application (No. 9-14-1735).

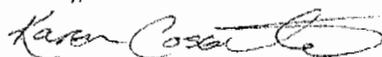
Monterey County residents and businesses have been pursuing a viable water supply solution for over 30 years to no avail. The test slant well, an imperative component of Cal-Am's proposed desalination project, is a substantial step in the right direction in addressing the water supply challenges that have plagued our region for decades.

Monterey County residents and businesses have led the way in water conservation and environmental awareness, pioneering technologies, programs and initiatives to this end. The test slant well honors this heritage by extracting water through the sand, ensuring the unique marine life of the Monterey Bay is protected.

With two-thirds of our current water supply in jeopardy from the State Water Resources Control Board Cease and Desist Order ("CDO"), timing is critical in advancing a solution to address the long term water supply needs of the Monterey Peninsula. Approval of this application moves our region closer to averting the economic crisis that would ensue should the CDO be fully implemented without a new supply online.

Thank you again for the opportunity to address this very important issue. We look forward to a future of available water in Monterey County, made possible in part, by the approval of the test slant well application before you.

Sincerely,



Karen Cosentino

2014 President, Monterey County Association of REALTORS®



Latino Seaside Merchants Association

1048 Broadway Avenue
Seaside, CA 93955

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CALIFORNIA
COASTAL COMMISSION

November 5, 2014

Mr. Steve Kinsey, Chair
California Coastal Commission
Attn: Mike Watson, Coastal Planner
725 Front Street, Suite 300
Santa Cruz, CA 95060

SUBJECT: Support Appeal No. A-3-MRA-14-0050 (California American Water Co., Marina)

Dear Mr. Kinsey:

The *Latino Seaside Merchants Association* serving the Latino business community in the city of Seaside and on the Monterey Peninsula supports the *California American Water Company's* (Cal-Am) appeal to the California Coastal Commission for approval of the Coastal Development Permits required for Cal-Am's test well project.

Small businesses in the city of Seaside and throughout the Monterey Peninsula need water – especially micro enterprise businesses known as “mom ‘n pop” businesses so that we can expand. But we can't because of not having a viable water source in our region.

Desalination is a good and doable option to increase California's water supply. Together we should look at desalination were appropriate and feasible. And we believe such projects will provide a critical addition to local or regional water portfolios throughout California.

As you may know, we on the Monterey Peninsula have taken a significant stake in the future of our region's water supply, together with the well-being of the Carmel River and the protection of our Monterey Bay National Marine Sanctuary.

Therefore, as Cal-Am requests a Coastal Development Permit to complete and operate a test well - a critical component of the Monterey Peninsula Water Supply Project that will gather data on the feasibility of slant wells at the site, we the *Latino Seaside Merchants Association* strongly support said permit request, and request that the Coastal Commission grant Cal-Am's appeal and approve the Coastal Development Permits required for this project.

Sincerely,



Marcelino Isidro, Treasurer
Latino Seaside Merchants Association



**Monterey Bay
Aquarium**

886 CANNERY ROW
MONTEREY, CA 93940
831.648.4300

Agenda Item No. 14

November 3, 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RECEIVED

NOV 06 2014

**CALIFORNIA
COASTAL COMMISSION**

RE: SUPPORT Agenda Item No. 14 Appeal No. A-3-MRA-14-0050
(California-American Water Company, Marina)

Hon. Chair Kinsey and Commissioners:

On behalf of the Monterey Bay Aquarium, I urge you to approve the required Coastal Development Permits for California American Water's (Cal Am's) Slant Test Well Project.

A reliable future water supply for the Monterey Peninsula is of paramount concern, as is a healthy Monterey Bay, which is vital to our regional economy and the well-being of our community. As an ocean conservation organization, we fully support the need to restore the Carmel River ecosystem through both water conservation and a mix of alternative sources of water, which could include groundwater replenishment, aquifer storage and recovery and desalination. We also support efforts to ensure that any future water supply project is conducted in a way that minimizes impacts to our region's world-renowned ocean and coastal ecosystems and marine life.

The use of subsurface intake is emerging as a viable alternative to open-water intake at desalination facilities. In particular, subsurface intake has been shown to eliminate the impacts of entrainment and impingement on marine life, as documented in the California State Water Resources Control Board's Proposed Desalination Amendment and Draft Staff Report (July 2014). In fact, the Board's Draft Amendment would require the use of subsurface intakes for desalination facilities statewide unless deemed infeasible by the regional water board.

Understanding the potential effects of desalination operations on the marine environment is important, especially as the Central Coast is home to 28 marine protected areas (MPAs), including 11 MPAs in and near Monterey Bay. These protected areas were established to enhance the protection of marine life and habitat in California's state ocean waters.

Furthermore, subsurface intake is the preferred option for desalination source water for the Mayors' Monterey Peninsula Water Authority, which conducted considerable analysis and deliberation before reaching agreement among sixteen diverse organizations and Cal Am on specific technical, environmental, organizational, and financial requirements for future water supplies.

Time is of the essence. Significant reductions to our water supply will have a major impact on our regional economy and way of life. It also has the potential to limit access to the Aquarium by a substantial

November 4, 2014

Mr. Steve Kinsey, Chair
California Coastal Commission
Attn: Mike Watson, Coastal Planner
725 Front Street, Suite 300
Santa Cruz, CA 95060

SUBJECT: Support Appeal No. A-3-MRA-14-0050 (California American Water Co., Marina)

Dear Mr. Kinsey:

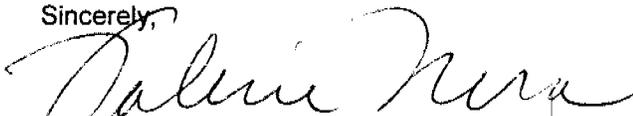
The California Chamber of Commerce supports the California American Water Company's (CalAm) appeal to the California Coastal Commission for approval of the Coastal Development Permits required for CalAm's test well project.

Desalination is a viable option to increase the state's water supply. Every effort should be made to pursue desalination where appropriate and feasible. These projects provide an invaluable addition to a well balanced local or regional water portfolio. The Monterey Peninsula community has a significant stake in the future of the region's water supply, the health of the Carmel River, and the protection of the Monterey Bay National Marine Sanctuary.

CalAm is requesting a Coastal Development Permit to complete and operate a test well that is a critical component of the Monterey Peninsula Water Supply Project. The test well will gather data on the feasibility of slant wells at the site. The test is needed to determine whether a full-scale desalination plant in Marina will work.

The CalChamber believes that the Coastal Commission should grant the appeal and approve the Coastal Development Permits required for this project.

Sincerely,



Valerie Nera
Policy Advocate

cc Coastal Commissioners



RECEIVED

NOV 06 2014

CALIFORNIA
COASTAL COMMISSION

November 5, 2014

Honorable Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, California 95060

Re: Appeal No. A-3-MRA-15-0050/Application No. 9-14-1735

Chair Kinsey and Commissioners:

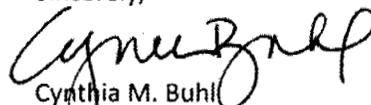
The Crossroads Carmel has been a long standing business here on the Monterey Peninsula for over 35 years. We pride ourselves on being home to over 55 small, local business proprietors, some who have been in business for over 20 years, supporting over 1,500 employees and generating a substantial amount of revenue to our immediate area as well as this region.

We recognize the significance and the impact of the current water situation in Monterey County. We grow increasingly concerned about what the future holds for us not only as business owners, but as residents. As is the case with many industries here, without water, retail cannot survive and certainly our shopping center and the businesses that live in it cannot survive. Like the majority of the residents and businesses on the Monterey Peninsula, we too continue to do our part to conserve water whenever and wherever possible. Our retailers as well continue to educate themselves and their employees on the need to conserve this precious resource and have implemented water saving measures. We do this all in the spirit of collaboration and with the intent that a long term solution will soon be implemented by those with the tools and resources necessary to see that it happens.

The proposed test well in Marina is a critical piece of this solution. Not only has the project been well thought out, it has proven and outside agencies confirm that the project is consistent with the Local Coast Plan (LCP), has minimal environmental impacts and to ensure that, it will be temporarily installed and tested within an existing footprint of the CEMEX plant property. By now you are also aware of all the agencies, local businesses and environmental organizations that support the project, which again is testament not only to the legitimacy of the project itself, but to the absolute certainty by those who will be directly impacted, that there is no more time left to waste and progress must happen now.

Therefore, we urge you to approve the Coastal Development permits required for California American Water's test well project and we thank you for taking this opportunity to collaborate with all of us to ensure that the Peninsula's long term water solution will soon be realized.

Sincerely,


Cynthia M. Buhl
General Manager

243 CROSSROADS BLVD
Carmel, Ca 95023

TEL 831.625.4106

FAX 831.624.3217

on the world wide web at
THECROSSROADSCARMEL.COM



MCPOA
MONTEREY COMMERCIAL PROPERTY OWNERS ASSOCIATION

RECEIVED

NOV 06 2014

CALIFORNIA
COASTAL COMMISSION

November 4, 2014

Steve Kinsey, Chair
California Coastal Commission
Attn: Mike Watson
725 Front Street Suite 300
Santa Cruz, CA 95060

Re: Support Appeal No. A-3 MRA-14-0050 (California American Water Co. Marina)

Dear Chair Kinsey and Commissioners:

This letter is to register our support for the California American Water Company (Cal-Am) and its appeal to the California Coastal Commission for approval of the coastal development permits required for the Cal-Am test well project.

Cal-Am is requesting a Coastal Development Permit to complete and operate a test well that is a critical component of the Monterey Peninsula Water Supply Project. The test well will gather data on the feasibility of slant wells at the site. In addition, the information obtained will be used to finalize the number, capacity, location, and design criteria of future intake wells, as well as improve the precision of groundwater modeling that is required to determine future water supply decisions.

The Monterey Peninsula Water Supply Project is reliant on the operation of a test well and on behalf of the Monterey Commercial Property Owners Association (MCPOA) we ask that the California Coastal Commission grant the appeal of the California American Water Company.

Sincerely,

Sam Phillips
President, MCPOA

Established 1989



MONTEREY PENINSULA REGIONAL WATER AUTHORITY



November 6, 2014

Via Email: Michael.watson@coastal.ca.gov

Hon. Steve Kinsey, Chair and
Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

Directors:
Jason Burnett, President
Bill Kampe, Vice President
David Pendergrass, Secretary
Jerry Edelen, Treasurer
Chuck Della Sala, Director
Ralph Rubio, Director

Executive Director:
James Cullem, P.E.

RE: SUPPORT Agenda Item No. 14 (Appeal No. A-3-MRA-14-0050)

Agenda Item No. 14

Hon. Chair Kinsey and Commissioners:

We are writing today to urge you to support and approve the required Coastal Development Permits for California American Water's (Cal Am) Slant Test Well Project. The fifteen parties joining this letter include local governments, ratepayer advocates, environmental non-profits, business interests, and farming groups. Each of the signatories has a significant stake in the future of water supply on the Monterey Peninsula, in the health of the Carmel River and our groundwater supplies; and in the protection of our Monterey Bay Marine Sanctuary and our community's beautiful coastline.

Cal Am provides water service to the people of the Monterey Peninsula. The community has historically relied on the Carmel River as a drinking water source, but the river has been over-pumped, negatively impacting the river ecosystem. To protect the river ecosystem, the State Water Resources Control Board (SWRCB) has ordered Cal Am to reduce more than three quarters of its historical diversions from the river on a ramp down schedule with final reductions scheduled for 2017.

The proposed solution is a portfolio of water projects, the largest of which is the Cal Am desalination plant. The Monterey Peninsula Water Management District and the Monterey Regional Water Pollution Control Agency are also pursuing an advanced-treatment recycled water project that would produce water that would be stored in the Seaside Groundwater Basin for subsequent recovery. If successful, this project would allow for a reduction in the size of the desalination plant. Cal-Am will also expand its ongoing aquifer storage and recovery project, which diverts wet-period surplus supplies from the Carmel River for storage in the Seaside Basin for subsequent recovery. Finally, existing aggressive conservation measures will continue, which have resulted in some of the lowest water use in the state of approximately 60 gallons per person per day.

The implementation of the full reductions mandated by the SWRCB prior to the completion of the portfolio of planned replacement projects would have significant impacts for the Monterey Peninsula. While partial compliance with this order can and must be achieved through continued

water conservation, to achieve full compliance, the community must also develop significant new water supplies.

When Cal Am applied to the California Public Utilities Commission (CPUC) for approval of the Monterey Peninsula Water Supply Project, each of our organizations intervened. We wanted to ensure our local environmental and community interests were represented in the process. After months of negotiations we reached an agreement with Cal Am that addresses many areas of concern, and establishes specific technical, environmental, organizational, and financial requirements for the project. These include the investigation of the feasibility of using subsurface slant wells at the active sand mining operation on the CEMEX, Inc. property in the City of Marina as the preferred location for the source water intake. The Cal-Am Slant Test Well Project is specifically proposed to assist in completing that important feasibility analysis.

We unanimously support the use of a test slant well to help determine the viability of subsurface intakes for the project. Use of subsurface intakes rather than open-ocean intake is a clear policy preference of the SWRCB, the National Oceanic and Atmospheric Administration – Monterey Bay National Marine Sanctuary, and the California Coastal Commission itself, among other agencies that will need to approve the overall project before it can be constructed. The proposed Slant Test Well Project is intended to help satisfy these policy requirements.

The site of the proposed Slant Test Well Project was a result of numerous meetings with local, state, and federal permitting agencies. The Slant Test Well Project was designed through a collaborative technical working group comprised of two hydrogeologists selected by the Salinas Valley Water Coalition, one selected by Cal Am and one selected by the CPUC.

The information that will be gathered from the slant test well on source water and feasibility is an important step in solving our community's water supply crisis and protecting the Carmel River ecosystem. The diversity of the parties supporting the Slant Test Well Project demonstrates that the proposal before you has been carefully balanced to best satisfy competing concerns, foremost among them the protection of coastal resources and our overall environment. Further, it bears emphasizing that the application before you is only for the test well to assist in determining the feasibility of using subsurface slant wells at the CEMEX property to provide source water to the Cal-Am desalination plant. If the test demonstrates that the site and technology are feasible, the development of permanent source wells at the site will be the subject of a separate Coastal Development Permit, which will be accompanied by the EIR for the full desalination project.

Hon. Steve Kinsey, Chair and Commissioners
November 6, 2014
Page 3

For the reasons discussed above, we urge you to approve the Coastal Development Permits required for Cal Am's Slant Test Well Project.

Sincerely,

November 6, 2014

Monterey Peninsula Regional Water Authority

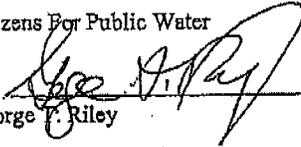
By: Jason Burnett
Jason Burnett, President

[Additional Signatures on Following Pages]

Hon. Steve Kinsey, Chair and Commissioners
November 6, 2014
Page 4

November 6, 2014

Citizens For Public Water

By: 
George F. Riley

November 6, 2014

Coalition of Peninsula Businesses

By: _____
Bob McKenzie

November 6, 2014

County of Monterey

By: _____
Louis R. Calcagno, Chair of the Board

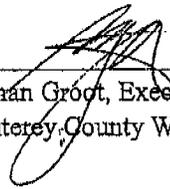
November 6, 2013

OFFICE OF RATEPAYER ADVOCATES

By: _____
Joe Como, Acting Director

November 6, 2014

Monterey County Farm Bureau

By: 
Norman Groot, Executive Director
Monterey County Water Resources Agency

November 6, 2014

By: _____
Louis R. Calcagno, Chair of the Board
Monterey Regional Water Pollution Control
Agency

November 6, 2014

By: _____
Keith Israel, General Manager

November 6, 2014

Planning and Conservations League

By: _____
Jonas Minton, Water Policy Advisor

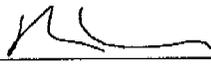
November 6, 2014

Citizens For Public Water

By: _____
George T. Riley

November 6, 2014

Coalition of Peninsula Businesses

By: x 
Bob McKenzie

November 6, 2014

County of Monterey

By: _____
Louis R. Calgano, Chair of the Board

November 6, 2013

OFFICE OF RATEPAYER ADVOCATES

By: _____
Joe Como, Acting Director

November 6, 2014

Monterey County Farm Bureau

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November 6, 2014

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Louis R. Calgano, Chair of the Board

November 6, 2014

Monterey Regional Water Pollution Control
Agency

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Keith Israel, General Manager

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Planning and Conservations League

By: _____
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November 6, 2014

Coalition of Peninsula Businesses

By: _____
Bob McKenzie

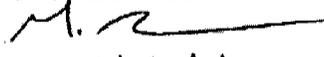
November 6, 2014

County of Monterey

By: 
Louis R. Calcagno, Chair of the Board

November 6, 2013

OFFICE OF RATEPAYER ADVOCATES


By: _____
on behalf of:
Joseph P. Como, Acting Director

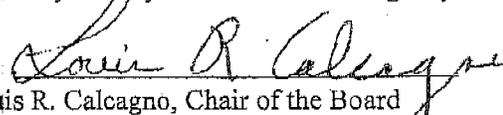
November 6, 2014

Monterey County Farm Bureau

By: _____
Norman Groot, Executive Director

November 6, 2014

Monterey County Water Resources Agency

By: 
Louis R. Calcagno, Chair of the Board

November 6, 2014

Monterey Regional Water Pollution Control
Agency

By: _____
Keith Israel, General Manager

November 6, 2014

Planning and Conservations League

By: _____
Jonas Minton, Water Policy Advisor

Hon. Steve Kinsey, Chair and Commissioners
November 6, 2014
Page 4

November 6, 2014

Citizens For Public Water

By: _____
George T. Riley

November 6, 2014

Coalition of Peninsula Businesses

By: _____
Bob McKenzie

November 6, 2014

County of Monterey

By: _____
Louis R. Calcagno, Chair of the Board

November 6, 2013

OFFICE OF RATEPAYER ADVOCATES

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Joe Como, Acting Director

November 6, 2014

Monterey County Farm Bureau

By: _____
Norman Groot, Executive Director

November 6, 2014

Monterey County Water Resources Agency

By: _____
Louis R. Calcagno, Chair of the Board

November 6, 2014

Monterey Regional Water Pollution Control
Agency

By: *Keith Israel*
Keith Israel, General Manager

November 6, 2014

Planning and Conservations League

By: _____
Jonas Minton, Water Policy Advisor

Hon. Steve Kinsey, Chair and Commissioners
November 6, 2014
Page 4

November 6, 2014

Citizens For Public Water

By: _____
George T. Riley

November 6, 2014

Coalition of Peninsula Businesses

By: _____
Bob McKenzie

November 6, 2014

County of Monterey

By: _____
Louis R. Calcagno, Chair of the Board

November 6, 2013

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Joe Como, Acting Director

November 6, 2014

Monterey County Farm Bureau

By: _____
Norman Groot, Executive Director

November 6, 2014

Monterey County Water Resources Agency

By: _____
Louis R. Calcagno, Chair of the Board

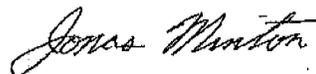
November 6, 2014

Monterey Regional Water Pollution Control
Agency

By: _____
Keith Israel, General Manager

November 6, 2014

Planning and Conservations League



By: _____
Jonas Minton, Water Policy Advisor

Hon. Steve Kinsey, Chair and Commissioners
November 6, 2014
Page 5

November 6, 2014

Salinas Valley Water Coalition Agency

By: Nancy Isakson
Nancy Isakson, President

November 6, 2014

Surfrider Foundation

By: _____
Gabriel M.B. Ross, Attorney

Hon. Steve Kinsey, Chair and Commissioners
November 6, 2014
Page 5

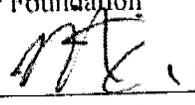
November 6, 2014

Salinas Valley Water Coalition Agency

By: _____
Nancy Isakson, President

November 6, 2014

Surfrider Foundation

By:  _____
Gabriel M.B. Ross, Attorney



Carmel River Steelhead Association

501 (C)(3) TIN 77-0093979

P.O. Box 1183

Monterey, CA 93942

Brian LeNeve, President
Carmel River Steelhead Association
Agenda Items W14a & W15a

November 3, 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Appeal No. A-3-MRA-15-0050 & Application No. 9-14-1735

Hon. Chair Kinsey and Commissioners:

As president of the Carmel River Steelhead Association, I must express my full support for California American Water's application for a Coastal Development Permit to install a test well in Marina.

For years my organization has been monitoring and advocating for the Carmel River's native South Central Coast Steelhead population, which has seen its ecosystem devastated by over-pumping in the last decade. With this most current drought, we might very well be looking at the extinction of this wondrous species within the river.

It is for this precise reason that the State Water Resources Control Board ordered the 70-percent cutback from the Carmel River, which has consequently left our community facing a future without an adequate water supply.

While I have dedicated my life to saving the Carmel River and support the state's decision, I don't think it should be done by destroying an entire community's quality of life and economic wellbeing.

That is why I support CalAm's project as it represents a complete solution to both problems. It will enable us to significantly reduce our impact to the river. It will also bring online a new supply that through the use of subsurface intakes will have minimal environmental impact. That is why this project enjoys so much support from both business and environmental groups like SurfRider, the Sierra Club and our Steelhead Association.

In order to move this project forward, we need to operate a test well to gauge the feasibility of the currently proposed site. This well will yield critical information that will feed a wide array of crucial data points that are the subject of scrutiny in the EIR currently underway at the California Public Utilities Commission.

If we are not able to install this well, we will most certainly be unable to meet our state-ordered deadlines, which will translate into further environmental destruction and heavy fines passed down to ratepayers.

I cannot guarantee the Steelhead trout will ever return to original population if this project goes forward. But I can guarantee they will soon be extinct if it doesn't.

I urge you to grant CalAm the development permit it needs to construct this well and begin our journey toward environmental recovery here on the Monterey Peninsula.

Sincerely,

Brian LeNeve
Carmel River Steelhead Association

Luster, Tom@Coastal

From: Watson, Michael@Coastal
Sent: Wednesday, November 05, 2014 9:19 AM
To: Luster, Tom@Coastal
Subject: FW: Appeal No. A-3-MRA-15-0050 and Application No. 9-14-1735

-----Original Message-----

From: Frank Emerson [<mailto:frank.t.emerson@gmail.com>]
Sent: Tuesday, November 04, 2014 4:43 PM
To: Watson, Michael@Coastal
Subject: Appeal No. A-3-MRA-15-0050 and Application No. 9-14-1735

Frank Emerson

Agenda Items W14a and W15a November 4, 2014

Hon. Steve Kinsey, Chair and Commissioners

California Coastal Commission

Dear Commissioners,

I am writing to ask for your approval of the Coastal Development Project Application for California American Water to drill test wells near Marina, Ca. (No 9-14-1735)

Our group, the Carmel River Steelhead Association, has been at the forefront in the effort to restore Carmel River habitat and fisheries for decades.

We are strong supporters of this desalination project as it provides a water source that can meet the community demand while not illegally over pumping the Carmel River and the underlying aquifer. Such over use has devastated the river, critically important habitat for endangered species and recreational uses of the public. We are also supporting the use of slant well technology for source water to avoid the impacts of direct sea water intake systems that are generally is use for other desalination plants as it will not entrain any sea life.

In my position as Steelhead rescue coordinator for the Carmel River Steelhead Association I have extensive personal experience with the devastating effects of over pumping on the Carmel

River. Hundreds of thousands of fish are stranded, wetlands dried up and the Carmel Lagoon habitat seriously altered every year. This year in particular the Carmel River was severely impacted with so little run off that there was no connection to the Ocean during the Winter season.

Normally, when we have sufficient rain to re fill the river and create enough flow for the river to flow to the Sea, the Steelhead return to Spawn. This did not happen last year and is a very serious loss of an entire year class of the population.

Please take note of the severity of the water supply and environmental degradation problems we have in our region. Approve the test wells and allow testing of possible source water for a desperately needed project.

Sincerely,

Frank Emerson

501 Lighthouse Ave #6

Monterey, Ca. 93940



To protect and restore California Rivers by influencing public policy and inspiring citizen action.

FRIENDS OF THE RIVER

1418 20TH STREET, SUITE 100, SACRAMENTO, CA 95811

PHONE: 916/442-3155 • FAX: 916/442-3396

WWW.FRIENDSOFTHERIVER.ORG

November 4, 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Support for Cal Am's Temporary Test Slant Well Application

Hon. Chair Kinsey and Commissioners:

Friends of the River (FOR) requests that the Commission approve California American Water Company's (Cal Am) permit application to construct, operate, and decommission a temporary test slant well. It is possible for this test project to reveal means which will improve environmental conditions while providing a more reliable water supply.

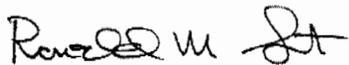
If approved, this test project may reveal alternative water sources which could alleviate impacts on the over-appropriated Carmel River. FOR and many of its members take pleasure in the aesthetic beauty and recreation opportunities offered by the Carmel River. We are particularly excited about the anadromous fish species restoration efforts, which we hope will revive the Carmel River Ecosystem. Additionally, excessive appropriations have caused negative impacts to the Seaside Groundwater Basin. The test project could reveal alternative options, allowing for groundwater basin recharge and restoration. Restoration of the basin could result in improved surface flows while increasing water storage.

Cal Am has the duty of providing water to people in the Monterey Peninsula, and for years Cal Am relied on the Carmel River to fulfill this duty. Cal Am over-appropriated the river, causing negative impacts the river ecosystem. In response, the State Water Resources Control Board (SWRCB) ordered Cal Am to reduce its Carmel River diversions by more than three-fourths by 2017. While we applaud SWRCB's decision to reduce Carmel River diversions, we understand that Cal Am must find another source of water for the people of Monterey Peninsula. Because Cal Am has extremely limited options for replacing the Carmel River as a water source, it is appropriate to explore the feasibility and impacts of operating a desalination plant. We realize that there are impacts caused by desalination plants. However, the Commission will better

understand those impacts with results from the test slant well project, enabling the Commission to make a more informed decision concerning coastal development in the Monterey Peninsula. If the test results reveal that a desalination project is infeasible or environmentally destructive, the Commission will reserve the right to deny a permit application for a desalination plant.

For these reasons, we request that the Commission approve Cal Am's application for the temporary test slant well. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald Stork". The signature is cursive and somewhat stylized.

Ronald Stork
Senior Policy Staff
Friends of the River
1418 20th Street, Suite 100
Sacramento, CA 95811

(916) 442-3155 x 220
rstork@friendsoftheriver.org

Coalition of Peninsula Businesses

A coalition to resolve the Peninsula water challenge to comply with the CDO at a reasonable cost

Members Include: Monterey County Hospitality Association, Monterey Commercial Property Owners' Association, Monterey Peninsula Chamber of Commerce, Carmel Chamber of Commerce, Pacific Grove Chamber of Commerce, Monterey County Association of Realtors, Associated General Contractors-Monterey Division, Community Hospital of the Monterey Peninsula

Agenda items W14 a and 15 a

November 3, 2014

The Honorable Steve Kinsey, Chair, and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, California 95060

RE: SUPPORT Agenda Item No. W 14 a and 15 a

Honorable Chair Kinsey and Commissioners:

The Coalition of Peninsula Businesses urges you to approve California American Water Company's desal source water test well permits as your staff recommends. The information that will be derived from the test well is critical to Cal Am moving forward on a water supply project to serve the needs of the Monterey Peninsula.

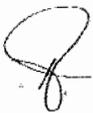
As you know, the Monterey Peninsula has a water shortage and will soon experience the full, draconian water supply reduction effects of a State Water Resources Control Board Cease and Desist Order. We in the Peninsula area have steadily reduced our water use through our conservation efforts to the point where our per capita water use is the lowest in California; simply put, we cannot conserve our way out of our water supply shortage.

Our principal water supplier, the California American Water Co., seeks to solve our water supply dilemma with a three-pronged approach that includes a desalination plant as its main component. Substantial issues exist as to a) whether slant wells are feasible in this area as a source of seawater for desalination and b) whether any significant fresh water from the Salinas River Aquifer is present in the source water. The test well provide or help provide answers to those critical questions.

Our Coalition was formed primarily to support an effort to solve our water supply problem at the lowest possible cost. It includes all the principal business organizations in the Peninsula area – the Monterey County Hospitality Association, the Monterey Commercial Property Owners' Association, the Chambers of Commerce of the Monterey Peninsula, Pacific Grove and Carmel, The Associated General Contractor-Monterey Division, the Monterey County Association of Realtors, and Community Hospital of Monterey Peninsula. All of our organizations know what the impacts of the CDO will be if we don't have a water supply solution – more than \$1 billion reduction in economic activity, millions of revenue dollars lost to local governments for essential services, thousands of jobs lost.

Please approve your staff's recommendation and approve Cal Am's test well permit in a de novo hearing.

Sincerely,



John Narigi, Co-chair



Mike Zimmerman, Co-chair

cc: Catherine Stedman, External Affairs Manager, Cal Am

Carmel River Watershed Conservancy
PO Box 223833, Carmel, CA 93922



Board of Directors:

Lorin Letendre, President
Michael Waxer, VP
Abbie Beane, Treasurer
Paul Bruno, Secretary
Catherine Bowie
Monica Hunter
Vince Voegeli
Barbara Rainer
Andy Magnasco
Vicki Sarris

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

November 4, 2014

RE: Appeal No. A-3-MRA-15-0050 & Application No. 9-14-1735

Hon. Chair Kinsey and Commissioners:

On behalf of the Board of Directors of the Carmel River Watershed Conservancy, this letter serves to strongly urge that you approve your staff's recommendation to permit Cal-Am to test the slant well technology as a key step toward building a desalination plant to serve the water needs of the Monterey Peninsula.

The thousands of people who have enjoyed, and hope to continue to enjoy, recreation in the Carmel River and its creeks, and the threatened species that reside in that River and its creeks have waited many years for an alternative water supply source for the Monterey Peninsula. The River is heavily over-drafted each year to supply water for the Peninsula's residents, whereas it once ran to the ocean pretty much all year long—at least in average years.

Now that the state is facing the worst drought in decades, it is imperative that the Peninsula moves ahead to develop an alternative water supply so the Peninsula's residents don't face water rationing or economic disaster, and so that the River can be restored to its former health and beauty.

Cal-Am and the Mayor's Authority have collaborated to develop that alternative water supply project including a desalination plant, but the project schedule is threatened with a crippling delay unless you are able to act to expedite the slant well testing phase of the project. If Cal Am is unable to proceed, the desalination project will be delayed.

More delays takes us further into violation of the State's Cease and Desist Order and risks a crippling effect on the Monterey Peninsula economy, which employs many Marina residents. If you approve the project today, Cal Am will be able to proceed with slant well testing and keep the project on schedule. The desalination project will provide hundreds of construction jobs - including work on the intakes and pipelines that run through Marina. Cal Am has a 50% local hire requirement, which is an opportunity for our entire area.

For these reasons, we respectfully request that you approve Cal-Am's slant well testing.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorin Letendre".

Lorin Letendre, CRWC President

501 C Nonprofit Corporation Tax ID # 77-0548869

E-mail: letendre@sbcglobal.net

Webpage <http://www.carmelriverwatershed.org>

Tel: 831-277-0276



PEBBLE BEACH
COMPANY

A-3-MRA-14-0050

November 4, 2014

California Coastal Commission
Attn: **Mike Watson**
725 Front Street, Suite 300
Santa Cruz, CA 95060

Dear Mr. Watson,

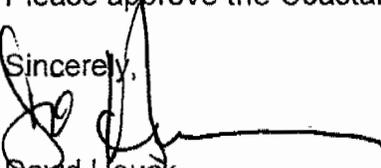
Pebble Beach Company (PBC) would like to join with the broad coalition of local governments, businesses and environmental organizations within Monterey County in support of California American (Cal-Am) and their proposed test well project in the city of Marina.

As you know, PBC has been actively involved with the water issues of Monterey County for decades. For example, PBC financed the CAWD/PBCSD wastewater reclamation project, a \$67M project that provides 100% of the irrigation water for all golf courses and other recreational areas within the Del Monte Forest. This project alone saves about 1,000 acre feet of potable water per year that previously had been used for irrigation.

We are all well aware of the fact that we need to find additional, alternative water sources to comply with the Cease and Desist Order and further protect the river. The test well proposed is temporary, and will enable the parties to gather data as to the long-term feasibility of the project. We need to be exploring each and every alternative, and we need to act now, to find a solution within the time frames set forth in the Cease and Desist Order.

Please approve the Coastal Development Permits required for Cal-Am's test well project.

Sincerely,


David Heuck
EVP and CFO
Pebble Beach Company

Cc: Bill Perocchi, PBC
Catherine.stedman@amwater.com
Michael.watson@coastal.ca.gov



AIA Monterey Bay

A Chapter of The American Institute of Architects

David Peartree, AIA, LEED AP,
President

American Institute of Architects, Monterey Bay Chapter

Agenda Items W14a & W15a

November 4, 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Appeal No. A-3-MRA-15-0050 & Application No. 9-14-1735

Hon. Chair Kinsey and Commissioners:

On behalf of the Board of Directors of the American Institute of Architects Monterey Bay Chapter, I urge you to approve California American Water's application to construct a slant test well for its proposed desalination project.

The Monterey Peninsula has long struggled with its water issues. On the bright side, our area of California is entirely self-sufficient in its water infrastructure. However, due to a series of circumstances over a number of years, the need to reduce pumping of the Carmel River and find a replacement water source is urgent. Failure to do so will result in devastating impacts to our environment and economy. In fact, under a Cease and Desist Order from the SWRCB, about two-thirds of the Peninsula's water supply will be effectively cut-off on December 31, 2016.

California American Water has proposed a trio of solutions that involve recycled water, increased groundwater storage with continued conservation, and the desalination plant. Data from a test well is needed to ensure the desalination project is feasible as proposed, and can advance.

The slant test well proposes to draw ocean water through the sands, rather than through a direct intake. This approach protects marine life and is considered to be environmentally superior. The Department of Water Resources granted \$1 million toward the test well project because, like your agency, they support sub-surface intakes as the best technology for gathering source water for desalination. But, it is necessary to verify that the technology will work and so this test well is critical.

The Monterey Peninsula is made up of people who live, work, and recreate here, as well as providing a place that welcomes others to visit our special area and to enjoy its splendor. It is difficult to imagine how any community can survive with a loss of even half of its water supply. Further, the Monterey Peninsula is one of the most frugal water users, per capita, in the nation. In fact, our region has both the highest conservation rate and the most steeply priced water rate structure!

As professional architects, we have lived and survived through many economic cycles. Yet now our community is speeding towards a catastrophic train wreck (metaphorically speaking), and it is imperative that California American Water be allowed to build the infrastructure needed to keep our community safe.

Please approve the slant test well project, which will help to ensure adequate water supply for our community, while protecting our precious environment.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Peartree', written over a horizontal line.

David Peartree, AIA, LEED AP,
President 2014

Cc: AIAMB Board of Directors

MW
Tomb.**RECEIVED**

NOV 04 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 30 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: Appeal No. A-3-MRA-15-0050 & Application No. 9-14-1735

Hon. Chair Kinsey and Commissioners:

The Monterey County Hospitality Association represents more than 250 local hospitality related businesses throughout Monterey County. Hospitality is the second largest industry in Monterey County. Collectively our members employ more than 20,000 people and generate more than \$2,000,000,000 in local revenue. Funds generated from local sales taxes and transient occupancy taxes are a major source of funding for our local governments.

A long term sustainable water supply is critical to our community and our industry. MCHA has been very active in working with the Monterey Peninsula Regional Water Authority, the Monterey Peninsula Water Management District, California American Water Company and others to find a solution to our local water problems. We believe the Monterey Peninsula Water Supply Project represents the right approach in that it proposes the use subsurface intakes that will avoid harm to our coastline habitat and the marine sanctuary.

The communities' economic wellbeing is directly tied to our coast. After all, it is one of the main reasons people come to visit the area and our businesses. This project will adequately address our water supply needs while minimizing the environmental impact to our coastal ecosystem, restore local aquifers and reduce the over pumping of the Carmel River.

The test well is required if this project is to move forward. The test well is necessary to assess the viability of the slant well technology in the currently proposed location. The well will yield critical data regarding the water quality and potential impacts to nearby water sources already in use. Time is of the essence. Without timely approval of this test well application, the project will suffer further delays that could lead to significant fines, stress on the Carmel River and mandatory rationing that would be devastating to our local economy.

We urge you to approve California American Water's test well application and support our region's economic and environmental future.

Sincerely,

Sam Teel, Chairman

Monterey County Hospitality Association

ADMINISTRATIVE OFFICE

OCEAN & MISSION • SUITE 201 • P.O. BOX 223542 • CARMEL, CA • 93922

PHONE: 831-628-8636 • FAX: 831-628-4269 • EMAIL: hadama@adcomm4.com

Paul B. Bruno
P.O. Box 400
Marina, Ca 93933

Agenda Item W14a & W15a

Hon. Steve Kinsey, Chair, and Commissioners
California Coastal Commission
Via Email

RECEIVED

NOV 06 2014

CALIFORNIA
COASTAL COMMISSION

Re: California American Water Slant Test Well
Appeal No. A-3-MRA-15-0050 and Application Number 9-14-1735

Dear Commissioners,

I am writing to express my support of California American Water's (Cal-Am) appeal of the City of Marina's permit denial and in support of their application to construct a Slant Test Well. Your approval is needed now so that Cal-Am can install the test well infrastructure necessary to obtain critical data before the Snowy Plover nesting season begins.

For background, I am a business owner in the City of Marina. Our family has owned and operated several businesses in this city for nearly 35 years. We are engaged in the community and are very familiar with its unique political climate. I am also personally well informed on matters concerning water supply in Marina and the peninsula as a whole. I also serve on a public board overseeing the adjudication of a local groundwater basin.

The City of Marina's denial of Cal-Am's permit had little to do with the merits of their application. Instead, it was all about the politics. I attended every Marina Planning Commission and City Council meeting that was convened on this matter. Sitting there proved to be an incredible waste of time. The arguments made and the questions asked highlighted how dysfunctional the local public process has become. It can best be described as a perfect storm that culminated in this improper denial.

Cal-Am's application came before these two city bodies at the height of the political season. There was a lot of grandstanding by both public and private citizens as they positioned themselves for current or future campaigns. Some took advantage of a strong undercurrent of animosity stemming from the ongoing Marina vs. the peninsula dynamic. There was a lot of

resentment expressed over unreimbursed costs incurred by Marina Coast Water District in connection with the previously proposed desal project. Even the peninsula's treatment of the City of Marina over housing units that they jointly control with the Fort Ord Reuse Authority (FORA) came into play. Piling onto this groundswell of negativity was a contingent of anti-growth activists who have been trying everything they can to slow down progress on finding a water supply solution.

We need some adult supervision and that has to come from areas outside of the local quagmire. The State has already recognized this and has been attempting to align the locals by holding their feet to the fire with the looming threat of full implementation of the State Water Resource Control Board's CDO. For the most part this has worked as can be seen by the direct involvement of the community's Mayors over the last several years. Unfortunately, this outside pressure sometimes is not enough as demonstrated by the City of Marina's meritless denial of Cal-Am's application.

I don't believe that I have to speak much to the merits of the test well itself. One of the better indicators of support for this activity is the \$1 Million State grant that was received from the Department of Water Resources to help pay for this work. This was the maximum amount that could be awarded such a project under Proposition 50.

In closing, I wish to thank you in advance for your leadership on this most pressing matter. The lack of long-term water supply has the Monterey Peninsula in dire straits. Unlike other areas of the state, this circumstance is not due to the current drought. This is how we have been living for decades. Please be the adult in the room. Please grant Cal-Am's appeal and approve the application.

Sincerely,

A handwritten signature in black ink, appearing to read 'PBB', with a long horizontal flourish extending to the right.

Paul B. Bruno

**CCC 11/12/14, #15a
George Riley**



PUBLIC WATER NOW

P.O. Box 1293, Monterey CA 93942

www.publicwaternow.org

publicwaternow@gmail.com

R E C E I V E D

NOV 04 2014

**CALIFORNIA
COASTAL COMMISSION**

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

November 2, 2014

**Subject: Agenda 15A, Cal Am Test Well Permit
California Coastal Commission (CCC)
Meeting on November 12, 2014, Half Moon Bay, CA**

Introduction

Public Water Now (PWN) is a community ratepayer-based, all volunteer, organization on the Monterey Peninsula. It formed in the summer of 2013 to sponsor an initiative to purchase local Cal Am assets. It intended to halt the continuing high costs and failures by California American Water through public ownership. Although the initiative lost, our effort gained 45% of the vote despite Cal Am having funded a \$2.4 million campaign against it (5 times more than the highest cost campaign in previous Monterey County history). PWN believes it speaks for a very large component of the Monterey Peninsula electorate and ratepayer base.

PWN supports a new water supply as quickly as reasonably possible. But PWN does not accept the idea of water at any cost, especially when asked to pay for water from experimental subsurface technology that has no known operational success anywhere in the world. It is the future cost of water

that is our top concern. And in the recent past, a string of Cal Am failures and tens of millions of dollars in stranded costs have been dumped on ratepayers by the CPUC. This is what makes PWN extremely nervous about this CCC decision on slant wells.

Are State Agencies Serious about the Question “If Feasible”

Public Water Now only recently learned about the State Water Resources Control Board's Draft Amendment Addressing Desalination, released to the public on July 3, 2014. PWN is now aware that this has been discussed for several years, but this is the first time we have seen the details. The state water board has demanded that new desal projects pursue the experimental subsurface ocean intakes, if feasible, before pursuing other options. Regardless of policy positions by state agencies, the fundamental question for any local application is – IF FEASIBLE.

The State Water Board and the CA Coastal Commission know that slant wells are a new engineering approach. It is experimental. Although highly desirable, there is no history of a successful operation. Even with high quality design, engineering, and hydro-geologic data collection and analysis, there is still this one alarming fact – there is not one operational success to draw upon. Not in California. Not in the United States. Nowhere in the world.

It appears that the question “if feasible” is not being seriously pursued. Several state agencies already advocate for subsurface intakes. Major protectors of the Monterey Bay support it. Environmental arguments abound. The fast track proposed by Cal Am complies with these interests. So it appears that the proponents simply want slant wells, period. It seems the conclusion is clear. Get the data, but get slant wells.

Yet at least two questions should be addressed. Are the state proponents serious about confirming “feasibility”? And what are the facts and experiences that support slant wells?

The state water board specified four feasibility criteria: site, design, technology and mitigation. This four-point definition is shortsighted and inadequate, in our opinion. PWN believes there are many other issues involved. Yes, the site specific information is needed, but it needs to be placed in context. Key factors excluded here are cost and risk in the nexus with time. We are very familiar with local water needs and demands of time. What is missing from the SWRCB “if feasible” equation is the interaction of key larger issues, particularly long range costs and implementation risks. This combination of factors should be determinative; not site specific data alone.

Furthermore, the SWRCB has drifted into a 'catch 22' bind. The deadline was ordered in 2008 with 8 years to go to the feared water rationing cliff. Today, the state board is insisting on the identical deadline, even though the new project, from its proposed start date, had only 4 years to the deadline. Something has to give. Ratepayers face enormous cost risks.

It is very difficult for PWN to trust that Cal Am and the CPUC can succeed with an *experimental* water project after glaring failures previously with *very traditional* water projects. How are environmental, community and economic interests expected to be balanced? PWN fears the ratepayers are at great risk. And Cal Am has not proven to be fully capable of carrying out normal water projects, much less

this complicated one. It looks like a faith-based project. PWN does not believe it.

In addition, Cal Am chose to pursue slant wells despite the need to protect the snowy plover nesting season and habitat areas. This forces construction time to winter months only. The very principal of shoreline protection impedes progress for marine protection. Yet the SWRCB and the CCC are on fast tracks in favor of the new and unproven technology, with what appears to be a wink and a nod for feasibility. Ratepayers are rightly worried.

We appreciate the SWRCB CDO schedule and potential for fines. But there are other questions that include, yet go beyond, the current 'catch 22' bind on the CDO. Will the potential for CDO fines be eliminated if slant wells proceed? Should there be an assessment of risk for a bad decision created by the pressure of time limits? Might more time for a considered decision, including the cost of delay, have better cost upsides than tunnel vision. ignoring this question? Is there a risk of overspending because of no experience with new technology? Is there a risk of continuing to spend in order to not waste prior spending? Who pays the bill compared to who decides and manages expenses? What oversight is there for cost and risk control? Are these questions being ignored? Site specific data will not provide all the answers.

PWN has also observed that the Cal Am application to the CCC is for a test well. However the CCC has taken this up on appeal because it is a public works project. When can a test well, stated to be decommissioned upon completion, be considered a "public works project"? Our simple logic suggests the ducks are lined up for full CCC approval for a facility for the production of water, regardless of pesky details about a temporary test well.

PWN believes many 'hopes' are masquerading as conclusions. Much trust is placed with an unreliable corporation that has a track record of failure. Many schedule shortcuts are proposed. Little attention is given to unverified future costs. Litigation risks exist.

This creates a dilemma. Detailed data is required. This takes time. Time is limited by the CDO and local needs. Litigation, higher costs and delays are high risks if the data is cut short. Without the time, the data is inadequate. Without the data, feasibility conclusions will be a sham. A sham review of "feasibility" will undermine future efforts as well. So PWN questions agency seriousness of the cautionary phrase "if feasible". Details are documented in the PWN attachments.

CCC Priorities?

What priority will lead the decision by the CCC?

If it is the preference for documented and mitigated coastal environmental protection, then a full EIR seems appropriate.

If it is to give substance to "if feasible", then clear data requirements over a specified period of time seems appropriate.

If it is to assure some consistency between the temporary test well and later plans for permanent production wells, then it seems appropriate to cite the law, the logic, and the schedule for integrating the proper amount of data with the question of "feasibility".

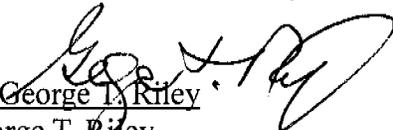
PWN fears time constraints will trump information, which could lead to litigation delays and more costs. The proposed shortcuts seem counter-productive. Eventually we might get an expensive white elephant. PWN requests that CCC treat "feasibility" in a broader sense, and decide for a full fact-based approach.

Request

As a minimum, PWN requests a fair and comprehensive consideration of "if feasible". PWN requests that if CCC approves the Cal Am application:

1. Add a condition to require 24 months of data collection for the new slant well approach;
2. Add a condition that quarterly data reports be made public;
3. Add a condition to require a public hearing on findings from the test period data analysis.

Public Water Now respectfully requests that the factors in this letter and the attachments be considered regarding 1) the guidance by SWRCB to pursue subsurface intake systems, "if feasible"; and 2) their application to the Monterey Peninsula.


/s/ George T. Riley
George T. Riley
Managing Director
Public Water Now
831-645-9914

Attachments:

1. Feasibility Issues beyond SWRCB Criteria.
2. Cal Am current schedule for MPWSP
3. National Driller article, September 1, 2014

**Attachment 1 to
PWN submission to CCC
11/12/14, #15a, Cal Am**

**Public Water Now Comments
on Feasibility Criteria for Slant Wells
to CA Coastal Commission**

Submitted by Public Water Now, P.O.Box 1293, Monterey CA 93942
%George T. Riley, Managing Director, georgetriley@gmail.com

**FEASIBILITY ISSUES And FACTORS In Addition to
SWRCB CRITERIA**

1. History of Cal Am Failures

In the 29 years between Cal Am's purchase of the Monterey system in 1966 and 1995, it made no effort to develop a larger supply. The local water management district made two major efforts in early 1990s, but voters turned both down. Only after the first CDO in 1995, did Cal Am even make its first attempt to develop a supply project. And since 1995, Cal Am has failed three times. All failures were from Cal Am decisions. None were from voter rejections. Cal Am failed in 1998-2004 when it abandoned its proposed new dam on the Carmel River, at a ratepayer cost of \$3 million. In 2006-07 it abandoned a desal project at Moss Landing, with a ratepayer cost of \$12 million. Cal Am withdrew from a public-private partnership in 2012, called the Regional Desal Project, at a current ratepayer cost of \$20 million (which could reach \$38 million pending litigation and CPUC proceedings). The CPUC has already approved passing all Cal Am stranded costs on to ratepayers.

This is an abysmal track record by California American Water. Ratepayers have already paid \$35 million for Cal Am stranded costs. This total could reach over \$50 million within a few years pending a current CPUC application and a court case.

Monterey Peninsula ratepayers are gun-shy of more costs. Cal Am's stranded costs have been huge. Cal Am investors have been saved. Cal Am ratepayers have been hosed.

As an option, PWN would like to see competition between Cal Am and two local entrepreneurial efforts for producing a new desal water supply. PWN believes competition will sort out more issues than narrowly focused and separate regulatory interventions.

2. Cutting corners (schedule compression)

Although this application is for a test well only, this is a false premise. Cal Am fully expects to return to the CCC for production wells within one year. The series of steps toward production is a tight set of dates to accommodate decisions, not feasibility questions. There is no real time for analysis between

the two applications. Data collection seems to be pro forma for speed, not objective for feasibility. There is a “schedule compression” between test well decisions and production decisions. Both CPUC and CCC are expected to make “go” decisions before feasibility questions are addressed.

CPUC is expected to act on the CPCN only 6 months after data collection starts. Which means the initial Proposed Decision is only after 5 months. Which means document preparation in the preceding months must ignore any meaningful test well data.

The CCC decision for production wells is scheduled one year after data collection starts. Again, all documentation and preparation time further reduces the meaningfulness of data collection time. (See Attachment: Schedule on Cal Am Monterey Peninsula Water Supply Project)

Clearly any sense of full analysis is undermined with the compressed project schedule. If there is no time set aside for full data collection, for full analysis, and for full review of all factors related to going forward, then we believe “if feasible” is essentially meaningless. The schedule compression makes a charade of “if feasible”.

Everyone realizes that CDO deadlines will be missed. And we need a new water supply. But the compressed schedule also contains risks. PWN believes that skipping over a fair assessment of ‘feasibility’ is a big mistake. Too many problems are housed in haste. And too much tunnel vision that ignores Cal Am's history of stranded costs will also have fallout. A sham review of ‘feasibility’ now may undermine future subsurface intake efforts as well. If ‘feasibility’ is treated lightly, and the project fails for whatever reason, will state agencies feel any pain? Local customers and ratepayers sure will.

3. High Risk, No Incentives (Wrong Approach, Wrong Time)

- **Experimental:** The State Water Board and the CA Coastal Commission know that slant wells are a new engineering approach. It is experimental. Although highly desirable, there is no evidence of a successful operation. Even with high quality design, engineering, and hydro-geologic data collection and analysis, there is still this one stunning fact – there is not one operational success to draw upon. Not in California. Not in the United States. Nowhere in the world.
- **Experiments need time.** Equipment and design changes must be accommodated. Our area needs water in a more predictable and lower risk way. Taking water from the open ocean can be mitigated. Costs are more predictable. Litigation risks are more thoroughly known and can be planned for. Slant wells have too many unknown impacts in an already intruded and contested groundwater basin.
- **Water need is high.** Between 45% and 65% of the Monterey Peninsula water supply will be met through desal. This huge proportion should not be at risk for unknown impacts and costs from an experimental approach with no evidence of a successful operation.
- **Ratepayer base is small.** The ratepayer base is quite small, about 40,000. It is extremely small to assume the risks and costs related to experimental and unproven technology with unknown impacts. This is a community-wide risk. Nowhere are the state jurisdictions suggesting grants

or cost caps to protect ratepayers from excess costs, or helping to seek additional funding assistance. All significant cost protection efforts were initiated locally. Why should ratepayers open their checkbooks to such unverified cost projections?

- SWRCB and CDO deadline and fines: Fines are likely for missing the deadline. This is not the time to experiment with an unproven policy preference. Yes, some project needs to be first, but the compressed schedule means there can be no glitches and no surprises. Is any state agency guaranteeing a fail-safe and timely project? There should be time for retries, redesigns and tweaks, for unknown delays, litigation, retooling, etc. Will the state board forgive any delays because it is new and unproven? Or will SWRCB continue to hold a hammer over the head of Cal Am (actually ratepayers) well after the CCC and CPUC decisions are made?
- Crises from poor planning and execution: Cal Am is directly responsible for the crisis mode regarding permits. Cal Am was overly optimistic in its original proposed schedule, claiming it could deliver desal water near the CDO deadline – December 31, 2016. It assumed no delays. Cal Am has been down this road before with the regional desal project, but it seemed to not learn any lessons. In this project, Cal Am assumed perfect timing, no permitting delays, and no litigation, in an area where it has already experienced delay, litigation and failure. For example, its bore hole permit became a crisis in Jan/Feb 2014 when the routine procedure was not executed in a timely fashion in mid-2013. Cal Am threatened CEMEX with eminent domain to gain access for bore holes. Cal Am is again pursuing eminent domain for access to CEMEX for the test well.

This crisis mode is an example of Cal Am performance in routine steps. Who expects higher performance with more complicated steps? PWN is not using rose-colored glasses. PWN wants all decisions to be based on facts, not hopes. This is not the time for short-cutting fact gathering and analysis. This is not the time for ignoring hard questions. This is not the time for cheer-leading and fear mongering. However it is time to account for risks, particularly when facts are so scarce. Declaring a policy is a good start. Now is the time to be hard-nosed on implementation risks.

4. Slant Wells: Good Idea? Costly Failure? Costly White Elephant?

PWN understands that slant wells were considered the “environmentally superior alternative” in the failed regional desal project. PWN accepts the rationale why several state agencies have recommended policy moves toward banning open ocean intakes, particularly at power plants. State agencies are moving toward better protection of marine ecosystems by minimizing open ocean intakes. The preference is a subsurface intake, if feasible. PWN does not oppose any of this, with the single caveat that “if feasible” should be meaningful.

The future for Cal Am's project holds three possibilities. 1) Slant wells may be successful and reasonable. 2) But local history suggests, and PWN fears, another project failure by Cal Am. 3) Or the third possibility – an expensive white elephant. Only the first one is good for ratepayers.

5. Subsurface Evaluation Must be Robust

Some project has to go first. But at some point, management decisions will consider more than site specific and engineering information. Maybe it is cost. Maybe it is risk avoidance, such as litigation

delay. Maybe it is an alternative that has new or comparative advantages. Maybe it is larger policy implications, such as an opportunity to enhance a regional objective in addition to the Peninsula objective. May it is all of these.

There will be a “go/no-go” decision point. PWN fears that there will be no substance to the “no go” option. If “feasibility” is a serious question, it must have time for input on broader implications. Cal Am and the CPUC are on a fast track to make that decision. PWN has no trust in these two, based on past project failures and passing stranded costs on to ratepayers.

If the initial site specific information is inadequate, it will attract litigation challenges that add cost and delay. Proceeding with short cuts will have served no useful purpose. The schedule compression to accelerate response to the SWRCB Cease and Desist Order will have worked the opposite effect. “If feasible” will still be an unanswered question.

PWN further fears the argument that will surely come – that more and more money needs to be invested so as not to waste money spent to date. How does a community prepare for this question, especially if the decision is in the hands of Cal Am? PWN fears that such a question may never get asked, knowing what we do about both Cal Am and CPUC. A robust feasibility analysis can minimize this possibility. A site specific set of criteria will not.

NOW is the time to frame the broader discussions. At least, NOW is the time to assure there is time to have these discussions. CCC can assure appropriate data collection and analysis with a 24 months requirement. Surely the CCC understands the need for a pause button before we face a “go/no-go” decision.

6. Comments on SWRCB “Feasibility” Criteria and Monterey Peninsula Situation

- Site. The location was litigated in 2011 for an insufficient EIR. In 2014, an inadequate legal interpretation of CEQA requirements was cited by the City of Marina in its recent rejection of a test well permit (September 2014). Litigation is still threatened over lack of water rights for use of percolated groundwater, which is part of the intake source water. Bore hole data suggests no aquitard separating the perched aquifer from the intruded, contested and protected 180 foot aquifer, thus setting the stage for litigation.

Furthermore, if there is going to be a dispute over water rights, it will come after sufficient test well data is available. Is that after 4 months, or after 18 months, or after production starts? There is a five year window to cite harm in a water rights issue. It is fairly common knowledge that Cal Am may argue that a 'physical solution' may trump the water rights law. That will require litigation, thus adding more time delay to the CDO question, and probably add to fines and costs for increasingly late delivery. This local exposure to risk demands a full fact-based test period.

- Design. Design may not be a big problem, except that additional time should be anticipated to iron out flaws and glitches. What is missing is proof of long range reliability and cost effectiveness.
- Technology. The proposed SWRCB draft regulations for *subsurface* intake do not specify a testing duration. However those same regulations for *surface* intake systems require a study period of at least 36 consecutive months. This is a stumbling block for ratepayers.

Experimental non-traditional systems will surely require more time to iron out problems, to make adjustments, to modify engineered components, and to cost more. Yet no time is specified for testing and analysis. This is a serious contradiction, and is precisely the problem PWN refers to in this letter. There is large scale agreement to the policy, but little commitment to fact-based implementation. Being careful now might avoid the escalation of costs later into a white elephant – a water supply at enormous cost

Dana Point tests of slant wells still have not concluded that the technology is right. The test well produced more sand than expected, indicating a well screen issue. Water chemistry changed throughout the testing period, suggesting a longer test cycle may be required. The changing chemistry may require innovations and probably more cost.

Cal Am and its well design contractor GEOSCIENCE Support Services Inc. have admitted to be pushing the envelop,. According to a recent article. A slant well has only been done once before. It's a very rare method,. The length and size “is pushing the max...”. The angle will impose unique stress on pump bearings so that how they “will hold up over time is an area of concern.” (National Driller, September 1, 2014, attached). Slant wells are entirely experimental. They are a risk we cannot afford.

- Mitigation. These costs are anticipated to be small with slant wells. But on the other side of the ledger, development, maintenance and replacement costs are expected to be high, possibly very high. An open ocean intake will be less costly, but will it have high mitigation requirements? Would they be approximately the same, or would one be more risky and costly than the other? Do agency professionals guess at this questions, or do they gather appropriate data? Where do these questions get raised, and how are they handled? This is why a robust feasibility review is required. .

7. Suggested additional criteria, under Monterey Peninsula circumstances

The four SWRCB criteria are helpful, but cannot be the final word. When the state makes a massive shift in policy, it should allow a transition period. The phase down of power plant ocean intakes are projected over the next 5 to 20 years, after more years in the making. New groundwater regulations require only a plan in 6 years. The trouble is the SWRCB criteria and Cal Am's project are being railroaded together with a severe lack of solid information.

Instead we see an abundance of policy and hope trying to prevail over the lack of practical facts. We are left with a simple “Trust us.” That is not good enough in the world of expensive projects. And “trust us” absolutely does not pass muster with recent stranded costs from three previous project failures that Cal Am initiated and abandoned. .

So how is “feasibility” to be determined? Guidance should come from actual operational experience or confirmed technology, or a variety of successful experiments. If they exist, they are not being cited. Our review of the literature makes our point. There is no such evidence.

Therefore we suggest additional criteria and appropriate time be incorporated into planning for subsurface ocean intake systems. Now is not the time for experimentation. The four SWRCB criteria are not exhaustive. We suggest the following issues be incorporated:

1. Wider engineering opinion on life cycle costs of slant well intakes. The life cycle cost projections need additional professional input. There is little history of large pumps operating at an angle over extended periods of time. So far, only Cal Am has offered opinion. Since slant wells have no extended history with sea water, we deserve more confidence in cost projections. Wider professional opinion is needed.
2. Higher contingencies for current and future costs. Some allowance must be made that recognizes the complete lack of actual experience on which to base cost projections. Extraordinarily high contingencies must be anticipated. This should include as a minimum various unknowns about actual component parts, replacement requirements, design reconfigurations, type of maintenance demands, and redundancy requirements.
3. Financial assistance. No community or sponsor should be expected to carry all the financial burden for such an experimental project. There must be considerable grant funds available to make it worth while. Without such financing assistance, no community should be expected to bear the full cost. Ratepayers must be protected. Financial incentives are normal for new technically challenging goals. Dana Point received about 55% in grant assistance for a far less costly test well (\$1.5 million of \$2.77 million). Cal Am has received \$1 million, about 20% of the unverified cost estimate of \$5 million for its test well. .
4. Look beyond time constraints. Experimental projects take more time. There must be an expectation that some rethinking, some redesign, some stop-and-start events must be worked out, over time. A fast track should never be planned, yet it is at the heart of Cal Am's proposal. Project delays should be expected, and not be treated as surprises. Furthermore, there needs to be a serious approach to the "go/no go" decision. Can anyone assure ratepayers that this will happen?

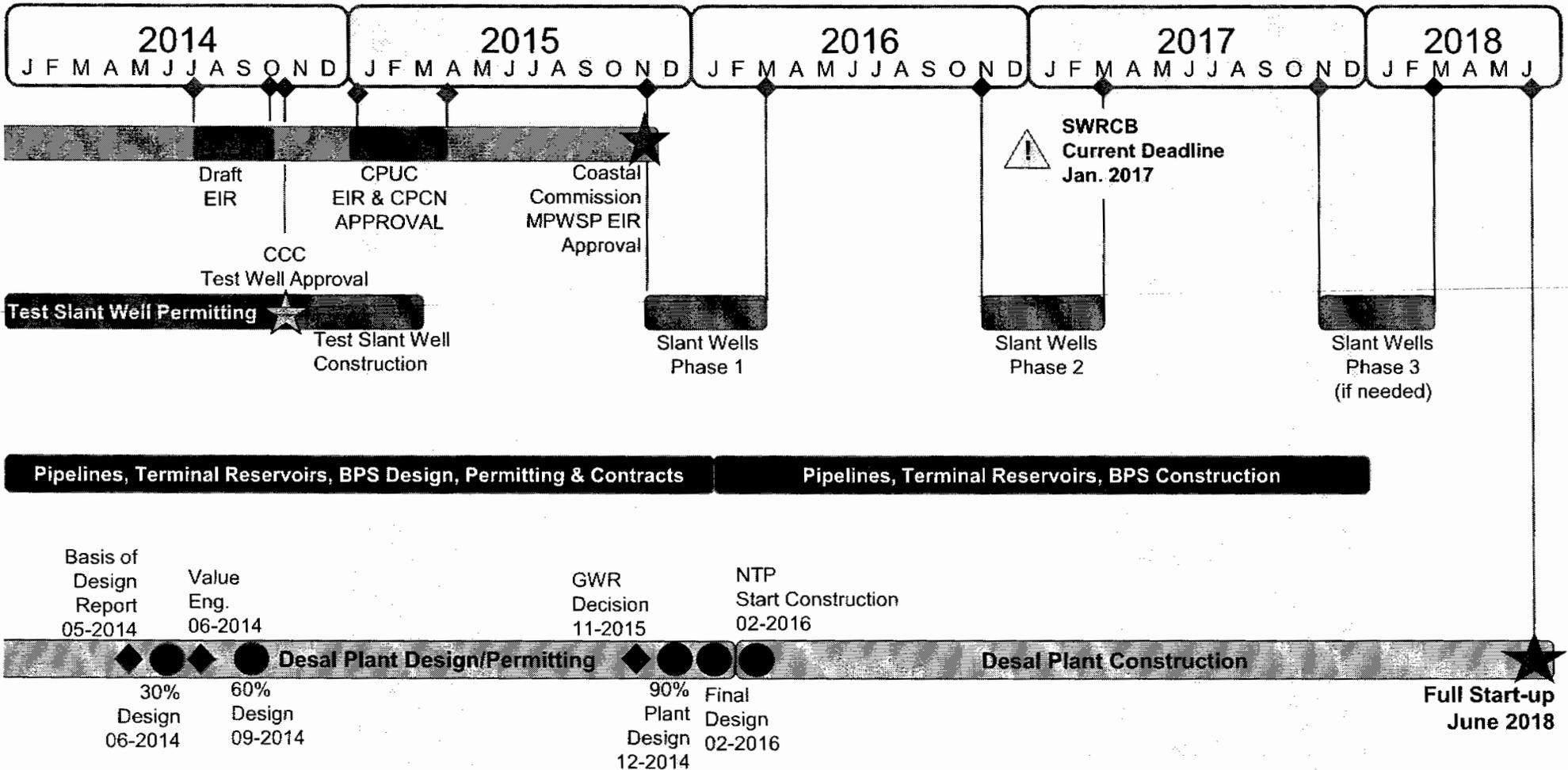
The CDO deadlines add an overlay of urgency that interferes with rational discussions. Facts and thoughtful review can prevail, but only if certain permitting or regulatory agencies show the nerve or leadership to not let new policy (subsurface intake) override practical consideration of all costs and implementation risks. Adequate time is a friend of problem solving.

5. Critical Path (or Milestone) Management. A new technology or new engineering approach must have time built into a critical path schematic that allows for a pause, a deliberative review of all factors critical for success. It must allow for management, financial, technical, and outcome inputs to be reconsidered. There must be a chance to rethink if more expense is justified. And if the likely outcome will be the desired result. This is a very serious time. More good money after bad is an earmark of a project gone wild. Or maybe a management with tunnel vision. This is where "white elephants" are hatched.
6. Experience of Sponsor. This is very subjective, but nevertheless, important. Is the sponsor known for innovation and delivery as promised? Is the sponsor in the heart of new thinking? Does the professional team display a solid foundation of experience? Has the sponsor participated in developing new ideas for the new approach? There must be some assessment of capabilities and track record before entrusting investment financing with the sponsor.

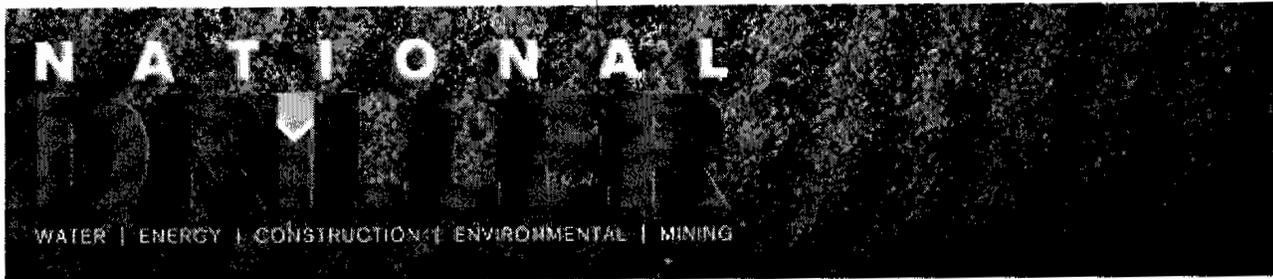
7. Availability of Options. State agencies cannot simply deny the reality of power plant assets. Land, easements, existing piping, storage, pumps, experience, rights of way, access to energy, and much more. The phase-out of once-thru-cooling will take time, but that time could host a few opportunities. Also there is residual low volume ocean intake for power plants. Can these be captured to local advantage?

There are other private and public assets in close proximity to power plants. Those assets should not be ignored in the rush to meet a schedule. The long term implications may have huge negatives if ignored, and perhaps huge benefits if allowed to compete. In fact, Monterey Peninsula has two private entrepreneurial desal endeavors that could compete with Cal Am's slant wells. Both trigger their options off of associating with, or in close proximity to, the power plant at Moss Landing. Not only are there two viable project ideas, they hope to compete with the Cal Am monopoly on price and performance in the tradition of American business – competition in the market place. PWN believes this would be superior to regulatory interventions and a monopoly with guaranteed profits (and a string of failures).

Monterey Peninsula Water Supply Project Anticipated Schedule



Note: The schedule is based on the information and assumptions available at time of update and is accurate to +/- 6 months.

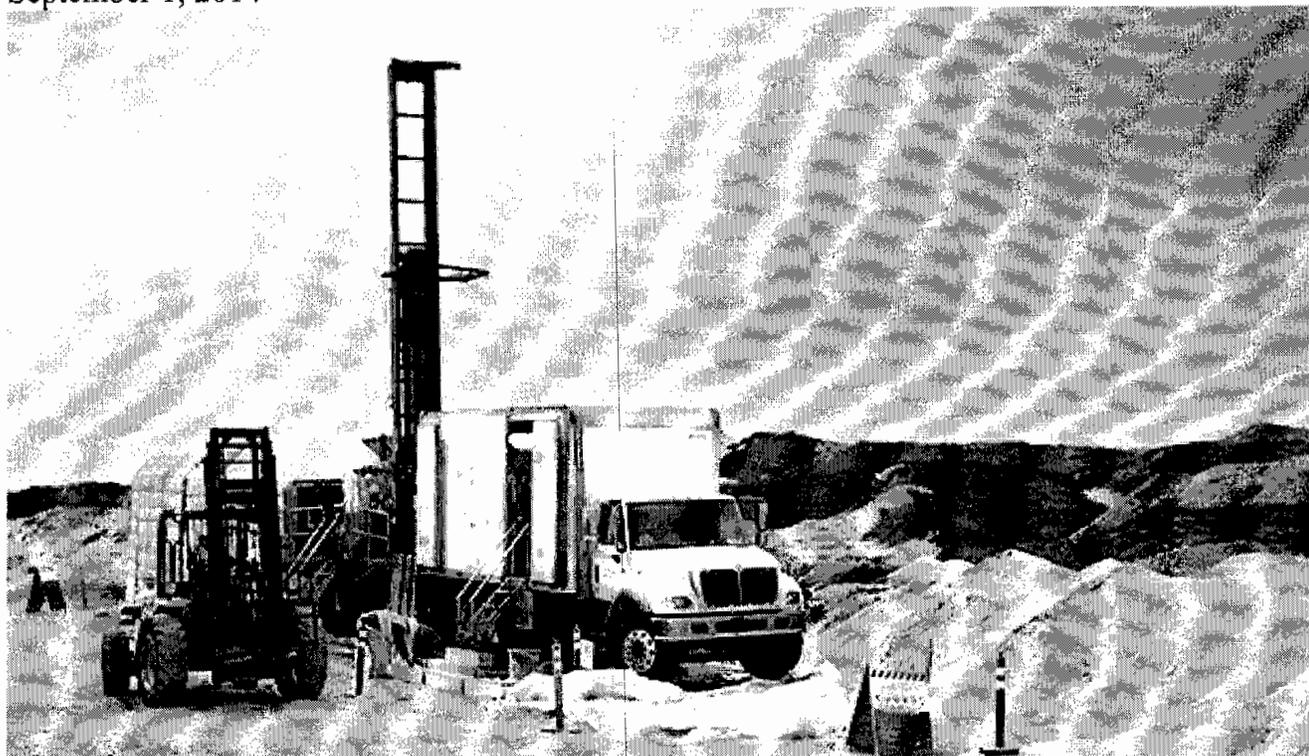


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Home

Slant Well to Address Water Shortage Without Harming Environment

By Valerie King
September 1, 2014



History is unfolding along the coast of California, according to Dennis Williams, president of GEOSCIENCE Support Services Inc.

His groundwater consulting firm has designed something like 1,000 municipal water supply wells in almost 40 years. But those were typical wells, vertical wells. What he's working on now he's only done once before. ||

"Necessity is the mother of invention," he said, alluding to a well technology his firm is designing for California's Monterey Peninsula. It's called a slant well or subsurface intake, and while the technology has been used in Europe and tested in the United States, he says it's still a very rare method. ||

"The evolution of the subsurface slant well technology," as Williams calls it, is an outcome of California state regulators and environmental groups that prefer an environmentally friendly approach to desalination. Their goal is to avoid harming marine life like more traditional ocean pipelines tend to.

The slant well will be drilled close to the coastline at a diagonal and collect enough ocean water to produce about 100 million gallons of drinkable water daily.

That's what California American Water hopes, according to Rich Svindland, its vice president of engineering. California American Water is a subsidiary of American Water Works Company Inc., the largest publicly traded U.S. water and wastewater utility company. They proposed the idea after California ordered reductions to the Monterey Peninsula's current water sources, a local river and aquifer that are expected to lose more than half of their current supply in the next decade.

"The idea is that we're trying to launch a well field out under the ocean floor to basically ensure that we capture ocean water as opposed to inland ground freshwater," Svindland said. The local groundwater basin he's referring to is protected and cannot be exported to residents across the peninsula.

Slant Well Design

In an effort to ultimately build a permanent series of slant wells, California American Water has proposed the building of a test well, already designed by GEOSCIENCE. Svindland said a specialized drilling firm will be selected once it is approved and permitted.

The test pilot hole insertion point is expected to sit approximately 450 feet inland of mean sea level at an elevation of about 25 feet. It is estimated to be built at a 19 to 20 degree angle, be 1,000 feet long and get about 300 feet deep, roughly parallel to the ocean floor. Actual screen depth is more likely to be 250 feet deep, according to Svindland.

"We're probably pushing the max as far as how large they can get," he said. It's slated to be about three times longer than the first slant well GEOSCIENCE designed eight years ago in Dana Point, Calif. He said the technology's limit is about 1,000 feet, the length needed to grab the 16,000 gallons of ocean water per minute he's hoping for.

The well will link to a single pipe, which will lead to a desalination plant. From there, the filtered water will travel through about 20 miles of pipeline to customers.

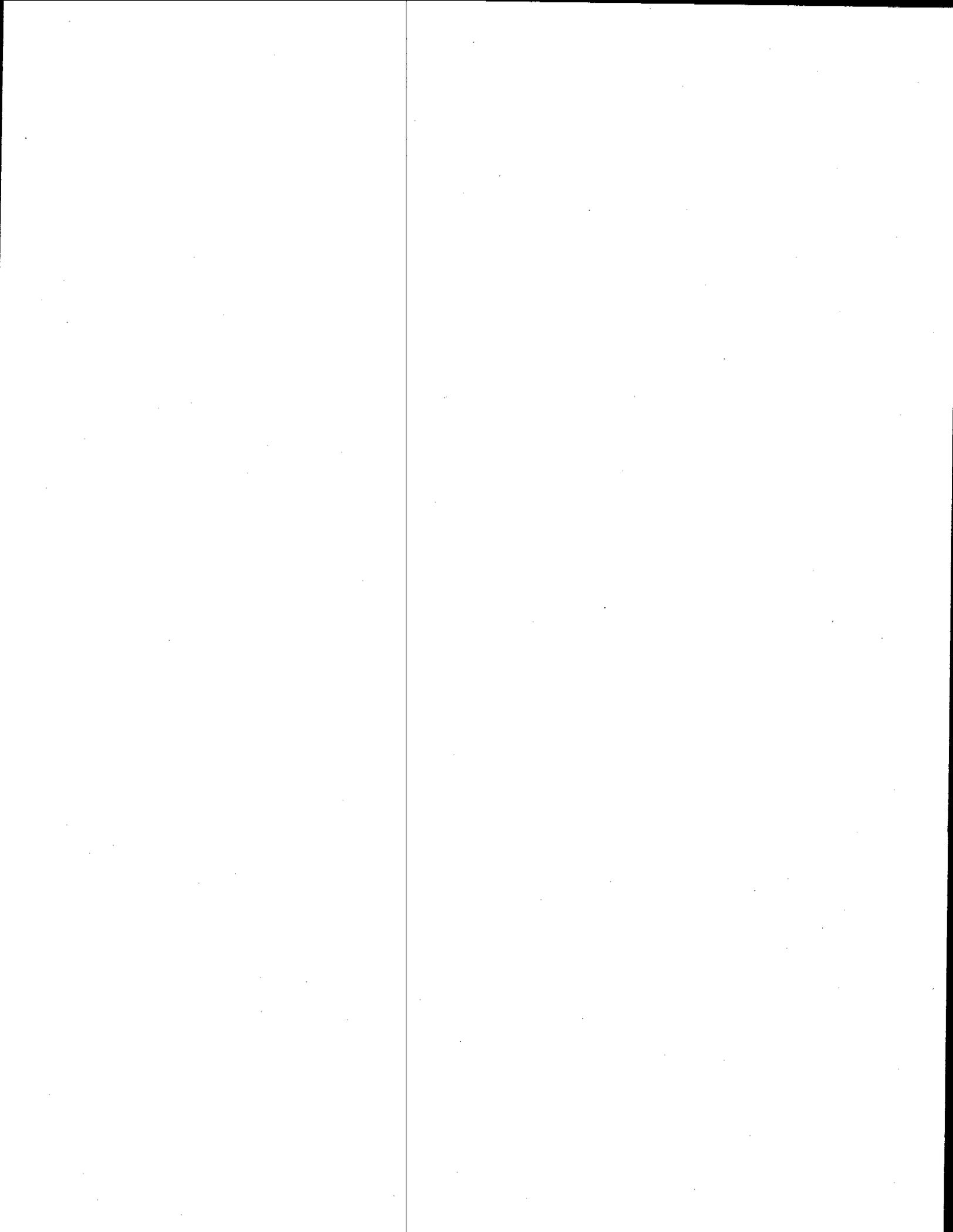
The engineers and residents have many questions regarding what the final project would involve and what harm it might bring to groundwater supplies. Svindland said running the proposed test well for up to two years will fill those gaps.

Building the Slant Well

"It's a perfect situation" for digging based on borehole samples from the proposed site, Williams said. The results show sand, some gravel and small clay pockets.

"We just build a drilling cradle at whatever angle we want and place the dual rotary drill rig on it and drill the wells," Williams explained.

To prevent the hole from collapsing, temporary casing will be installed around the production string using



a telescoping method. "So you're going to have one casing that's pushing, say, 100 feet and then say you have 36-inch casing," Svindland said.

"And then you're going to go inside that casing and you're going to push another slightly smaller diameter—say 34—so it fits right inside there tight."

The technique will be used all the way down, resulting in a diameter as small as 14 1/8-inches, where the screen will be located. The larger screen on top to hold the pump is still being designed and will likely span 18 to 20 inches. "All this has to be done with high quality steels that are not going to be subject to corrosion from ocean water, so we're talking super duplex steels," Svindland said.

The louver won't be cut for the screen openings until the hole is drilled and the grain sizes can be determined. Otherwise, they risk having a lot of sand coming inside the screen.

Challenges

Since the well rests at such a low angle, gravity doesn't help, so everything has to be pressurized, including the artificial filter pack. Removing the temporary casing without destroying the filter pack is another difficulty not associated with vertical wells.

The special equipment needed to push the casing down and then pull it out isn't so easy to come by since slant wells aren't so common. "Then they're only of a certain size, where vertical stuff there's a lot bigger pieces of equipment out there that can do a lot more things," Svindland said. "So the market is not as fully developed as a traditional vertical well."

Another symptom of the slant involves the pump and motor, typically designed to either be truly horizontal or truly vertical. The slant well is somewhere in between, so the bearing and parts that help transfer load for rotating elements must be designed more robustly. Svindland says this can be done, but how well the bearings will hold up over time is an area of concern.

Something else they must consider is coastal erosion, an issue at the proposed site. The slant well can't be drilled right at the water's edge, meaning the digging could be pushed as far as 700 feet inland. This could make it more difficult to reach as far out under the ocean floor as is necessary.

The number one issue, according to both Svindland and Williams, is permitting. They admit that public skepticism is a typical and healthy occurrence with such large undertakings, but he said that's the reason for this test. "The biggest challenge from my perspective is just to get folks to acknowledge, 'hey, this is a test well, not permanent.'"

Getting approval soon is crucial because it ties into another obstacle, their timeline, which is only getting tighter. "We've been trying to do this well for two years now and we keep getting hung up in different permitting areas," Svindland said.

They are still on track to build the slant well from November to March. They are limited to building in that window because a threatened bird that inhabits the beach does not nest there during those months.

The number one issue, according to both Svindland and Williams, is permitting.

Svindland doesn't want the desalination plant built until the test slant well is finished so they know the water can be pulled in. Pushing the well construction to next year would delay the building of the plant too.

Despite some public skepticism, Svindland said it feels good to see how far the proposal has come. "We're certainly kind of glad to be where we are and hopefully we'll have this one last final push this last month and a half and we'll get the permission to go ahead."

At a time when water shortage is increasingly rampant and environmental awareness is growing, Williams said he's confident this innovation will serve the need for new water supplies in the Monterey Peninsula and elsewhere.

Looking forward, he said he sees slant wells becoming more common. "I think as time goes on you're going to see this technology developed. California's probably the leader in groundwater development technique, so you'll probably see other sections of the country follow suit."

Valerie King is associate editor of *National Driller*.

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CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Howard "Chip" Wilkins III
cwilkins@rmmenvirolaw.com

October 30, 2014

VIA ELECTRONIC MAIL & US MAIL

Susan Craig
Central Coast District Manager
California Coastal Commission
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Re: Appeal by California-American Water Company from September 4, 2014 City of
Marina Action on Coastal Development Permit 2012-05

Dear Ms. Craig,

I am writing on behalf of our client, the Marina Coast Water District, in regards to California-American Water Company's (Cal-Am's) attempt to appeal from the City of Marina's California Environmental Quality Act (CEQA) determination. The City of Marina denied "without prejudice" Cal-Am's proposed project because it concluded that the Initial Study and Mitigated Negative Declaration for the California-American Slant Well Project prepared pursuant to the CEQA was not adequate. Cal-Am appeals from that decision.

There are no grounds for appeal at this time. (*Kaczorowski v. Mendocino Cnty. Bd. of Supervisors* (2001) 88 Cal. App. 4th 564, 569 ["The only grounds for appeal are that the locally approved development does not conform to the standards of a certified LCP or the Coastal Act's access policies. (§ 30603, subd. (b)(1))"]; see also *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 272 ["Once the Coastal Commission has certified the local coastal plan 'as conforming to the policies of the Coastal Act, review authority for development within that portion of the coastal zone passes to the local government.'"]) The City has not acted on Cal-Am's proposed slant test well pursuant to its certified local coastal program (LCP). The City merely denied a permit for the well "without prejudice" pending adequate environmental review. The City ought to be given an opportunity to act on the proposal once an adequate environmental document has been prepared and certified or adopted.

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 2

For this reason, the Coastal Commission ought not to countenance Cal-Am's attempts to leap frog over the City. Such leap-frogging is an anathema to the entire design of the Coastal Act, which contemplates that the City has primary jurisdiction to implement its LCP once the program has been certified by the Commission. (See *Sierra Club v. California Coastal Commission* (2005) 35 Cal.4th 839, 855 fn. 11 ["Coastal Act contains "[p]rovisions for ... the transfer of coastal management responsibilities back to local government [that would] alleviate [] previous problems regarding local control in the planning process".].)

In fact, as I explain below, absent the City's "denial" of the permit under the LCP, the Commission has *no jurisdiction* to hear Cal-Am's appeal. There is simply nothing to appeal. In the parlance of the Commission's regulations, there is no "significant question" as to the proposal's "conformity" with the City's "certified local coastal program" at this time. (Cal. Code Regs., tit. 14, § 13115; accord Pub. Res. Code, § 30625, subd. (b)(2); see also *Hines v. California Coastal Commission* (2010) 186 Cal.App.4th 830, 849 ["A substantial issue is defined as one that presents a 'significant question' as to conformity with the certified local coastal program."].)

A. There Is No "Denial" of the Permit Under the LCP to Support Jurisdiction for an Appeal.

On September 4, 2014, the City declined to issue a coastal development permit to Cal-Am for its proposed facilities. In Resolution No. 2014-103, the City explained that it could not issue a coastal development permit to Cal-Am at that time because environmental review for the project was inadequate:

Based upon the substantial evidence in light of the whole record before the City of Marina, the City Council is unable to find that the project will not have significant effect on the environment.

[¶]

Based upon the above conclusions regarding [the California Environmental Quality Act (CEQA)], the City is unable to approve the Project and therefore denies the Project without prejudice to reconsideration as such time as the appropriate CEQA review is completed.

(Resolution No. 2014-103, dated September 4, 2014, pp. 2-3.) Thus, the City denied the application for a coastal development permit *without prejudice* on the grounds that further environmental review was required *under CEQA*. The Commission's appellate jurisdiction does not extend to a review of a local lead agency's CEQA determinations:

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 3

were it determined that the Commission's finding of no substantial issue constituted an approval of the project within the meaning of CEQA, the Commission still would have been limited to reviewing the conformity of the local government's actions to the certified Local Coastal Program or to the public access policies of the Coastal Act. (§ 30603, subd. (b)(1).) The Coastal Commission lacks jurisdiction to review a local government's compliance with CEQA.

(*Hines, supra*, 186 Cal.App.4th at p. 852, emphasis added.)

Thus, the City should be afforded the opportunity to consider the project on the merits once adequate environmental review has been completed—in as much as the City is the agency with primary authority to issue coastal development permits within the jurisdiction of its land use plan.¹

Through its appeal, Cal-Am asks the Commission to trespass into the City's primary jurisdiction, in effect leapfrogging over it; the Commission should decline to do so. As the Commission acknowledged in *Sierra Club, supra*, 35 Cal.4th at p. 855, it has specific, defined jurisdiction under the Coastal Act. (See also *Burke v. California Coastal Commission* (2008) 168 Cal. App. 4th 1098, 1106 ["courts do not defer to an agency's determination when deciding whether the agency's action lies within the scope of authority delegated to it by the Legislature"].) At issue here is the City's authority to implement its land use plan.

The Coastal Act contemplates that local agencies will be charged with the primary responsibility for implementing the Coastal Act. (Pub. Resources Code, § 30519, subd. (a) ["after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review ... shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program ... applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof."]; see also *Kaczorowski, supra*, 88 Cal.App.4th at p. 569, ["[a]uthority for ensuring compliance with a certified LCP is delegated by the

¹ In its appeal, Cal-Am makes much of the fact that the City's staff recommended that the City find conformity with the Local Coastal Program. (See Cal-Am Appeal, Attachment 2, pp. 4-5.) Staff's recommendation is not a final action supporting appellate review. The City Council has not yet reached the matter, having found the CEQA document inadequate. Cal-Am simply has not exhausted all of its remedies before seeking appeal to the Commission. (Cal. Code Regs. tit. 14, § 13114 [appellate review is proper only after the "appellant has exhausted local appeals" and then only "after the local decision has become final"].) Here, again, there was no final action taken on the permit under the City's certified LCP. The only final decision, if any, was taken on the environmental document, which was deemed inadequate.

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 4

Commission to the unit of local government responsible for implementing the LCP”]; *Sierra Club, supra*, 35 Cal.4th at p. 855, fn. 11 [“Coastal Act contains “[p]rovisions for ... the transfer of coastal management responsibilities back to local government [that would] alleviate [] previous problems regarding local control in the planning process”].) Thus, once the Commission certifies an LCP, “[d]evelopment review authority can no longer be exercised by the Coastal Commission” and is “delegated to the local government that is implementing the local coastal program,” with limited rights of appeal to the Coastal Commission. (*City of Malibu v. California Coastal Commission* (2012) 206 Cal.App.4th 549, 563.) “Thus, after certification of a local coastal program, issuance of coastal development permits is the purview of the local government, not the Coastal Commission. And, after certification of an LCP, the Coastal Act mandates—with the singular, narrow exception delineated in the section 30515 override provision—local control over changes to a local government’s land use policies and development standards.” (*Id.* at p. 556.)

Here, Cal-Am has sought to appeal the City’s denial of its coastal development permit under Public Resources Code section 30603, subdivision (b)(5). That provision does not authorize the Commission to wholesale review a local agency’s exercise of its land-use authority or its implementation of CEQA. Rather, it is expressly limited to appeals from determinations under the Coastal Act:

(a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: [¶¶]

(5) Any development which constitutes a major public works project or a major energy facility.

(b) [¶] (2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.

(Pub. Res. Code, § 30603, subs. (a)(5), (b)(2), emphasis added; see also *Kaczorowski, supra*, 88 Cal.App.4th at p. 569 [“The only grounds for appeal are that the locally approved development does not conform to the standards of a certified LCP or the Coastal Act’s access policies. (§ 30603, subd. (b)(1))”]; *McAllister, supra*, 147 Cal.App.4th at p. 272 [“Once the Coastal Commission has certified the local coastal plan “as conforming to the policies of the Coastal Act, review authority for development within that portion of the coastal zone passes to the local government.”].)

Section 30603 can only be read as a limitation on the Commission’s appellate jurisdiction to appeals from implementation of the LCP. Any other reading would allow the Commission to trump a local agency’s land use and regulatory actions simply by

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 5

finding that the proposed activity “conforms” with the LCP. The Commission should decline to set such a precedent.

The court’s holding in *Security Nat. Guar., Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 419, affirms this narrow reading of the Commission’s appellate jurisdiction. The court explained that just because “an agency has been granted some authority to act within a given area does not mean that it enjoys *plenary* authority to act in that area.” Thus, “if the Commission takes action that is inconsistent with, or that simply is not authorized by, the Coastal Act, then its action is void.” (*Ibid.*) In the context of appeals under the Coastal Act, the court explained:

Once the LCP is certified, “the Commission’s role in the permit process for coastal development [is] to hear appeals from decisions by [the local government] to grant or deny permits.” (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1354, fn. 5, 56 Cal.Rptr.3d 591, citing § 30603.) The Commission’s jurisdiction in such appeals, however, is limited. (*City of Half Moon Bay v. Superior Court* (2003) 106 Cal.App.4th 795, 804, 131 Cal.Rptr.2d 213.) As relevant here, the Coastal Act limits the grounds for a CDP appeal “to an allegation that the development does not conform to the standards set forth *in the certified local coastal program*” (§ 30603, subd. (b)(1), italics added.)

(*Id.* at p. 421.)

In sum, the City has not “denied” the permit for a slant test well under the provisions of the LCP. It simply found that the Initial Study and Mitigated Negative Declaration for the California-American Slant Well Project to be inadequate under CEQA. There is therefore no denial upon which to support jurisdiction to support the Commission’s hearing of an appeal.

B. Jurisdiction Over Part of the Project Does Not Convey Jurisdiction Over the Entire Project.

Cal-Am may argue before the Coastal Commission, as it has elsewhere, that because the Commission has primary jurisdiction over elements of the slant test well that are sited below the mean high tide line, it can simply exercise jurisdiction over the entire project. Under this theory, the Commission can remedy any problems that might have occurred during the City’s environmental review during the implementation of its certified regulatory program. In other proceedings, Cal-am has cited *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 271-272, for this proposition.

But the fact the Commission has primary jurisdiction over part of the project’s water side elements under Public Resources Code section 30519, subdivision (b), in no way confers jurisdiction to the landside elements of the project under subdivision (a).

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 6

The Legislature expressly conferred the former on the Commission and the latter on local agencies. (See also *Sierra Club, supra*, 35 Cal.4th at p. 843 [recognizing that a grant of jurisdiction over part of a project does not confer jurisdiction to the Commission over the remainder of the project].) The only way in which the Coastal Act authorizes the Commission to act in such a manner is when both the local agency and the Commission expressly agree to such a consolidated procedure and determine that public participation would not be impaired by such a process:

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.

(Pub. Resources Code, § 30601.3.) That has not occurred here.

McAllister, supra, 147 Cal.App.4th 253, does not enlarge the jurisdictional reach of the Coastal Commission. In that case, *McAllister* objected to Monterey County's approval of a project, arguing that the project was inconsistent with the LCP and that the environmental review was inadequate. *McAllister* appealed the County's decision to the Commission. As provided by law, the Commission heard the appeal de novo (Cal. Code Regs., tit. 14, § 13115, subd. (b)), undertaking its own environmental review under CEQA, and ultimately denying the appeal. At trial, *McAllister* maintained his objections to the county's environmental review. The court concluded, however, that the county's environmental review was not subject to challenge because under de novo review the "County's CEQA decisions ... have been superseded by the Coastal Commission's environmental review." (*McAllister, supra*, 147 Cal.App.4th at p. 294.) The fact that the Commission can exercise de novo review once it has proper jurisdiction does not somehow give it plenary power to make the decision for the local agency in the first instance. (See, e.g., *Hines, supra*, 186 Cal.App.4th at p. 852 [explaining that the Commission may not hear an appeal of a local agency's CEQA determination; once the Commission has appellate jurisdiction, however, the Commission may undertake "de novo review" and prepare "the functional equivalent of an EIR under CEQA"].)

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 7

C. Cal-Am Proposes No Major Public Works Project; Accordingly, the Commission Lacks Jurisdiction.

Not only is there no final agency action sufficient to appeal at this time, the Commission lacks subject matter jurisdiction. Cal-Am proposes no “major public works project,” and thus cannot seek an appeal with the Commission under Public Resources Code section 30603, subdivisions (a)(5) and (b)(2).

Cal-Am argues that this “test well” is a major public works project simply by virtue of the fact that it would cost more than \$100,000 to complete. (Cal. Code Regs. tit. 14, § 13012, subd. (a).) That provision requires more than the mere expenditure of funds or else it would encompass virtually all projects. It requires that the expenditure be for a “public works project.” Under the Coastal Act, “Public Works” means “All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.” (Pub. Resources Code, § 30114, subd. (a).) The project here proposes none of those things.

The alleged sole purpose of the test slant well is to pump between 1,614 and 4,035 acre/feet of water from the ground per year, test it, and then discharge the water into the ocean. (See, e.g., IS/MND, p. 23.) Discharging groundwater in the ocean is not—in any evident way—a reasonable public use. The well is not proposed to serve anyone. Given this, there is no evidence that the test slant well is a public works project within the meaning of Public Resources Code section 30603, subdivisions (a)(5) and (b)(2).²

In an effort to attempt to “rig” the system, and subvert appropriate local environmental review, Cal-Am has always maintained that the “test slant well” is separate from its proposal to build a Water Supply Project in the future. In this way, it has argued that it need not disclose, even at the most basic levels, the foreseeable environmental impacts of the entire Water Supply Project as part of the environmental review for the test slant well. (See, e.g., IS/MND, p. 6 [“Because no long-term operations are proposed, the potential environmental effects of any long-term operations are not considered in this document.”].) Here, Cal-Am maintains precisely the opposite, urging that the test slant well is an essential first phase for the overall Water Supply Project. On this basis, Cal-Am argues that its proposed test slant well—which in itself offers absolutely no public benefits—is in fact a “major public works project.” Thus, according to Cal-Am, for the purposes of CEQA review at the City, the test slant well and the Water Supply Project

² In addition, the activity appears to be contrary to Monterey County Water Resources Act, which prohibits water from being exported outside the Salinas Valley Groundwater Basin. (Stats. 1990, ch. 52, § 21, West’s Ann. Cal. Wat.–Appen. (1990 ed.) ch. 1159 [“no groundwater from that basin may be exported for any use outside the basin”].)

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 8

are entirely separate actions;³ but for the purposes of appellate review here they are one in the same. Cal-Am cannot have it both ways: it should not be allowed to assert contrary positions in this manner in order to manipulate agencies and circumvent the law.

For all of these reasons, the Commission should find that, at this time, “no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.” (Pub. Res. Code, § 30625, subd. (b)(2); see also *Alberstone v. California Coastal Commission* (2008) 169 Cal. App. 4th 859, 863-864 [“It must first be noted that the question here is not whether appellants’ appeal raises *any* issue but whether it raises a *substantial* one. A substantial issue is defined as one that presents a “significant question” as to conformity with the certified local coastal program”], citing Cal. Code Regs., tit. 14, § 13115.) Of course, once adequate environmental review has been undertaken, and the City acts on the project and makes findings under its LCP, Cal-Am will have an opportunity to appeal to the Commission—if indeed it is dissatisfied with the manner in which the City has implemented the LCP at that time.

We therefore urge the Commission to conclude that there is no “significant question” as to the proposal’s “conformity” with the City’s “certified local coastal program” at this time. In this way, the City of Marina can complete its environmental review for the project and exercise its jurisdiction under the LCP.

³ Such a position is contrary to CEQA, which precludes segmentation of single project for the purposes of analysis. As the Supreme Court explained in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 (*Laurel Heights*), under CEQA an agency must analyze the effects of potential future development in its EIR if such development is: (1) “a reasonably foreseeable consequence of the initial project,” and (2) “will likely change the scope or nature of the initial project or its environmental effects.” (47 Cal.3d at 396.) In that case, the University of California San Francisco (UCSF) had purchased a 354,000 square foot building, but prepared an EIR only for the initial occupation of 100,000 square feet by the School of Pharmacy. (*Id.* at p. 393.) UCSF argued that its future plans to occupy the remainder of the building, not available for ten years, were speculative. (*Id.* at p. 394.) Like the applicant here, UCSF claimed that, because these plans required further approvals that would be evaluated in their own right, the agency could evaluate the impacts of the potential expansion at a later time. (*Ibid.*) The Supreme Court rejected this argument, finding that deferring environmental review to a later point, when “bureaucratic and financial momentum” would make it difficult to deny the expansion, violated CEQA. (*Id.* at pp. 395-96.)

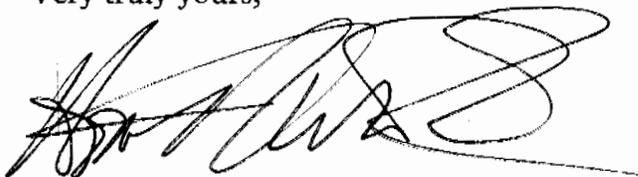
Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 9

I understand the staff report will be available soon. Please provide me with a copy of the staff report once it is available and a copy of all public notices issued by the Commission related to Cal-Am's proposal.

As a final matter, I note that the record of the City's actions provided by Cal-Am does not include the transcript of proceedings at the City Council on September 4, 2014. A copy of that transcript is attached.

Thank you for your consideration of these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard Wilkins III", written over a horizontal line.

Howard "Chip" Wilkins III

cc: Tom Luster, Environmental Scientist, CCC
tluster@coastal.ca.gov

Encl.

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CITY OF MARINA
CITY COUNTY REGULAR MEETING

COUNCIL CHAMBERS
211 HILLCREST AVENUE
MARINA, CALIFORNIA

WEDNESDAY, SEPTEMBER 3, 2014 - 6:00 P.M.
TRANSCRIPTION OF AUDIO RECORDING

AGENDA ITEM NO. 9:

Consider appeal of Planning Commission action of July 20, 2014, regarding adoption of Resolution No. 2014-__:
(1) certifying a Mitigated Negative Declaration and adopting a Mitigation and Monitoring Program; and, (2) approving Coastal Development Permit CDP 2012-05 for the California-American Water Slant Test Well Project located at CEMEX's Lapis Road property (APNs 203-011-001 & 203-011-019).

CITY COUNCIL:

MAYOR/CHAIR BRUCE DELGADO
MAYOR PRO-TEM/VICE CHAIR FRANK O'CONNELL
COUNCILMEMBER NANCY AMADEO (via teleconference)
COUNCILMEMBER DAVID BROWN
COUNCILMEMBER GAIL MORTON

1 P R O C E E D I N G S

2 MAYOR DELGADO: We'll move on to the main item
3 tonight, while we're trying to get our Councilmember
4 Amadeo with us.

5 This is to open a public hearing, take
6 testimony from the public, consider appeal of Planning
7 Commission action, July 10th, regarding adoption of the
8 Mitigated Negative Declaration and adopting a Mitigation
9 and Monitoring Program, and then perhaps approving the
10 Coastal Development Permit for the Cal-Am Water slant
11 test well project at CEMEX.

12 So let's discuss how this is going to work
13 tonight. One ground rule is no booing, no clapping. We
14 don't want to get into who supports who, making some
15 people feel bad and other people feel good. So we have
16 applause during public comment for good things, you
17 know, celebratory reasons, but not for booing down or
18 lifting up someone who has spoken in favor of what you
19 support. So no applause.

20 And how this normally goes, we have our staff,
21 and then we have the project proponent given up to 10
22 minutes. And then we have City Council questions,
23 comments, then we go to the public for comment, in this
24 case a public hearing.

25 That the way, Theresa and Laine, you wish

1 tonight to be handled? Okay.

2 And we had a request from Ron Weitzman to have
3 up to 10 minutes, but we didn't think that that would be
4 fair, because everyone else gets four minutes. But we
5 invite you, if you have more than four minutes, to have
6 someone tag team. What you didn't get said in four
7 minutes, you can have someone else try to say it. In
8 his case, it's going to be difficult because it was a
9 Power Point he wanted to produce. But we thought in the
10 issue of fairness, we couldn't just let one person have
11 10 minutes. That's not normally how we do things.

12 Council, do you object or agree to that?

13 MAYOR PRO-TEM O'CONNELL: I agree to it.

14 MAYOR DELGADO: Okay.

15 COUNCILMEMBER BROWN: That's fine.

16 MAYOR DELGADO: All right. Councilmember
17 Morton, did you have something you wanted to say?

18 COUNCILMEMBER MORTON: No. I'm good.

19 MAYOR DELGADO: All right. So, Theresa, is
20 that how you are seeing it happening tonight?

21 THERESA SYZMANIS: Sounds good.

22 MAYOR DELGADO: Okay. Theresa Syzmanis is our
23 senior planner and has been devoting much of her time
24 the last several months on this project. Thank you,
25 Theresa, for all your work. We're looking forward to

1 your presentation.

2 THERESA SYZMANIS: Thank you for the
3 introduction.

4 This is the California-American Water slant
5 test well project. The project was reviewed and
6 considered at a public hearing of the Planning
7 Commission on July 10th. And the Planning Commission
8 declined to certify the Mitigated Neg Dec, which I'll
9 call an MND from here on in, and adopt the Mitigation
10 Monitoring and Reporting Plan, the MMRP, and also
11 further declined to approve or disapprove the Coastal
12 Development Permit.

13 MAYOR DELGADO: Theresa, I'm sorry to interrupt
14 you, even after that brief introduction, but we think
15 it's important, probably legal, to get Nancy on the
16 phone if she is going to be participating in tonight's
17 meeting.

18 COUNCILMEMBER AMADEO: I am on the phone. I
19 called in.

20 MAYOR DELGADO: Okay. Nancy, we're going to
21 get you set up a little bit better than you are right
22 now so that you can hear and we can hear you. How best
23 for her to hear Theresa?

24 Have you heard Theresa speaking so far, Nancy?

25 COUNCILMEMBER AMADEO: I've been able to hear

1 everything so far, yes.

2 MAYOR DELGADO: Okay. Thank you, Theresa, for
3 your patience.

4 THERESA SYZMANIS: Okay. So the day after the
5 Planning Commission meeting on July 11th,
6 California-American Water filed an appeal of their
7 decision to City Council, so this is a public hearing to
8 consider the appeal, and there are two actions requested
9 tonight to consider certifying the MND and adopting the
10 MMRP for the project and to consider approving the CDP.

11 So as I did for the Planning Commission, I'm
12 going to review the contents of your packet and then
13 turn the floor over to the City's consulting team, SWCA
14 Consultants, who are with us here tonight, and they will
15 abbreviate the project description, the findings in the
16 IS/MND, and the proposed mitigations. And then we,
17 along with City CEQA counsel who is also here with us,
18 will be available for questions at your leisure.

19 So in addition to the staff report, there are
20 five hefty packets of documents. Exhibit A is the
21 Initial Study and Mitigated Negative Dec that was
22 prepared by SWCA Consultants following the procedures
23 outlined by the California Environmental Quality Act.
24 The analysis within the initial study is based on the
25 project description in the initial study.

1 There were two early referrals in August 2013
2 and then in February 2014 to the regulatory and
3 permitting agencies and other interested parties for
4 help in identifying the issues to be addressed. Also at
5 an early stage, the City's planning documents, the
6 General Plan, the Local Coastal Program, and the
7 Municipal Code were reviewed to understand the relevant
8 policies in the proposed -- in relation to the proposed
9 project.

10 Specialists prepared four technical studies.
11 They were biological resources, cultural resources,
12 geology and soils, and hydrology and water quality, and
13 that included the collection of data from bore holes.
14 So the technical study information and additional
15 research is summarized within the environmental
16 checklist of the IS/MND, and there are 17 different
17 topic areas that are covered. And in each topic area,
18 the potential for significant effects to occur as a
19 result of the project were identified, and mitigation
20 measures were proposed to reduce the level of impact to
21 less than significant.

22 The mitigation measures are summarized in the
23 MMRP. And as a result of the public review process, the
24 MMRP was further amended. So that's your Exhibit B, and
25 that's the MMRP that's proposed for adoption.

1 Also, there's a separate errata sheet, your
2 Exhibit C, and that summarizes all of the proposed
3 changes to the text of the Initial Study MND and the
4 MMRP as a result of that review.

5 For that review, the draft IS/MND was
6 circulated for 30 days from May 19th, 2014, to June
7 17th, 2014. Copies were transmitted to the state
8 clearinghouse, and a Notice of Intent to adopt an MND
9 was sent to responsible agencies and local agencies
10 concerned with the project and also any other person,
11 entity or organization that requested notice.

12 The NOI was also posted with the Office of the
13 Monterey County Clerk. There were eight initial comment
14 letters that were received, and along with the responses
15 to those comment letters, that's your Exhibit D.

16 Correspondence that was received between June
17 17th and July 10th, between the time the staff report
18 for the Planning Commission was made public and the
19 Planning Commission public hearing, that's your Exhibit
20 E.

21 And then additional correspondence since that
22 time is your Exhibit F.

23 And then there were also a number of pieces of
24 correspondence that had been forwarded to you by the
25 City Clerk since the agenda packet was ready on the 29th

1 of August. So that's the contents of the environmental
2 document.

3 And insofar as the Coastal Development Permit
4 requirements, the project site is zoned Coastal
5 Conservation and Development on the zoning map. It's
6 also located within the Coastal Development Permit
7 combining district.

8 So within these zoning districts, coastal
9 research and educational uses and coastal dependent
10 industrial uses are permitted subject to obtaining a
11 Coastal Development Permit.

12 In order to obtain a CDP, there are a long list
13 of findings that need to be made. These findings are
14 made for you in the draft resolution, and they address
15 the requirements of the City's planning documents
16 relative to the coastal zone.

17 For consistency with the General Plan, general
18 plan policies differ to the Local Coastal Program for
19 the portion of Marina that's within the coastal zone.
20 The Local Coastal Land Use Plan identifies the project
21 site as appropriate for uses that are dependent upon
22 salt water and the unique coastal marine environment
23 found in Marina, including new coastal research and
24 education uses and coastal dependent industrial uses,
25 and also gives priority to coastal dependent development

1 on or near the shoreline following environmental
2 assessment by qualified professionals and mitigation to
3 the extent possible.

4 The Land Use Plan has 11 criteria that must be
5 met. And so all of the findings they reference back to
6 the assessments by the qualified professionals, so to
7 the relevant sections of the Initial Study and the MND
8 where the findings can be made.

9 The factors and required findings for the two
10 referenced Municipal Code sections, which are again
11 different, are similarly addressed, though, with
12 references to the IS/MND.

13 So that's a brief summary of a lot of
14 information. But with that, I'm going to turn the
15 podium over to Emily Creel. She is SWCA's project
16 manager, and she will continue with the presentation.

17 MAYOR DELGADO: Thank you, Theresa. And good
18 evening, Emily. Thanks for all your work. Emily, you
19 are the primary author on the Mitigated Negative
20 Declaration?

21 EMILY CREEL: I am.

22 MAYOR DELGADO: Okay. Thank you.

23 EMILY CREEL: Thank you, Theresa.

24 Mayor Delgado, Councilmembers, thank you for
25 having me.

1 My name is Emily Creel and, as Theresa said,
2 I'm with SWCA Environmental Consultants. We worked with
3 your planning staff to complete CEQA review of the
4 project.

5 So I have a presentation. I'm going to discuss
6 the project description, what's being proposed, and then
7 hit the highlights of our environmental analysis.

8 So we prepared a draft Initial Study Mitigated
9 Negative Declaration, I also will refer to it as an MND,
10 under the California Environmental Quality Act. The
11 project vicinity is the northwestern portion of the City
12 of Marina at the location of the CEMEX sand mining
13 facility.

14 This is a project overview. So I'm going to
15 walk through the main components of the project in
16 reference to this graphic. The project really entails
17 four major components. The first is a slant test well
18 itself. I believe you can see my mouse on the projector
19 as sort of a pointer.

20 So the slant test well is proposed at this
21 location here. The test well would be drilled
22 diagonally underneath the floor of the Pacific Ocean to
23 a maximum length of 1,000 feet, which is the capacity of
24 the drilling rig.

25 MAYOR DELGADO: Emily, on that map, can you

1 show where the intake would be?

2 EMILY CREEL: Sure. The intake portion of the
3 well would be approximately the last 800 feet of the
4 well.

5 MAYOR DELGADO: Can you point to where that
6 might be on that map?

7 EMILY CREEL: So if this is a thousand feet
8 total, you know, you are talking about here, all the way
9 down to the end of the well.

10 MAYOR DELGADO: So at the 800-foot mark is
11 where it would be?

12 EMILY CREEL: No. It would be from 200-foot
13 mark down to a thousand.

14 MAYOR DELGADO: Okay.

15 EMILY CREEL: So the screened portion of the
16 well serves as the intake portion, and that, I believe,
17 begins at 200 feet and extends all the way to the
18 well -- terminus of the well.

19 MAYOR DELGADO: Approximately, can you show
20 where the 200 to 800 is?

21 EMILY CREEL: So I'm estimating halfway here is
22 about 500.

23 MAYOR DELGADO: Okay.

24 EMILY CREEL: You know, 250 is about a quarter.
25 So I would estimate that the well screen begins about

1 here.

2 MAYOR DELGADO: Okay.

3 EMILY CREEL: And extends all the way to the
4 terminus of the well.

5 MAYOR DELGADO: And along that length it would
6 be essentially sucking in source water?

7 EMILY CREEL: Correct. But the entire length
8 of the well screen would not necessarily be pumping
9 water, capturing water at the same time. It would be
10 designed so that the aquifers could be pumped
11 separately. So the well would extend through the
12 dune-sand aquifer and then into the 180-foot aquifer,
13 and so the entire length of well screen would not
14 necessarily capture water during the entire length of
15 pumping.

16 MAYOR DELGADO: Okay.

17 EMILY CREEL: I also think --

18 COUNCILMEMBER AMADEO: Mr. Mayor, can I
19 interrupt a moment?

20 MAYOR DELGADO: Sure, Nancy. Go ahead.

21 COUNCILMEMBER AMADEO: I'm watching this on my
22 computer, and there is a delay and the screen is worse
23 than watching it there. Is this available in any one of
24 the attachments? I don't remember seeing it. Was it
25 e-mailed out? So that I can get a better picture of

1 what you're talking about.

2 MAYOR DELGADO: I'm assuming it's in the
3 Mitigated Negative Declaration. It's on the cover page.

4 And for the audience's perspective, you may not
5 all know, the document we're referring to tonight, this
6 Mitigated Negative Declaration --

7 COUNCILMEMBER AMADEO: I see it now. Thank
8 you.

9 COUNCILMEMBER MORTON: Page 9.

10 MAYOR DELGADO: It's also on page 9, which is
11 Figure 2, the project location map of the MND.

12 EMILY CREEL: There may have been slight
13 revisions to the graphics to tailor it for this
14 presentation.

15 MAYOR DELGADO: Okay. Nancy, are you with us
16 on that question?

17 COUNCILMEMBER AMADEO: Yes. Now it is good.
18 The picture was so bad on the computer, I could not tell
19 what you were looking at. Now that you told me what you
20 are looking at, I found it, and I'm fine.

21 MAYOR DELGADO: All right. Thank you, Nancy.

22 COUNCILMEMBER BROWN: May I ask a question?

23 MAYOR DELGADO: Go ahead, Councilmember Brown.

24 COUNCILMEMBER BROWN: Yes. At the end of the
25 well, at the end of the thousand-foot line, how deep is

1 the well? I'm sorry, how deep does it go?

2 EMILY CREEL: It's currently estimated to be
3 between 250 and 300 feet below ground, below the mean
4 tide line, so below the surface of the ocean. That
5 would be, I believe, approximately 290 feet below the
6 ocean floor.

7 COUNCILMEMBER BROWN: Okay. Now, if it's a
8 thousand feet and it goes down at an angle of 19
9 degrees, is that the correct angle?

10 EMILY CREEL: Yes. But those numbers are not
11 set in stone, nor is the thousand-foot length. So those
12 will be determined when they are actually installing the
13 well, based on the material that's being excavated out
14 of the well bore hole.

15 COUNCILMEMBER BROWN: Okay. Now, some basic
16 trig calculations tell me that it could be as deep as
17 330 feet, based on that slant and the length. Would
18 that go through the aquitard at the bottom of the
19 180-foot aquifer?

20 EMILY CREEL: And that is exactly why they will
21 need to potentially adjust the length of the well as
22 they are actually doing the drilling. The applicant has
23 indicated that they do not want to get into that
24 aquitard or the 400-foot aquifer. So the maximum length
25 is a thousand feet, and they would like to get out as

1 far as they can. But if they do reach that clay layer,
2 at that point the well would be terminated so that it
3 sits at the bottom of the 180-foot aquifer.

4 COUNCILMEMBER BROWN: Okay.

5 EMILY CREEL: So if that happens prior to
6 reaching a thousand-foot length, that's where your
7 length would be shortened.

8 COUNCILMEMBER BROWN: All right. Thank you.

9 EMILY CREEL: Sure.

10 MAYOR PRO-TEM O'CONNELL: May I?

11 MAYOR DELGADO: Mayor Pro-tem O'Connell?

12 MAYOR PRO-TEM O'CONNELL: Thank you, Mr. Mayor.

13 On page 19 of the IS/MND it makes reference to
14 something Councilman Brown was bringing up, that the --
15 should I pause?

16 MAYOR DELGADO: That's okay. Sorry about that,
17 Nancy.

18 MAYOR PRO-TEM O'CONNELL: It states that the
19 actual length and angle of the slant well may be based
20 on preliminary site investigation and information
21 obtained during installation of the monitoring well
22 clusters.

23 And I think you made reference to just one
24 well. It's my understanding that you are going to have
25 four well clusters in approximately a maximum of three

1 bore holes in each of those clusters?

2 EMILY CREEL: Yes, that's correct. So that's
3 the second component of the project description. You'll
4 have the slant test well, which is the only well that
5 will actually pump water, and then the project also
6 proposes up to four clusters of monitoring wells, and
7 each cluster would have up to three separate two-inch
8 borings.

9 And the reason a cluster is proposed for those
10 monitoring wells is so they can do an individual boring
11 into each aquifer, and they would not have a single
12 monitoring well going through more than one. So within
13 a cluster, you'd have one monitoring well in the
14 dune-sand aquifer, you would have the second one into
15 the 180-foot aquifer. And not all the clusters will
16 have a third, but those that do will have a third
17 monitoring well down into the 400-aquifer to monitor
18 fluctuations within those aquifers separately.

19 MAYOR PRO-TEM O'CONNELL: Depending on the
20 amount of fluctuation, if any, in the bore holes, is
21 there any possibility, regardless of how remote, that
22 the actual slant well length and/or angle will be
23 modified in any way during the 24-month period? Or do
24 you know that?

25 EMILY CREEL: During the operational phase?

1 MAYOR PRO-TEM O'CONNELL: Yes.

2 EMILY CREEL: I don't think it would be
3 possible. It would be, you know, drilled and
4 constructed in place, and at that point it's -- it's
5 set.

6 MAYOR PRO-TEM O'CONNELL: So what is the main
7 purpose of the monitoring wells?

8 EMILY CREEL: The monitoring wells are to
9 facilitate the project's purpose, which is information
10 gathering on how those aquifers will react and to what
11 degree they will react to the pumping activities. So
12 those monitoring wells will be fitted with a sensor
13 which record real-time data on water quality levels.
14 They will also take data regarding water quality. So
15 that data will be constantly recorded by those wells,
16 and then the applicant proposes to digest it and put out
17 that data to the Hydrogeologic Working Group so that
18 they can update this model, the north Marina groundwater
19 model, which is the tool being utilized to analyze
20 impacts of the Monterey Peninsula Water Supply Project.

21 MAYOR PRO-TEM O'CONNELL: Does the applicant
22 digest the information and provide it to the other
23 party? Or is it an independent party that digests the
24 information?

25 EMILY CREEL: I believe the current proposal is

1 for the Monterey County Water Resources Agency to
2 provide oversight of the monitoring program. But that
3 information will be, you know, really in the form of a
4 data sheet, and that same data will go to -- it will be
5 publicly available. So the Hydrogeologic Working Group
6 and any interested agencies would be able to take that
7 data and give it to their experts.

8 MAYOR PRO-TEM O'CONNELL: And how -- I'm sorry.
9 How often will this be done, the monitoring and the
10 digesting of the information? Once a year? Once a
11 month?

12 EMILY CREEL: The applicant has recently
13 submitted to me a sort of preliminary monitoring plan,
14 and I think the proposal is to provide monthly reports
15 on water levels. Water quality data would be provided
16 on a quarterly basis, and that's because they have to
17 collect the samples, send them to a lab, wait for that
18 analysis to be done, and then sent back. So it's a
19 little more cumbersome of a process.

20 MAYOR PRO-TEM O'CONNELL: Thank you.

21 Thank you, Mr. Mayor.

22 MAYOR DELGADO: Thank you.

23 I think I kind of started us off on the wrong
24 protocol by asking my question. So if I and other
25 councilmembers can limit our questions to the burning

1 ones, if we think it will help the presentation, but
2 hold all the others until we are done with the staff
3 presentation. Thank you.

4 EMILY CREEL: Okay. So we talked about the
5 slant test well, we talked about the monitoring well
6 clusters. The two other major components in my mind are
7 the discharge system and the electrical connection.

8 So the project proposes to discharge water by
9 connecting to the existing ocean outfall pipeline that
10 runs just south of the project area and is currently
11 used by the MRWPCA, the Monterey Regional Water
12 Pollution Control Agency, to discharge treated
13 wastewater.

14 So what -- how that would happen is from the
15 slant test well insertion point in the slant test well
16 vault, a pipe, 12-inch diameter pipe, would be run
17 approximately 250 feet and connected and tied into the
18 outfall at the location of a junction structure which is
19 located here on the beach. So the junction structure is
20 basically a vault. It's fairly narrow, but it's very
21 deep, and it connects the land portion of the outfall to
22 the ocean portion of the outfall. And that's currently
23 subsurface. It would have to be excavated at the beach,
24 and the pipe would connect directly to the lid of that
25 structure.

1 And then the electrical connection that would
2 be made to power the well is basically what's
3 encompassing the rest of your project area. It would
4 run -- two-inch electrical conduit would be ran from the
5 wellhead vault over to near the entrance of the CEMEX
6 facility and tie into an existing PG&E electrical
7 connection over here at this location.

8 The dotted black line on the eastern portion of
9 the project site and also along the slant test well
10 area, that indicates a subsurface disturbance. So
11 within the CEMEX access road, the trenching of the
12 electrical conduit would be by surface excavation, but
13 through this active mining area on the eastern portion,
14 that would be done through horizontal directional
15 drilling.

16 And then on the top right corner of this
17 graphic you can see what we've identified as the marine
18 project area, and that basically includes the area
19 surrounding the discharge point. So the ocean outfall
20 extends approximately two miles offshore, and the last
21 about 1,100 feet of the outfall is fitted with a
22 diffuser, and the diffuser has two-inch exit portals
23 that alternate sides. I believe they are about five
24 feet apart, but they alternate sides. So that 1,100
25 feet actually is where the wastewater is discharged.

1 It's not like a spigot where all the water comes out at
2 the end.

3 So this is just a little more detailed graphic
4 on the west end of the project area. You can see this
5 is the wellhead vault and insertion point. This box
6 here indicates the drill rig size and location. The red
7 line is the electrical conduit. It would be connected
8 to an electrical panel. The electrical panel is unique
9 in that it's one of the few above-surface components of
10 the project. It would include a sampling location,
11 which is where they would collect their water samples,
12 and it would also house the alarm system. And then the
13 blue line represents the discharge pipeline to the
14 junction structure.

15 So the project history: California-American
16 Water has proposed development of a full-scale
17 desalination plant. It includes a subsurface intake
18 system as a water supply source, and it would serve as a
19 future water supply source for the Monterey Peninsula.

20 As a result of extensive agency communication
21 and a settlement agreement, Hydrogeologic Working Group
22 was established to develop a work plan for analyzing
23 that larger project, which I'll refer to as the
24 full-scale project.

25 The Hydrogeologic Working Group set out a

1 detailed work plan of steps that needed to be taken, and
2 the bore holes were the first step recommended by that
3 group, and the slant test well is the second. The
4 Hydrogeologic Working Group is made of geologic and
5 hydrogeologic experts that represent a wide range of
6 interests. So Cal-Am has an expert in the group, so do
7 the farm -- farm interests in the Salinas Valley
8 Groundwater Basin.

9 The project purpose is to develop and operate a
10 short-term pumping program to gather information on the
11 geologic, hydrogeologic and water quality
12 characteristics of the project site. That information
13 would be used to refine the north Marina groundwater
14 model, which is the tool being developed by the HWG to
15 evaluate short- and long-term impacts of that larger
16 full-scale project.

17 So this is a representative illustration. It's
18 not to scale. And we have some more information now
19 that outdates this graphic a little bit. We know that
20 the Salinas Valley aquitard is not present in this
21 location, or is present in only limited dust (phonetic)
22 areas.

23 The project would be conducted in three phases.
24 The first includes project construction that's expected
25 to take four to five months and would include

1 development of the slant test well and all related
2 infrastructure.

3 Project operation is the test pumping program,
4 and it would take place for up to 24 months. It
5 would -- the slant test well would pump 24 hours a day.
6 But it's not known at this time whether 24 months will
7 be necessary. I believe the Hydrogeologic Working Group
8 has said they anticipate the necessary information being
9 obtained in less than that time. So this is a maximum.
10 The actual amount of pumping is not yet known.

11 And then the third phrase is project
12 decommissioning. At the end of the pumping period, the
13 slant test well and all infrastructure would be
14 decommissioned in accordance with well standards.

15 So the MND, like Theresa mentioned, looked at
16 17 different issue areas. And for tonight, I've elected
17 to limit my presentation to hydrology, and that's
18 because we haven't received a lot of comments on other
19 issue areas. But I do have team members here that are
20 prepared to respond to any questions you may have on
21 other environmental topic areas.

22 So the main topic of discussion in the MND and
23 in response to comments with public -- with the public
24 has been hydrology and water quality. We looked at
25 several different potential impacts. The first was the

1 potential for the project to result in or increase the
2 rate of seawater intrusion. So this is a map of
3 historic seawater intrusion in the 180-foot aquifer. It
4 has been mapped by the Monterey County Water Resources
5 Agency. I have a similar map for the 400-foot aquifer.
6 So our project location I should have marked
7 here for you, but it's approximately here, and
8 approximately here. So in both aquifers, the area is
9 within the zone of seawater-intruded groundwater. So
10 our analysis found that the pumping associated with the
11 slant test well would not increase seawater intrusion,
12 and that's because the boundary for seawater intrusion
13 exists inland of where the pumping would occur. The
14 boundary of seawater intrusion is basically the boundary
15 where the pressure between saline-induced groundwater
16 and inland groundwater equalizes. So if the pressure of
17 an inland groundwater aquifer isn't sufficient to keep
18 that saline water at the shoreline and that pressure is
19 reduced, then the saltwater will begin to creep inland
20 and intrude into those areas of groundwater.

21 So in this case, if you have pumping on the
22 seaward side of the boundary line, if anything, that
23 pumping may tend to capture water that pulls the
24 boundary closer to the shore, but that's not expected to
25 be the case here. The pumping is not significant

1 enough.

2 We also considered well draw-down as a
3 potential impact of the project. This analysis was
4 interesting because this is one of the main goals of the
5 test pumping program is to give good evidence and
6 information on the effects of draw-down that would occur
7 as a result of the larger project. So these draw-down
8 contours were modeled based on the best analytical
9 modeling and information available from the
10 Hydrogeologic Working Group. It's all analytical
11 modeling really at this point. But the modeling is
12 estimating that almost the entire extent of draw-down
13 would be limited to that CEMEX site.

14 At the portion of the well screen, the
15 draw-down is estimated at about three and a half feet, I
16 believe. And at the furthest extent, the nearest well,
17 which is the CEMEX well near the 1 there, draw-down is
18 estimated at 0.2 feet, which is the smallest margin that
19 we measured. That's about two and a half inches.

20 MAYOR DELGADO: Show me where the zero down
21 would be expected.

22 EMILY CREEL: Sure. It's indicated by this
23 largest contour circle. So it just reaches the CEMEX
24 well, which is right about at Highway 1, but it doesn't
25 reach any of the other wells mapped here.

1 MAYOR DELGADO: Okay. What would be the
2 expected draw-down height, depth, at the Marina Coast
3 Water District facility at the end of Reservation Road?

4 EMILY CREEL: So the smallest increment that
5 was measured here, which is approximately two and a half
6 inches, is about half a mile from the location of the
7 slant test well screen. The Marina Coast Water District
8 site on Reservation Road is almost twice that distance.
9 So based on this modeling, the draw-down at that
10 location would likely be negligible, difficult to
11 measure.

12 So we identified the potential for well
13 draw-down. I think it's important also to remember that
14 this is draw-down of aquifers that are intruded with
15 seawater. So the loss is of water that is really
16 unusable for agricultural uses and potable water uses,
17 unless it is desalinated. However, we also recognize
18 that was also a point of public concern and that our
19 current information is not based on actual tests, it's
20 based on analytical modeling which necessarily has a lot
21 of assumptions built into it.

22 So we did recommend mitigation, and that came
23 in the form of a monitoring plan which would be required
24 for Cal-Am during pumping activities, they would have to
25 disclose publicly the results of their monitoring. And

1 in the event draw-down exceeded what is currently
2 anticipated, we did consider that to be a potentially
3 significant effect, and there would be a series of
4 mitigation measures that would come into play, including
5 paying for increased pumping costs for affected adjacent
6 well users, providing replacement water to adjacent
7 users. And if none of those measures are adequate to
8 reduce impacts, then there's also a requirement that
9 pumping be reduced.

10 So the MND considered erosion hazard and
11 shoreline erosion. We took a report that was prepared
12 by ESA, who is the environmental firm working on the EIR
13 for the larger desal plant project, and we hired a
14 coastal engineer to peer review that report for us, and
15 his professional opinion was that the report was very
16 conservative in that it probably overstated the effects
17 of coastal erosion, but that otherwise it would be
18 adequate for use in the MND, because impacts would not
19 be any greater than what was stated in that report.

20 So we mitigated the project based on that
21 report's findings. That report found a worst-case
22 scenario storm erosion hazard zone at this location,
23 this dotted black line. So the slant test well is
24 currently proposed within that -- within that hazard
25 zone. So our mitigation that we proposed was to remove

1 the slant test well and move it inland to another
2 location within the CEMEX access road so that the
3 wellhead vault and the wellhead insertion point was
4 outside of that hazard zone.

5 So it's a two-year project, so really
6 developing something for that period of time does not
7 create a huge risk that there will be a major storm
8 event that might expose the structure, damage the
9 structure, cause erosion on the beach, things of that
10 nature. However, the City's LCP has a policy that
11 prohibits development of any structures within that
12 coastal erosion hazard zone. So there was an exception
13 for coastal dependent infrastructure, which we felt the
14 discharge pipeline met, but we did require the applicant
15 to move all of the components inland. That mitigation
16 requirement will also affect the ultimate terminus of
17 the well, it's depth from the ocean floor, and it's
18 reach beyond the shoreline.

19 Other hydrology-related impacts that we looked
20 at were the potential violation of water quality
21 standards associated with the discharge. The project
22 would be required to operate under an RWQCB approval of
23 the discharge. This would either come through an NPDS
24 permit or a modification of the MRWPCA's existing permit
25 or some other discharge permit, and those permits

1 incorporate the permits of the California Ocean Plan.

2 Water samples taken during the bore hole
3 program also indicate that the water quality there that
4 would be retrieved would meet all of those applicable
5 standards.

6 We considered the risk of erosion, siltation
7 and stormwater runoff due to surface disturbance and
8 recommended standard mitigation measures for a drainage
9 plan, erosion control plan.

10 And several agencies raised a question about
11 the potential for cross-aquifer contamination as a
12 result of drilling through more than one aquifer. The
13 bore holes have indicated that the dune-sand aquifer and
14 the 180-foot aquifer are not separated by a defined
15 aquitard at this location. Water quality samples taken
16 between the two also reflect hydraulic connectivity
17 between those two, so there's not a great risk of
18 commingling between those aquifers at this location.
19 Cal-Am has also agreed to, upon decommissioning of the
20 well, you would basically seal it with cement, and they
21 would comply with any requirements of the Monterey
22 County Environmental Health Bureau, which is the agency
23 charged with implementing well standards.

24 So that's all we have on hydrology. Again, we
25 do have experts here if you have questions on other

1 issue areas, and we're available to answer any of your
2 questions you may have.

3 MAYOR DELGADO: All right. Councilmember
4 Amadeo, are you still with us? Could you hear
5 everything presented?

6 COUNCILMEMBER AMADEO: I heard it well enough.
7 I couldn't hear questions well, but her answers came
8 through relatively clear so I could kind of figure out
9 what the questions were.

10 MAYOR DELGADO: Okay. From now on we'll repeat
11 the questions and try and make sure you can hear those.

12 Did you have any questions, Nancy? Do you want
13 to start us off?

14 COUNCILMEMBER AMADEO: No, I don't have any at
15 this time. Thank you, Mr. Mayor.

16 MAYOR DELGADO: Okay. Emily, the question I'm
17 going to ask is one that was asked in my set of
18 questions to you. Thank you for answering those. I
19 haven't had a chance to look at these answers.

20 So, briefly, on page 104 of the Mitigated
21 Negative Declaration it says that there is a distinct
22 hydraulic separation between the dune-sand aquifer and
23 the 180-foot aquifer, but then a couple pages later it
24 says that the bore hole samples show the expected
25 hydraulic continuity between those two aquifers. So can

1 you explain that apparent discrepancy?

2 EMILY CREEL: Sure. This is an issue of poor
3 figure placement. The discussion you are referring to
4 on page 104 continues after this Figure 8 flood zone map
5 on page 106. And that discussion says:

6 "However, the Salinas Valley aquitard is
7 known to thin out as it approaches the
8 ocean in some areas, and recent exploratory
9 borings taken at the CEMEX site indicate a
10 lack of the confining layer at that location."

11 So the discussion at page 104 is more general
12 to the Salinas Valley Groundwater Basin, you know,
13 within the entire extent of the basin.

14 MAYOR DELGADO: Okay. So are there any
15 environmental risks to groundwater, given that there is
16 no aquitard between those two aquifers?

17 EMILY CREEL: I think the risks are -- it
18 depends on what risk you're talking about. The risk of
19 commingling or water quality impacts between the
20 aquifers is greatly reduced or eliminated because there
21 is hydraulic connectivity, so water quality between the
22 two is consistent or it's the same or similar.

23 The risk, however, of water fluctuations within
24 one aquifer as a result of pumping in the other aquifer
25 would be greater because there's no confining layer that

1 would limit the reach of those pumping activities into
2 the other aquifer.

3 MAYOR DELGADO: So if the two-year well
4 operations were drawing water out of the dune-sand
5 aquifer, it might cause water to leave the 180-foot
6 aquifer to compensate for that? So if I had a well in
7 the 180-foot aquifer, there might be draw-down in my
8 well because of the take-away in the upper aquifer, the
9 dune-sand aquifer?

10 EMILY CREEL: Basically, yes, I think you have
11 got it right. The well would capture, you know, a body
12 of water along the screened portion. And the purpose of
13 the slant test well is to really give the Hydrogeologic
14 Working Group a good indication of where exactly that
15 water would come from. But the lack of a layer between
16 those two aquifers, you are exactly right, would mean
17 that the water would flow more freely between the two.
18 So pumping within one aquifer would, you know, cause
19 effects in the other aquifer to be more -- more freely
20 felt.

21 MAYOR DELGADO: How many operational wells of
22 third parties might be affected by that? Would the
23 CEMEX wells potentially be affected by that, and that's
24 why you said there was a 3.5-foot draw-down at their
25 well potentially, maximum?

1 EMILY CREEL: No, that was at the location of
2 the slant test well. So the nearest well is the CEMEX
3 well, but it's located out towards the entrance of
4 the --

5 MAYOR DELGADO: That was 0.2-foot?

6 EMILY CREEL: That was the 0.2-foot.

7 MAYOR DELGADO: Okay. How about other wells
8 such as the Ag Land Trust?

9 EMILY CREEL: Those are located at a distance
10 that at this point, based on our best information, would
11 be outside of the area of draw-down.

12 MAYOR DELGADO: And how far away are those, do
13 you estimate?

14 EMILY CREEL: Let me take a look. So it looks
15 to be about half the distance again. From the slant
16 test well insertion point to the CEMEX well is
17 approximately 3,000 feet, I believe, 3,300, and the
18 closest off-site well is, you know, about half that
19 distance again.

20 MAYOR DELGADO: So it would be about a full
21 mile?

22 EMILY CREEL: No, I think it's about a half a
23 mile from the center of these contours to the farthest
24 contour out.

25 MAYOR DELGADO: So it's a half mile to Highway

1 1 and the furthest contour, and then how much further is
2 it from that furthest contour to the Ag Land Trust
3 nearest well?

4 EMILY CREEL: Just by eyeballing the graphic,
5 it looks to be about, you know, a quarter mile.

6 MAYOR DELGADO: So three-quarter mile total?

7 EMILY CREEL: Yes.

8 MAYOR DELGADO: All right. Can you address
9 sort of the big elephant in the room, the issue of
10 potential piecemeal CEQA analysis?

11 EMILY CREEL: Yeah, I will. And Kathy Jensen,
12 here, is also to provide legal support on that issue.
13 So what I think I would like to contribute to that
14 response is sort of a discussion of our process and our
15 decision to take the approach that we did.

16 We did recognize this as a unique situation
17 early on in the process. We did recognize that this
18 project was tied to and, you know, had no -- no real
19 separate purpose except to provide information for this
20 larger project.

21 So what we decided to do was prepare an MND
22 that looked at the slant test well only, and that was
23 based on a couple of reasons. The first is that the
24 City didn't have the authority to look at the larger
25 project. That role is being taken by the California

1 Public Utilities Commission who is the CEQA lead agency
2 for that larger project. So the City was, you know,
3 looking at an application that was submitted by Cal-Am.
4 And short of their ability to look at the larger desal
5 project, which was being looked at by the CPUC, we
6 decided that what we could do was consider this project
7 on its own and prepare an MND for the slant test well.

8 So in preparing the MND -- you know, the reason
9 CEQA disallows piecemealing is because if you parcel a
10 smaller component out of a project, it tends to minimize
11 environmental impacts. You're not looking at the whole
12 picture.

13 So what we did in the MND was try and disclose
14 to the greatest extent possible this project's
15 connection to that larger project. So we did disclose
16 that there was this larger project out there, that there
17 was a full desal plant also being planned and that this
18 project was intended to provide information used in
19 analysis of that project. We did identify the EIR that
20 was being prepared for that project by the CPUC.

21 All of that was in an effort to disclose that
22 we're not -- we're not parceling this off to minimize
23 impacts. This is a separate item with a separate
24 purpose, more of like a feasibility study that they
25 would use to then look at and get a better picture of

1 the larger project.

2 So the risk, I think, of piecemealing was
3 minimized in disclosing all of those facts, but it still
4 is a question. You know, it's a factual question.

5 MAYOR DELGADO: Okay. Could we get our CEQA
6 expert, Kathy Jensen to comment on this main issue?

7 KATHY JENSEN: I will say it's -- piecemealing
8 is a very tricky CEQA issue. And, fundamentally, we
9 start out with the definition of a project for CEQA
10 purposes is called out specifically in the CEQA
11 guidelines to include the whole of the project. And so
12 there is a fundamental principle in CEQA that when you
13 are looking at a project, you want to look at all phases
14 of it, all aspects of it, all components of it in one
15 document. But, you know, there are exceptions to that.

16 The guidelines go on to say that the term
17 "project" refers to the activity which is being approved
18 and which may be subject to several different
19 discretionary approvals by government agencies. The
20 term "project" does not mean each separate government
21 approval.

22 So the fact that -- we have got a very
23 complicated situation here. Normally piecemealing comes
24 up where you have a single entity and they are looking
25 at something and they are thinking about a future phase,

1 but they don't want to deal with that future phase, but
2 it's one agency and one CEQA review. Here we have two
3 separate lead agencies doing two separate activities
4 which adds a complication to this issue.

5 MAYOR DELGADO: Can you tell us the two
6 separate agencies and the two separate complications?

7 KATHY JENSEN: The two separate agencies are
8 the California PUC, which is the lead agency on what
9 we're calling the larger project, yet you have an
10 application that's come in to you, and you have a duty
11 to process that application and by default that makes
12 you the lead agency on this test well project.

13 The key question really is whether you feel --
14 because at the end of the day when you adopt a
15 resolution approving this project and approving the EIR
16 or disapproving it, you have to make the determination
17 that the document and the project description, which is
18 part of it, reflects your independent judgment. So it
19 really does come down to a judgment call and it's very
20 factually specific.

21 We've got complicating factors here. There are
22 many -- there are cases out there that involve oil
23 drilling where they have said that it's perfectly fine
24 to have exploratory drilling be analyzed stand-alone,
25 and that you don't have to look at the ultimate oil

1 production as part of the review of just the stand-alone
2 drilling. But those cases have -- are a little bit
3 different than our situation, because, number one, the
4 coring or the drilling hasn't ended up with a physical
5 infrastructure piece that ultimately, although it's not
6 part of this application, but could come back to you at
7 a future date with a request to convert, you know, that.
8 That's not before you, but you have to decide whether
9 that's reasonably foreseeable, whether the conversion of
10 this infrastructure to a permanent facility is something
11 reasonably foreseeable.

12 Is it reasonably foreseeable is the key test,
13 and specifically whether that bigger project that we've
14 been referring to, the -- is a reasonably foreseeable
15 consequence of this initial project. That is the key
16 test, and it's factual.

17 MAYOR DELGADO: Well, that seems like a
18 no-brainer; that, of course, it's foreseeable that if
19 these slant test wells work out the way everyone hopes
20 they do, then they would be turned into permanent wells
21 and they would be supplying the desal project.

22 KATHY JENSEN: Well, that is -- that is a
23 conclusion that you could reach. Some of the factors
24 that the courts have looked at is whether or not it's
25 the first step of a project, whether or not it has

1 independent utility, whether -- and, clearly, I don't
2 think this is something that would be done but for the
3 fact you've got the larger project. This -- if it was
4 strictly for informational purposes and the EIR, the
5 larger EIR, was not going to go forward until that
6 information was necessary, the courts have carved out
7 situations where it's not possible to look at the bigger
8 impacts of the bigger project.

9 So one question is, is it possible to look at
10 those impacts at this point in time? And I'll differ
11 with one thing that Emily said. She said you don't have
12 jurisdiction to look at those issues. You clearly don't
13 have jurisdiction to just take over a project and be the
14 lead agency, but it's a little different about whether
15 you can actually look at the impacts of that project.

16 So it would be -- it would be futile to say you
17 are going to go ahead and prepare a whole new EIR just
18 for this slant well project. The more rational thing
19 would be that you would -- if you felt like this was a
20 single project and should be treated as a single
21 project, I would presume that what you would do is
22 indicate that you would want to -- before you grant a
23 permit for these wells, you want to see the
24 Environmental Impact Report that covers not only the
25 test wells but also the impacts of the longer-range

1 project.

2 MAYOR DELGADO: Now, that would delay the whole
3 project --

4 KATHY JENSEN: It would delay it.

5 MAYOR DELGADO: -- until the EIR was completed.

6 KATHY JENSEN: Until the EIR was completed,
7 yes.

8 MAYOR DELGADO: So there would be an EIR
9 without test slant wells. And then after the EIR, we
10 would start on the test slant wells if we thought
11 that --

12 KATHY JENSEN: Yes. Presumably. They would --
13 they would -- presumably. What the test wells are
14 primarily for is not to get data for the draft EIR that
15 apparently is going to be released in February before
16 the test results from this is coming forward, it really,
17 as I understand it, is for feasibility purposes to
18 understand whether or not this location is feasible.
19 And they want to get that information as soon as
20 possible, which is why they have come to you with this
21 separate request.

22 So at the end of the day you've got to ask
23 yourself whether or not the larger project is a
24 foreseeable consequence of this initial project. And
25 you may want to -- you know, there's certain things that

1 certainly approval of this doesn't compel the approval
2 of the larger project, that's still independent. But,
3 you know, it is a complicating factor that there is this
4 infrastructure, millions of dollars worth of
5 infrastructure that is going in for these test wells.
6 And whether that's an initial step is -- you know,
7 towards a project that has not yet been assessed in a
8 full EIR is really a judgment call for you all.

9 MAYOR DELGADO: Okay. One last question before
10 we turn it over to other councilmembers. You are saying
11 that the key question: Is this a reasonably foreseeable
12 consequence of the larger project?

13 KATHY JENSEN: No. The other way around. Is
14 the larger project a consequence of the initial project?

15 MAYOR DELGADO: Right. So this is the first
16 time I've heard about this key question. It's not in
17 our MND, and it's not in our staff report before us. So
18 I want to ask your whole team, why haven't we heard this
19 key question before now?

20 KATHY JENSEN: Well, I think as Emily
21 explained, we're in a situation where you have received
22 an application, and I think they laid out exactly what
23 the scope of the review was going to be. And actually
24 until yesterday, we never received any comment or
25 concern about this issue.

1 MAYOR DELGADO: The Planning Commission's
2 denial or lack of approval was largely based on -- by
3 some commissioners' comments, piecemealing issue.

4 KATHY JENSEN: I don't recall that issue coming
5 up during the --

6 MAYOR DELGADO: Yes. It's in our staff reports
7 in the minutes of the Planning Commission meeting.
8 So -- okay.

9 Let's continue then. Mayor Pro-tem O'Connell?

10 MAYOR PRO-TEM O'CONNELL: Thank you, Mr. Mayor.

11 I just had some questions about the 1996
12 annexation agreement. It's been thrown back and forth.
13 But, as you know, Marina Coastal Water District says the
14 1996 annexation agreement applies in this matter. SWCA
15 Environmental Consultants say it doesn't because CEMEX
16 hasn't been annexed and, quote:

17 "A legal interpretation of the rights
18 and responsibilities under the 1996
19 annexation agreement is outside of the
20 CEQA document."

21 That's on page 172 of the staff report.

22 If CEMEX had been annexed to MCWD, would it
23 fall within CEQA at that time?

24 KATHY JENSEN: I don't -- I still don't think
25 that the agreement itself raises a CEQA issue. I think

1 it raises legal rights issues. And Deb Mall can also
2 address this because she is also very familiar with it.
3 But at her request, I reviewed it as well. And as I
4 read it, I don't believe that it has any CEQA
5 implications in and of itself.

6 There is the 500-acre-foot limit on the CEMEX
7 site, and I -- as far as I have been told, that they are
8 operating within that limit and there's nothing about
9 this project that takes them over that limit. So that
10 was the only question I had after reading it. But even
11 if they were to go over the limit, you know, there are
12 procedures to remedy that in the agreement, and they
13 really don't invoke the City. The City is not given the
14 responsibility to -- to pursue breaches of that. But
15 there is a contractual obligation on the part of the
16 property owner they are not to exceed that acre feet.

17 MAYOR PRO-TEM O'CONNELL: Well, the City is a
18 party to the agreement.

19 KATHY JENSEN: And they could enforce it.

20 MAYOR PRO-TEM O'CONNELL: Okay. In 2012, the
21 Marina Coastal Water Board passed a resolution, the
22 resolution is 2012-42, and they authorized, and I'll
23 read the wherefor right in front of me.

24 "The initial study under the California
25 Environment Quality Act, CEQA, and LAFCO,

1 the Local Agency Formation Commission,
2 application preparation required for
3 submittal of a LAFCO application for
4 annexation of the CEMEX property."

5 Do you know, does anyone from MCWD have any
6 knowledge of what the initial study is or how far along
7 the initial study is that was ordered by this
8 resolution? No one?

9 KATHY JENSEN: I have no knowledge of that.

10 MAYOR PRO-TEM O'CONNELL: Okay. The bottom
11 of -- well, actually, on page 3 and 4 of the initial
12 study of the MND, it states, and I'll quote:

13 "If there is a disagreement among expert
14 opinions supported by facts over the
15 significance of an effect on the
16 environment, the lead agency," Marina in
17 this case, "shall treat the effect as
18 significant and shall prepare an EIR."

19 Is it your opinion that there isn't a
20 difference in expert opinions at this point?

21 KATHY JENSEN: I really don't think that we've
22 seen -- if you accept the scope of the MND as being the
23 test well and test well only and not covering the larger
24 project, I haven't seen anything by way of experts'
25 testimony that disputes the factual determinations that

1 have been made about the impact. I haven't seen any
2 expert reports, so I don't think there is a dispute as
3 to that issue.

4 MAYOR PRO-TEM O'CONNELL: Okay. On page 3 of
5 the same document I quote again:

6 "If a lead agency is presented with a
7 fair argument that a project may have a
8 significant effect on the environment, the
9 lead agency shall prepare an EIR even though
10 it may also be presented with other
11 substantial evidence that the project will
12 not have significant effect."

13 So let's assume that you are correct or your
14 opinion is that substantial evidence has been presented
15 which will prove that the -- there's not a significant
16 effect.

17 KATHY JENSEN: That's not the test. The test
18 is if there's any fair argument --

19 MAYOR PRO-TEM O'CONNELL: I haven't finished my
20 question. Excuse me.

21 KATHY JENSEN: Okay.

22 MAYOR PRO-TEM O'CONNELL: So is it your
23 understanding or your opinion that there has not been a
24 fair argument presented that there is an adverse --
25 significant adverse effect to the environment from this?

1 KATHY JENSEN: That's my -- again, if you are
2 accepting the scope, yes, that is my opinion. I haven't
3 seen anything disputing the analysis that was done
4 relating to this. I have to say we got a lot of stuff
5 at the very end when I was flying up here and I haven't
6 had a chance to read everything, but certainly
7 everything through yesterday, I --

8 MAYOR PRO-TEM O'CONNELL: I'm sorry. Go ahead.

9 KATHY JENSEN: I did not see anything.

10 MAYOR PRO-TEM O'CONNELL: How long has this
11 process been in the works?

12 EMILY CREEL: July 12 initially.

13 KATHY JENSEN: July 12?

14 EMILY CREEL: August 2012.

15 KATHY JENSEN: August 2012.

16 MAYOR PRO-TEM O'CONNELL: What was the
17 significance of letters that are dated back in 2010,
18 2008?

19 KATHY JENSEN: I think people are submitting
20 them just because they related to a previous project
21 that somehow is tied. I personally don't think that
22 comments made on another project are substantial
23 evidence of an impact of this project.

24 MAYOR PRO-TEM O'CONNELL: Okay. Well, when I
25 was looking at it, I saw comments in letters from

1 previous years that seemed to be applying to this
2 particular one.

3 But on page 21 of the IS/MND it states, and I
4 quote:

5 "Drilling of the wells would require
6 approximately 15,000 gallons of water
7 per monitoring well and 10,000 gallons
8 of water per day for the slant well over
9 an approximately 46-day drilling period."

10 Is the 15,000 gallons of water per monitoring
11 well, is that each day for 46 days? Or is that just one
12 day for each one?

13 KATHY JENSEN: That's the total time period.

14 MAYOR PRO-TEM O'CONNELL: Per well?

15 KATHY JENSEN: Per well.

16 MAYOR PRO-TEM O'CONNELL: So if there were 10
17 wells, it would be 15,000 times 10?

18 KATHY JENSEN: Correct.

19 MAYOR PRO-TEM O'CONNELL: And the 10,000
20 gallons of water per day for the slant well, how long
21 would that go on? Just for the 46 days?

22 KATHY JENSEN: Correct.

23 MAYOR PRO-TEM O'CONNELL: Thank you.

24 Thank you, Mr. Mayor.

25 MAYOR DELGADO: All right. Thank you, Emily

1 and Frank.

2 Councilmember Morton?

3 COUNCILMEMBER MORTON: Yes. I -- thank you.

4 I want to go back to this piecemealing, and you
5 made a couple of statements. First of all, Emily
6 referred to this in her -- I believe it's her second
7 slide. She says Cal-Am has a proposed development of a
8 full-scale subsurface intake water project. That's the
9 caveat. She said next, the bore holes were the first
10 step. She said next, the test slant well is the second
11 step.

12 What more do you need to look at in this
13 environmental process to not recognize that those are
14 two subparts of a bigger, greater project?

15 I'll quote what you have to say and ask you
16 this question. You said one of the --

17 MAYOR DELGADO: Do you want an answer to that
18 first question, or is this hypothetical?

19 COUNCILMEMBER MORTON: I'm just going through.
20 That was the facts that we've been given today.

21 MAYOR DELGADO: So do you want an answer to
22 that question?

23 COUNCILMEMBER MORTON: Yeah. Go ahead and
24 answer. I'm sorry.

25 KATHY JENSEN: Well, I would say the purpose of

1 the bore holes was truly just to get information for
2 that EIR that's being done and they weren't something
3 that is leaving behind a component of a project. So I
4 actually viewed those separately, and I don't think
5 there really is an issue as to those.

6 And, in addition, if my memory serves me right,
7 the ultimate determination was that there was no permit
8 needed because it was within the scope of the previous,
9 but we won't reopen that tonight. So I don't know if
10 that answers --

11 COUNCILMEMBER MORTON: So I'm looking at page 6
12 of the Mitigated Negative Declaration that says:

13 "It is possible that if the MPWSP is
14 successfully developed, Cal-Am will seek
15 to have the slant test well converted into
16 a permanent facility and connected to the
17 subsurface intake system as one of several
18 permanent subsurface intake wells."

19 Doesn't that statement make it foreseeable that
20 this is part -- that the outcome of these slant test
21 wells is going to be a permanent well? Doesn't that
22 statement in your Mitigated Negative Declaration, the
23 assumption and statement of facts by your expert, make
24 it necessary for us to conclude that if this is -- comes
25 up with the results they want, it's in the right place,

1 that it will not be deconstructed and it will be a
2 permanent well?

3 KATHY JENSEN: Well, I suppose you could try to
4 come up with some requirement that it -- you know, that
5 it absolutely had to be deconstructed and that it cannot
6 be used again. I don't know if that's feasible or not
7 or if this council could even require something that
8 then a subsequent council could not go back and revisit.
9 So -- but --

10 COUNCILMEMBER MORTON: I have read --

11 KATHY JENSEN: -- in terms of -- I want to
12 explain that we really did try to fully disclose the
13 issue and that, you know, we wanted to not hide the ball
14 in any way, shape or form, and to also clearly specify
15 the scope of the analysis that was being done, because
16 in all honesty, that was really the best we could do,
17 given where we are.

18 The City's really not in a position to go out
19 and get all the information about the bigger project and
20 include that in this document. Really if -- if this
21 board -- council feels like it's one project, the
22 obvious result is to wait for the bigger EIR and have
23 the benefit of that. But it really is a factual -- and
24 I'll tell you there's no cases that deal with this
25 specific fact pattern of two EIRs going, and the thing

1 that's the testing, not having enough impacts to require
2 a neg dec. And there is a categorical exemption for
3 information gathering, but it wouldn't apply here
4 because of the sensitive habitat issues and some other
5 things. So that wasn't an option.

6 So, I mean, in defense of the team, you know --
7 COUNCILMEMBER MORTON: I'm not trying to -- I'm
8 looking at what statements are actually made and looking
9 at the facts. And you have set forth, as I understood
10 it, that it's our -- as a council that we're required to
11 exercise an independent review and judgment in looking
12 at whether or not to grant this permit.

13 KATHY JENSEN: That's one of the required
14 findings.

15 COUNCILMEMBER MORTON: Yes. And you said one
16 of the tests that we could use is what is the
17 independent utility, and you just have answered the
18 question about an independent utility of the bore holes
19 in a weird round-about way, but what is the independent
20 utility of a slant test well, these slant test wells?
21 What is, in your opinion, the independent utility?

22 KATHY JENSEN: Well, I don't know that it's
23 independent. But the utility, as I understand it, is to
24 determine the feasibility of this location.

25 COUNCILMEMBER MORTON: And how is that

1 independent from the full project? If it's determining
2 the feasibility for the project at this location, how?
3 I thought it was rhetorical. Thank you. The other --

4 MAYOR DELGADO: Let me jump in here, just
5 because I want to restate one of your questions.

6 You said that a key question is whether the
7 larger desal project is a reasonably foreseeable
8 consequence of the test slant wells. Okay. And what
9 Councilmember Morton pointed out is that on page 6 it
10 says:

11 "It is possible that if the Monterey
12 Peninsula Water Supply Project is
13 successfully developed, Cal-Am will seek
14 to have the slant test well converted into
15 a permanent facility and connected to the
16 subsurface intake system as one of the
17 several permanent desal project subsurface
18 intake wells."

19 Doesn't that mean that it's reasonably
20 foreseeable that the larger project will result from
21 these test slant wells?

22 KATHY JENSEN: I think you can make that
23 determination. That's a fair assessment.

24 MAYOR DELGADO: Okay. So I don't bring this up
25 to tank the project, because I want this project to

1 progress. But I know that we have to do this right, and
2 we can't just will it to happen even if it's not proper
3 by CEQA. But this key question that you have brought up
4 tonight seems to be a no-brainer in the answer.

5 Gail, I interrupted you. Thank you for letting
6 me do that.

7 COUNCILMEMBER MORTON: No. Thank you. You
8 reiterated --

9 MAYOR DELGADO: Please go ahead. Did you have
10 others?

11 COUNCILMEMBER MORTON: My attention was taken
12 to a California Supreme Court case of Laurel Heights
13 Improvement Association versus the Regents of University
14 of California. Now, here is where the university
15 wanted -- they acquired a building in San Francisco that
16 was, I don't know, a bazillion feet. But they did an
17 EIR because they were going to only occupy one-third of
18 the building. So they did a limited EIR on this
19 one-third of the building. They said we don't need to
20 do the EIR on occupancy of the other two-thirds because
21 we're not going to take that over for 10 years. It's
22 not going to happen immediately.

23 Now, that is something, a building, pretty
24 concrete, not water, not boring holes under the ground
25 out in the sand, a building. And the California Supreme

1 Court said, no, that is piecemealing a project. That is
2 the law in the State of California, as I understand it.
3 I'm not an attorney. I'm just using my common sense up
4 here. I'm an attorney, but not your kind of attorney.
5 I do family law.

6 But my common sense is that --

7 KATHY JENSEN: You handle the tough cases.

8 COUNCILMEMBER MORTON: I do. But my common
9 sense says that if an EIR was required for the totality
10 of a building, 384,000 feet -- that's how much it was,
11 384,000 square feet -- that you had to do the EIR at the
12 beginning of the project.

13 And the Supreme Court reasoned that deferring
14 the EIR to a later date, when bureaucratic and financial
15 momentum would make it difficult to deny the expansion,
16 violated CEQA. And that's the point that saying that
17 the wells, the final wells, are a foreseeable outcome.

18 It's not that anybody is trying to stop the
19 project. What we're trying to say is you have to do the
20 work now. Don't go down a path where you haven't looked
21 at the totality of the environmental impacts, and that's
22 what we're trying to get to today.

23 You agree that's the law?

24 KATHY JENSEN: That is the law. You are
25 supposed to look at the totality of a project.

1 COUNCILMEMBER MORTON: Thank you.

2 MAYOR DELGADO: Was that an expert -- did you
3 just find that, or is that in a comment?

4 COUNCILMEMBER MORTON: It's in a -- I got a
5 bazillion -- we got a bazillion letters that we've all
6 read.

7 MAYOR DELGADO: Earlier we heard there was not
8 expert opinion. What document were you reading from?

9 COUNCILMEMBER MORTON: I am reading -- that
10 cite came --

11 MAYOR DELGADO: From the MWCD's CEQA 17-page
12 letter?

13 COUNCILMEMBER MORTON: Remy, Moose & Manley, a
14 letter dated September 3rd, 2014.

15 MAYOR DELGADO: That came in today.

16 COUNCILMEMBER MORTON: But I did go Shepardize
17 the case. It is still current, valid law.

18 KATHY JENSEN: Oh, yes.

19 COUNCILMEMBER MORTON: I read the case. I've
20 read -- I've done my --

21 KATHY JENSEN: It's the key case. It's the key
22 case on piecemealing.

23 COUNCILMEMBER MORTON: Thank you very much.

24 MAYOR DELGADO: Some of us are a little slower.
25 I'm a little slower here catching up on what was just

1 discussed.

2 Can you summarize what relevance you think you
3 saw in this discussion that just happened in the last
4 two minutes?

5 KATHY JENSEN: Well, I think if the council
6 determines that this is a component of the larger
7 project, then you would treat it that way in terms of
8 you wouldn't -- you wouldn't analyze it or you wouldn't
9 accept the negative dec based on that. You would end up
10 rejecting it and rejecting the project, if that's the
11 way you feel, because you wouldn't have -- if your
12 determination is that it is a part of the larger
13 project, then the negative dec before you does not
14 analyze the impacts of that project. You don't have the
15 CEQA analysis to render an opinion in favor of the
16 project. You would need to deny the project at this
17 point in time and wait until the full EIR is completed.

18 MAYOR DELGADO: Okay.

19 COUNCILMEMBER MORTON: I did have one more
20 question.

21 In this, our staff report, there was
22 reference -- the response by the agency to one of the
23 letters was that it was anticipated that CEQA -- and one
24 of the reasons that they did respond in this Mitigated
25 Negative Declaration was that there's a contemplation

1 they could not do a study of five years to see what the
2 water level was, to test what the current status is,
3 because five years would be too long and the comment
4 references that this process is contemplated to be done
5 within, like, 180 days is what they use.

6 I want to know this -- and they said there's
7 some urgency to get this done. Is urgency an exemption
8 to CEQA?

9 KATHY JENSEN: Only in situations where you
10 have riots or some natural disaster. A lot of times
11 when you have an urgency situation, you might have
12 legislation that comes out of Sacramento that exempts a
13 project. But urgency in and of itself, you know, absent
14 some sort of natural disaster where you just need to go
15 out and do something, demolish a building, and you don't
16 have time to do the review, is not an exception.

17 MAYOR DELGADO: So if Monterey threatens a
18 riot, we can claim urgency?

19 KATHY JENSEN: Maybe that would work.

20 COUNCILMEMBER MORTON: Thank you for your
21 answers and for explaining.

22 COUNCILMEMBER AMADEO: Mr. Mayor, can I ask a
23 question?

24 MAYOR DELGADO: One moment, Nancy.
25 Councilmember Brown has been patient, and then we'll go

1 to you.

2 COUNCILMEMBER AMADEO: Thank you.

3 COUNCILMEMBER BROWN: Thank you, Mayor.

4 So I am also an attorney, but not your kind of
5 attorney. So my understanding is if there's a fair
6 argument for significant environmental effect, then an
7 EIR is required.

8 KATHY JENSEN: Yes.

9 COUNCILMEMBER BROWN: And in determining
10 whether there is a fair argument, we're supposed to
11 consider the entire record, not merely the proposed
12 negative declaration, correct?

13 KATHY JENSEN: That's correct.

14 COUNCILMEMBER BROWN: And that entire record
15 would include all the written --

16 KATHY JENSEN: Comments.

17 COUNCILMEMBER BROWN: -- all the written
18 comments and even oral comments from the public.

19 KATHY JENSEN: Correct.

20 COUNCILMEMBER BROWN: And so suppose there is
21 expert testimony or expert opinion that there would be a
22 significant negative environmental effect weighed
23 against other expert opinion that says the opposite.
24 Are we supposed to weigh that evidence? Or are we
25 supposed to just say as if in, for example, a summary

1 judgment motion, well, there is a conflict here, and
2 therefore because of the conflict, then an EIR is
3 required?

4 KATHY JENSEN: It's very much like that, that a
5 summary judgment -- which is my summary judgments are
6 hard to get -- but it's very much like the summary
7 judgment standard if there is a dispute in evidence.
8 But you do get to determine whether the evidence is
9 credible.

10 If you have an expert in an area giving
11 testimony outside his area, that wouldn't be substantial
12 evidence. But if you have an expert in a field giving
13 valid -- or giving testimony, the fact that you have a
14 competing one that negates that does not mean that you
15 are -- in the neg dec land you are forced into an EIR in
16 that setting, because that expert's testimony is
17 considered substantial evidence, even if disputed. It's
18 only when you have an EIR that you can have the battling
19 experts, and you're entitled to rely upon one over the
20 other, and you will be supported as long as, you know,
21 you can choose at that point in time.

22 COUNCILMEMBER BROWN: Okay. But what you are
23 telling me then, I think I'm hearing, is that aside from
24 finding that public testimony or any testimony or
25 anything in writing is not credible because the person

1 doesn't have expertise in that field, aside from that if
2 there's a conflict, then it goes to an EIR rather than
3 approving the Negative Mitigated Declaration, correct?

4 KATHY JENSEN: Correct.

5 COUNCILMEMBER BROWN: And you say, well, it's
6 like summary judgment and summary judgments are hard to
7 get. Can you also say that what you're asking us to do
8 is kind of hard to get?

9 KATHY JENSEN: Well, it is hard. But I think
10 that, again, looking at the impacts of the test well
11 alone, I think they have gotten there. You know, I
12 don't know what we're going to hear tonight. There may
13 be expert testimony that's going to be delivered.

14 I will say an attorney letter that just cites
15 cases, that's not substantial evidence.

16 COUNCILMEMBER BROWN: I know. I understand.

17 KATHY JENSEN: So I just wanted that to be
18 clear.

19 COUNCILMEMBER BROWN: I understand that.

20 KATHY JENSEN: So I haven't seen any
21 declarations or any other expert reports that come in
22 that raise issues with regard to the slant well impacts
23 in and of itself.

24 COUNCILMEMBER BROWN: Well, the night is still
25 young.

1 KATHY JENSEN: Yeah. Well, I'm not sure I
2 agree with that, but Duran Duran is probably finished by
3 now.

4 COUNCILMEMBER BROWN: All right. Thank you
5 very much.

6 MAYOR DELGADO: All right. Thank you, David.
7 Nancy, go ahead, if you are with us.

8 COUNCILMEMBER AMADEO: Thank you. I'm still
9 with you.

10 I appreciated this discussion and with the
11 questions. The issue of the piecemeal part is obviously
12 very important, but I was interested in the example that
13 Councilmember Morton used of this building in San
14 Francisco.

15 There was an assumption of the results in
16 there. You already knew that the result was going to be
17 in 10 years they wanted the whole building, they wanted
18 to occupy. With this, my question would be there isn't
19 an assumption of the results because it's a test, you
20 are looking for information. So if you are looking for
21 information, the reality is the information could be
22 something so that you can't use this site.

23 Does that negate in any way the idea of
24 piecemealing? In other words, there is no assumption
25 associated with this. Yes, it could lead to a project.

1 Then again, it could lead to no project at all.

2 KATHY JENSEN: Again, this is a factual
3 question that it's hard to wrap your arms around. The
4 issue of -- if this was a test that didn't involve any
5 infrastructure that would ultimately become the end
6 product, I think the answer would be a lot easier. If
7 we knew with 100 percent certainty that there would be a
8 decommissioning of the facility, then I think the answer
9 is easier.

10 But the potential for return, you know, them
11 coming back I think makes it a little -- makes it a
12 tough issue.

13 COUNCILMEMBER AMADEO: Thank you.

14 MAYOR DELGADO: All right. Thank you, Nancy.

15 I have more questions, but I'll try to ask them
16 throughout the night. Better to let the public start to
17 speak.

18 And this is a good time for us to disclose any
19 conversations or information that we gathered from other
20 sources not in front of us tonight.

21 But first I wanted to go over the various
22 documents that we have before us that have come in too
23 late to be part of our council packet, or at least are
24 not part of our council packet.

25 The first one is an e-mail from Margaret Davis,

1 August 31st, basically demanding a full EIR.

2 The second one came in today from the Ag Land
3 Trust with several points respectfully requesting that
4 the appeal before us tonight be denied.

5 A third one is the one from our own
6 Environmental Consultants, SWCA, responding to my nine
7 questions via e-mail. I sent those, and there are
8 responses to those. Thank you for that.

9 The fourth one is the Monterey County
10 Hospitality Association August 26th letter recommending
11 approval of the Cal-Am request tonight.

12 The fifth one is the Hyatt Regency's petition
13 that was distributed to employees who live in Marina and
14 work for the Hyatt Regency urging us to do the right
15 thing, approve the Cal-Am permit.

16 The next, the sixth one is an August 29th SWCA
17 letter responding to MCWD questions posed on August
18 22nd. That might also be in our staff report.

19 The seventh is from the Monterey Commercial
20 Property Owners Association supporting Cal-Am's request
21 tonight.

22 The eighth is the Coalition of Peninsula
23 Businesses signed by Joan -- John, sorry -- John Nargii,
24 co-chair of that, and Mike Zimmerman, co-chair, also
25 urging us to approve the permits for Cal-Am's water

1 project test wells.

2 The next is from Chris Shake Enterprises. He
3 apparently is a Monterey Peninsula employer of over 400
4 folks, and he requests our support and approval of the
5 Cal-Am project test wells.

6 The next one is one we just spoke about. It's
7 a 17-page letter, basically a CEQA legal counsel
8 employed by MCWD, Marina Coast Water District, that is,
9 with many points basically leading to the request for us
10 to do other than approve the permit as it is before us.

11 Then I have an undated, unsigned nine reasons
12 to -- nine reasons to oppose the approval of the
13 two-and-a-half-year slant test well. I assume it's from
14 Public Water Now, but it's not?

15 UNIDENTIFIED MALE: It's not.

16 COUNCILMEMBER MORTON: Who is this from? It
17 looks like this.

18 UNIDENTIFIED: It's not from Public Water Now.

19 MAYOR DELGADO: Does anybody know who this is
20 from? Ron Weitzman for Water Plus. I get Water Plus
21 and Public Water Now mixed up. Sorry about that.

22 The next one is from Public Water Now regarding
23 Cal-Am's growth strategy revealed -- referred to as
24 tuck-ins.

25 And the final that I have seen is from the

1 CEMEX, the property owner of the proposed slant test
2 well project basically demanding that we revise the
3 Mitigated Negative Declaration in six different ways.

4 And so that's -- that's what we have before us
5 that are part of the record, besides what's in our staff
6 report. Then personally I want to mention that I've had
7 a couple of conversations initiated by some elected
8 officials -- Sam Farr, Mark Stone -- regarding the
9 politics of tonight, which is not really about the
10 environmental impacts.

11 Cesar Lara of the Monterey Bay Central Labor
12 Council about the union issues; Julie Packard regarding
13 aquarium concerns; Tom Moore regarding -- he is the
14 president of the Marina Coast Water District --
15 regarding their concerns; Luana Connelly, Softwick,
16 Malick (phonetic) regarding environmental impacts; and
17 Jason Burnet, a couple of conversations I had with him
18 regarding the timing of tonight's meeting, the date,
19 that is; and then George Riley regarding the politics
20 and the environmental impacts of this project.

21 Does anyone else have any disclosures they
22 would like to make?

23 Mayor Pro-tem O'Connell?

24 MAYOR PRO-TEM O'CONNELL: Thank you. Yes, I
25 received, similar to the mayor, numerous e-mails from

1 people in support of and people against this appeal. I
2 have spoken to or received e-mails from two of the
3 Planning Commission members. I did, in fact, watch the
4 Planning Commission.

5 I have received communications from two of the
6 Marina Coast Water District members, Mr. Moore, Thomas
7 Moore, being one of them. At one point the mayor asked
8 me if I had been -- started reading the IS/MND, and I
9 looked at him and said "Yes," and that was the extent of
10 that conversation.

11 And I haven't spoken to anyone else on the
12 Council or anyone else that I can recall.

13 I have received numerous e-mails, to be honest
14 with you, that I haven't opened, because you can know
15 who the e-mail is coming from and you know what position
16 it's going to take. And I prefer to do the research on
17 my own, which seems to give me a much more objective
18 point of view on things.

19 So I think I've covered pretty much everyone.
20 I may think of someone else tomorrow morning or
21 something. Thank you.

22 MAYOR DELGADO: Thank you, Frank.

23 Councilmember Brown?

24 COUNCILMEMBER BROWN: I, too, received numerous
25 e-mails. I opened them all. I did not reply to any of

1 them. I spoke -- I spoke to one member of the Planning
2 Commission very briefly. I spoke to no one on the City
3 Council about this. Thank you.

4 MAYOR DELGADO: All right. Thanks, everybody.

5 So let's go ahead and open the public hearing
6 and take any testimony from the public. I'm sorry, but
7 why don't we start with the project proponent. Is there
8 someone representing the project proponent that would
9 like to come up?

10 Ian Crooks. And we'll give you 10 minutes,
11 Ian. So about nine o'clock or just before nine o'clock
12 we'll ask you to wrap up.

13 IAN CROOKS: Yes. Thank you. I would request,
14 if it would be better for you to reserve some of my time
15 to address the questions as they come from the public.
16 I have with me tonight experts, counsel, and also CPUC
17 is here as well, so they can talk to the EIR and some
18 piecemealing as well. And I have some representatives
19 from the Hydraulic Working Group as well, so we could
20 tackle those comments.

21 So it may be best that I reserve my time for
22 them.

23 MAYOR DELGADO: Sure. Okay.

24 IAN CROOKS: Okay.

25 MAYOR DELGADO: All right. Thank you, Ian.

1 So except for Ron, because he is special,
2 everybody else maybe line up and come up one at a time.
3 Thanks, Ron.

4 RON WEITZMAN: One, two, three, go?

5 I'm Ron Weitzman with Water Plus. Thank you,
6 Mayor Delgado and Councilmembers, for listening to us.
7 It's going to be a long evening -- has been a long
8 evening.

9 We've seen this picture before. The report on
10 the study that this council graciously allowed Cal-Am to
11 make with their bore holes contained 76 references. Not
12 one of them included the 2009 study by Martin Fenney,
13 who is a hydrogeologist who worked on the bore hole
14 study, and it was a study that almost mirrored exactly
15 what this study and what this proposal -- proposed study
16 is supposed to do.

17 That study by Martin Feeney in 2009 was the --
18 was to determine whether there was a subsurface source
19 well possibility or option on the neighboring Fort Ord
20 just south of the CEMEX property.

21 I want to show you the CEMEX property. That's
22 8,100 feet along the ocean there. It's in blue. You
23 can see the -- and I will go back to the original.

24 I'm not going to cover all these nine reasons
25 here. I'm just going to do reasons 1 and 2 and 8 and 9.

1 Now, the 2009 study differed from the bore hole
2 report. Martin Feeney set up some criteria at the
3 beginning, and if they found certain things, they were
4 go/no go criteria. They found out that if one of these
5 criteria or any of these criteria was not met, that the
6 project would be dead.

7 The first most important criteria was the
8 existence of an aquitard between the dune sand aquifer
9 and the 180-foot aquifer. Having found none on Fort
10 Ord, which was adjacent to CEMEX, they said that
11 vertical wells into the dune sand aquifer were a no-no
12 because, as the mayor said, drilling for those would be
13 drilling from the 180-foot aquifer or below, and the
14 Agency Act forbids that, because that's part of the
15 Salinas Valley Groundwater Basin.

16 So then he proceeded to look at slant wells on
17 Fort Ord, and he rejected slant wells because the
18 Coastal Commission requires a setback of at least 300
19 feet from the shore. And if you start a slant well --
20 and he said the minimum -- Cal-Am's been talking about
21 19 or 20 degrees, the minimum degree is 22 and a half
22 degrees. So satisfying that minimum requirement would
23 require you to go into at least one of the aquifers, the
24 180-foot aquifer, and from what Cal-Am is now proposing,
25 it would get into another aquifer. Otherwise you'd be

1 in an aquitard and you couldn't get any water. So those
2 are two sufficient reasons to deny the project.

3 So why -- why are Cal-Am and the farming
4 interests pursuing the project? Cal-Am was doing it
5 just to show the State Water Board due diligence so it
6 will relax its CDO deadline.

7 I didn't know that ratepayers were in the
8 business of acting like a charitable foundation to fund
9 research. Four hundred million dollars of research is
10 what you're asking Monterey Peninsula ratepayers to pay
11 for with this project.

12 They make friends with the mayors who are in
13 their jobs temporarily, but they won't make friends with
14 the ratepayers if you approve this proposal. So thank
15 you very much.

16 MAYOR DELGADO: Thank you very much, Ron. And
17 that was Ron Weitzman. All right. Are you Ron
18 Weitzman?

19 RON WEITZMAN: I think I am.

20 MAYOR DELGADO: Okay. I just want to be sure.
21 You looked at me like, uh, that's not my name, and I
22 wanted to make sure our City Clerk knew that.

23 CHANDLER ROLAND: Chandler Roland, 179 Palm
24 Avenue. I'm speaking for the 20,000 residents of
25 Marina.

1 And I'm concerned about a couple of items:
2 One, what is it going to cost the 20,000 residents of
3 Marina in relation to these two steps that we're taking?
4 Already we have got staff time for the last two months
5 as far as our own people here in the city. How long do
6 we go on this in relation to their salaries going into
7 this pot? What is the benefit to these 20,000 citizens
8 in regards to the test we're talking about now?

9 And what is the benefit on the second step in
10 regards to a possible desalinization plant? Are our
11 citizens gaining financial benefit in regards to this in
12 the end? Are they gaining more water in the end? Is it
13 going to cost them more than what it's costing now as
14 far as water? Will businesses be in a position where
15 they themselves will be charged a greater amount of cost
16 for water because of what we're doing or starting today?

17 Cal-Am's reputation, at least in the local
18 media, has not been great. I am concerned about large
19 organizations coming to us, like developers, and
20 explaining to us that this is going to be a benefit for
21 us.

22 CENTEX worries me. This is a -- as I said, a
23 Mexican firm. What financial benefit are they receiving
24 from Cal-Am or anyone else in regards to our intrusion
25 of their land? What position are they taking under the

1 circumstances in regards to these two issues, these two
2 steps?

3 And I just noticed on the previous gentleman's
4 chart here that CENTEX is not willing to sell any land.
5 How does that affect the long-term issues that we're
6 talking about?

7 Thank you.

8 MAYOR DELGADO: All right. Thank you, Phil
9 [sic]. And we're going to get to all -- we're going to
10 get to answering all the questions when the comment
11 period is over.

12 JONAS MINTON: Good evening, Mayor and
13 Councilmembers. Jonas Minton, Senior Planner to the
14 Planning and Conservation League. We're that statewide
15 organization that has been watch-dogging and frequently
16 litigating on CEQA for over 40 years. We very much
17 appreciate the City of Marina's attention to your
18 environment and legal compliance.

19 My comments are also informed by my service as
20 chair of the State of California's Desalination Task
21 Force where we look at the issue of CEQA compliance.
22 But I think you put your finger on the key issue: The
23 piecemealing reasonably foreseeable question.

24 Let me give you one precedent that has not been
25 discussed. I had the opportunity to serve for four

1 years as Deputy Director of the California Department of
2 Water Resources. In that function, I oversaw the
3 investigation of the major new dam sites for California.
4 You will probably hear more about those with upcoming
5 bond elections and so forth, those massive multi-billion
6 dollar structures.

7 With those projects we had to determine their
8 feasibility. That frequently involved extensive
9 physical works: boring, excavations, all sorts of
10 trenching work, physical alterations to the environment,
11 all without knowing whether a project would actually be
12 feasible, financeable or constructed.

13 It was and continues to be the practice of the
14 State of California -- and, by the way, most major water
15 districts who undertake such projects -- they separate
16 out the investigation phase. There's no way that they
17 could go ahead and identify all of the impacts. It just
18 wouldn't make sense if you didn't know if your project
19 would work.

20 In this case, I think it is a reasonable
21 question to ask is it reasonably foreseeable. That's
22 one of the things we did at the State of California.

23 In this case, I'm not sure such a project is
24 reasonably foreseeable. That is the purpose of the
25 pilot project. That is just what the State Desalination

1 Task Force said, you should do these things in steps.
2 That's how you come up with better projects.

3 I will note that it is a continuing practice of
4 the State of California. It has never been challenged.
5 I was at DWR. I was never challenged on that side. For
6 the past 10 years I've been this with environmental
7 group protecting CEQA. Neither we nor any other group
8 have ever taken that issue on. So thank you.

9 MAYOR DELGADO: Thank you very much, Jonas.
10 And I think I'll be asking you a question later, but
11 that will be later. Thank you.

12 GEORGE BREHMER: Mr. Mayor, Members of the City
13 Council.

14 My name is George Brehmer, and I started
15 litigating environmental law 41 years ago over at City
16 of Carmel-By-The-Sea. At the time there was
17 1,850-approximate-unit subdivision proposed, and it
18 really got the community's ire up. You know how the EIR
19 was prepared on that one? The Friends of Mammoth case
20 had been recently decided, and EIRs were new. The
21 Planning Department for the County that had been
22 processing this application for this huge subdivision
23 took all the paperwork they had received, put it in a
24 box, called the developer and said, "Come here and pick
25 this up and get us an EIR."

1 They sent it up to San Rafael, and then on to
2 Sacramento, and they got an EIR. The project went down
3 the tubes, and there hasn't been a single thing built on
4 that land since.

5 The concern that I have, having litigated about
6 eight cases with the County on environmental matters, a
7 number of them involving the adequacy of Environmental
8 Impact Reports, it became quite apparent over the years
9 that applicants have an unfortunate tendency to want to
10 get their project approved as quickly as they can, and
11 they think that an Environmental Impact Report is going
12 to delay the project so they push for negative decs.
13 They pressure the planners for your city and as a result
14 today you have a Mitigated Negative Declaration based on
15 the initial study. They've worked really hard on it.

16 But here's what going to happen. We have all
17 heard reasons for a full EIR, or at least a focused EIR.
18 This case, this situation is ripe for litigation. You
19 know, if you want to do the applicant a favor, deny this
20 permit and tell them to go out and get you at least a
21 focused EIR. They are going to get to the end of their
22 game quicker that way than they will if you approve
23 getting this permit, and then they get into litigation
24 and they get that tied up for a year or two before they
25 really get started.

1 This should be denied. Get that full EIR. You
2 deserve to be fully informed. I noticed in the -- I
3 still have a green light. That's amazing. I noticed in
4 the front page of the agenda, "the City Council will
5 provide the leadership in protecting Marina's natural
6 setting." Well, the Council provides the leadership in
7 all things in this city.

8 I'm just really tickled by the energy that you
9 were displaying tonight when you had these awards before
10 we got into this heavy matter. You've got wonderful
11 things going here. Marina may be the leading city for
12 the future on the Monterey Peninsula. Most of the
13 others are landlocked. Seaside's got a little bit of
14 room to go, but, Marina, you've got a tremendous future.
15 You have a tremendous responsibility to see to it that
16 that future is moved along in a fine way.

17 This permit should be denied. Full EIR or
18 focused EIR should be utilized. Do the applicant a
19 favor. Thank you for your time.

20 MAYOR DELGADO: Thank you. Was your name
21 George Bremmer?

22 GEORGE BREHMER: George Brehmer, B-r-e-h-m-e-r.

23 MAYOR DELGADO: Thank you, George.

24 KEVIN STONE: Good evening, Mayor Delgado,
25 Members of the Council. My name is Kevin Stone. I'm

1 with the Monterey County Association of Realtors. We
2 represent over 1,350 realtors throughout Monterey
3 County, many of which live here and do business in this
4 fine city of Marina.

5 I'm going to take just a minute to read a
6 letter from our president, Karen Cosentino, into the
7 record.

8 "Dear Mayor Delgado and Members of the
9 Council: On behalf of the Monterey
10 County Association of Realtors, I ask
11 that you approve the permits necessary
12 for California-American Water Company to
13 move forward with the test slant well
14 project.

15 "I would also like to take this
16 opportunity to express our strong collective
17 support for taking the appropriate steps
18 required to ensure this project moves
19 forward as quickly as possible.

20 "The potential economic impacts associated
21 with further delays are of great concern to
22 our organization. The positive collaboration
23 on this project with the City of Marina is
24 critical. Our communities and economies are
25 interconnected and dependent on each other.

1 "We ask for your assistance and
2 partnership in seeing this effort through
3 this next critical step. We respectfully
4 request that you support the appeal of the
5 Planning Commission decision and stand with
6 the ratepayers throughout the Monterey
7 Peninsula once again caught in the middle.

8 "And we thank you again for your time
9 and consideration."

10 As an added point to that, I think that the
11 information that we all need and that we're all looking
12 to obtain, this is just the next process, the next step
13 in that overall timeline. We need to get the data
14 that's critical to obtaining some of these very informed
15 decisions that I think we're trying to -- we're trying
16 to get to.

17 So, again, we ask for your partnership and your
18 collaboration in reaching that end. Thank you.

19 MAYOR DELGADO: Thank you, Kevin.

20 ANDREW LEVITT: Hello. My name is Andrew
21 Levitt. I'm the Director of Engineering at the Monterey
22 Marriott.

23 Our current employee status, we employ about 40
24 to 50 Marina residents, which I am one of. In the 19
25 years I've been here on the peninsula, we have

1 instituted several water reduction initiatives.
2 Currently, as I've been at the Marriott, we have reduced
3 our water use by two million gallons annually, and
4 clearly we can all agree that's not enough here. We
5 need an alternate source of water. There is a plan in
6 front of you that addresses that. And if we don't make
7 significant steps forward, it could be a catastrophic
8 event on our -- on Monterey County.

9 So it is my recommendation to put it in your
10 court and have you approve the permit process for
11 Cal-Am's desalination plant. Thank you.

12 MAYOR DELGADO: Thank you, Andrew.

13 ANDREA BALTZEGAR: My name is Andrea Baltzegar.
14 I'm the controller at the Monterey Plaza Hotel and a
15 Marina resident. Thank you, Mayor and Councilmembers,
16 for the opportunity to speak.

17 As the controller at the Plaza Hotel, I have
18 fiscal duties to make sure our hotel watches every
19 penny. And in the two and a half years that I've worked
20 on the peninsula, I've seen our water costs triple.
21 That's very concerning. And I understand the reasons
22 why. So the costs notwithstanding, I'm more concerned
23 about the availability of the water as both an employee
24 of the peninsula and as a resident.

25 The mission statement and the vision statement

1 for the City of Marina both refer to guiding Marina to
2 grow into a well-rounded city with the mission statement
3 mentioning that the community will be characterized by a
4 desirable quality of life, including recreation and
5 cultural opportunities, a safe environment, and, most
6 importantly, an economic viability that supports a high
7 level of municipal services and infrastructure.

8 So I understand that relates specifically to
9 the City of Marina, but, also, I think the intent is
10 that Marina help in any way they can to ensure the
11 surrounding areas are equally as viable, as Marina
12 residents obviously go work in surrounding areas.

13 If we can't, as a community, get together and
14 make a decision to get this moving in the right
15 direction, I think we have a real problem. We can throw
16 out lots of statistics and legal precedent and examples
17 from other cities that make the case for either side,
18 but -- and we can make the evil utility company the bad
19 guy. But the fact remains that we have a real problem
20 and a danger of a shortfall of water if something isn't
21 done.

22 I'm not sure of the other viable solutions, but
23 I would think that Cal-Am has done that research, and
24 this is the solution on the table right now. It's not a
25 quick solution or an easy solution, but we need to get

1 moving.

2 I urge the Council to approve the Resolution
3 Number 2014 to certify the MND and approve the Coastal
4 Development Permit for the slant test well project.
5 Thank you.

6 MAYOR DELGADO: Thank you very much, Andrea.
7 Thanks for coming tonight.

8 BRIANNE FITZGERALD: Hello, Mayor and
9 Councilmembers. My name is Brianne Fitzgerald, and I am
10 an aquarist and an intern volunteer coordinator in the
11 animal care department at the Aquarium. My husband and
12 I moved here three years ago with our young son Jack.

13 And I'm here tonight as a representative of the
14 Aquarium. And there are 65 of us that work at the
15 Aquarium and are residents and voters in this city,
16 additionally 54 volunteers that live here and work in
17 Monterey at the Aquarium.

18 And to best articulate the Aquarium's position
19 on the issue before you tonight, I would like to share a
20 letter that our executive director, Julie Packard, sent
21 to Mayor Delgado, which I believe he referred to
22 earlier.

23 "Dear Mayor Delgado: I'm writing to
24 urge your support for approval of the
25 Planning Commission to drill the desal

1 test slant wells at the CEMEX site. It's
2 critical that we all continue to work
3 together to keep the options rolling forward
4 so that a water solution can be determined
5 as soon as possible. Our communities around
6 the peninsula are tightly linked, and it's
7 urgent that we work together on a solution
8 for all.

9 "The future of the Aquarium and its role
10 as an educator, employer, and economic
11 engine for our area depends on a secure
12 water source. We're proud to be part of
13 the Marina community where our
14 state-of-the-art animal research and care
15 facility and our storage warehouse are
16 located. Over 100 of our employees and
17 volunteers are Marina residents. Over the
18 years we've purchased over two million
19 dollars in goods and services from 106
20 Marina vendors.

21 "Your support of this next step in
22 finding a water solution is the right thing
23 to do for your constituents and our community.
24 Thank you for your commitment to Marina and
25 our region. Sincerely, Julie Packard."

1 And on a personal note, I've learned a lot here
2 this evening through the presentations and your
3 questions. I was a reluctant resident to Marina. We
4 purchased a home here three years ago. I didn't know
5 much about the community, and I had a mother's concerns
6 about what community that we'll be raising our son in.
7 And since then we've spent, you know, countless hours at
8 our fine library and at the pond and shopping in our
9 stores and gone to preschool here, and now we're joining
10 our rec department with the sports here like Junior
11 Giants and Marina soccer coming up.

12 I have seen the community support of each other
13 in these events, and I have seen this Council's support
14 of the community. I have gone from a reluctant resident
15 to a very proud member of the city, to be a member of
16 the city and a constituent of the city.

17 I want our city to be a partner in the larger
18 community of the Monterey Peninsula, and I want us to
19 recognize the interconnectedness and the links we have
20 to the peninsula and to be a city that honors the value
21 of helping others in need, and certainly our brothers
22 and sisters on the peninsula and the businesses and jobs
23 are in need of help.

24 Thank you.

25 MAYOR DELGADO: Is it Brianne or Brianna?

1 BRIANNE FITZGERALD: Brianne.

2 MAYOR DELGADO: Thank you for being an active
3 member of Marina.

4 BRIANNE FITZGERALD: Thank you.

5 SAM TEEL: Good evening, Mayor Delgado,
6 Councilmembers. My name is Sam Teel. I'm the chairman
7 of the Monterey County Hospitality Association. I sent
8 a letter, which you have in your packet, and I will
9 summarize it, because these people didn't all read it,
10 so I'll let them read it. This was regarding the Cal-Am
11 test wells.

12 The Monterey County Hospitality Association
13 urges the Council to grant the appeal before you so that
14 the California-American Water Company can move forward
15 with proposed test wells. It's vitally important that
16 the Council recognize that issue before you is not
17 approval of a desalination plant or the entirety of the
18 water project. The application at hand is for test
19 wells. The test wells are essential to data collection
20 and the analysis necessary to access the viability of
21 the water project in this location.

22 The Monterey County Hospitality Association has
23 over 250 members representing all phases of hospitality
24 industry throughout Monterey County. Our industry
25 employs -- excuse me -- employs more than 20,000 people

1 and generates over two million -- two billion -- no,
2 that's got to be million -- in local tax revenue.

3 The impact of not having a long-term water
4 supply will be disastrous to our industry. The local
5 economy in our communities without a water supply, we
6 are faced with severe rationing and result in a
7 significant or an outright closure of those businesses
8 which make up and support the hospitality industry.
9 Excuse me. There will be a significant loss of jobs and
10 local tax revenue.

11 Many of our industry employees live in Marina.
12 We checked with just four hotels -- the Hyatt Regency,
13 the Marriott, the Monterey Plaza and Portola and found
14 an average of 18 percent of the hotels' employees, over
15 200 persons, are Marina residents.

16 Given all of the hospitality-related businesses
17 in our area, including restaurants, retail stores,
18 and/or lodging facilities, the number of Marina
19 residents employed in the hospitality industry would
20 undoubtedly be well over a thousand.

21 Without a long-term water supply, most of these
22 jobs will be lost. We urge you to grant the appeal
23 tonight.

24 I also have in front of me some letters that
25 were signed by employees. You have some of those in

1 your packet which you referred to earlier. I have one
2 -- some from Quail Lodge, the Monterey Plaza, the Hyatt
3 Regency, which you cited, Asilomar Conference Grounds,
4 Portola Hotel, Inns of Monterey. And those total
5 signatures on these are 67. So these were employees
6 that voluntarily signed that letter that you have in
7 front of you urging you to (inaudible) and they are all
8 Marina residents.

9 So please take the consideration for your
10 residents and your constituents and approve this.

11 Thank you.

12 MAYOR DELGADO: Thank you very much, Sam. I
13 have a question for you later, Sam. So if you are
14 around, I'll ask you.

15 STEPHANIE CORSENO: Good evening. My name is
16 Stephanie Corseno, and I'm a resident of the City of
17 Marina. I currently work for a local hotel.

18 I want to thank Councilmember Morton for
19 pointing out the piecemealing. It was something that I
20 was not aware of earlier.

21 I do agree with Councilmember Nancy's point
22 that the test pump is to question whether or not it
23 should go forward.

24 That being said, while I can't speak on behalf
25 of anyone in this room, I will say that I'm curious

1 about the environmental impact that this region has
2 already incurred without a current solution to the water
3 shortage.

4 If this test pump proves to be immensely
5 detrimental to the environment, then at least the City
6 will know not to move forward with the project.

7 However, if this test pump proves to be as
8 environmentally sound as Cal-Am predicts, then I don't
9 understand why we shouldn't move forward.

10 Currently, Marina's water is sourced from
11 Salinas Valley Groundwater Basin. Wouldn't it be
12 prudent to have a backup time in times of drought, light
13 rainfall years or emergencies? It sounds like price
14 increases are inevitable whether or not this project
15 goes through. So I think that a test pump would be
16 something that we should go for.

17 According to Cal-Am, if this project gets the
18 green light for being eco-friendly enough, then the
19 pumping of the Carmel River will come to a halt. If you
20 really care about the environment, then isn't this
21 something that you would want?

22 Currently, my overall understanding of this
23 desalination project is that there are more pros than
24 cons and that this solution is better than having none
25 at all.

1 I do have one question for Emily, and thank you
2 for the layman's terms for the explanation of this
3 project. I really didn't understand it very much at
4 first.

5 If this test pump is approved, is there a
6 possibility that the brine by-product could be
7 researched for research in an industrial capacity or
8 some other way?

9 And that's it. Thank you.

10 MAYOR DELGADO: Stephanie, can you repeat your
11 question, please?

12 STEPHANIE CORSENO: If this test pump is
13 approved, is there a possibility that the brine or
14 by-product, also known as what some people are calling
15 the waste, could be researched for reuse in an
16 industrial capacity? So that could be something that's
17 even more environmentally friendly, that if this does go
18 through, can we research more uses for this by-product?

19 MAYOR DELGADO: All right. Thank you very
20 much, Stephanie.

21 DR. JOHN AVELLA: Good evening. My name is Dr.
22 John Avella, and I'm the executive director of
23 hospitality programs at Cal State University Monterey
24 Bay and coordinator of our internship programs. I'm
25 also a resident of Marina.

1 I'm here to talk about the 5,000 students that
2 we have at Cal State Monterey Bay who work part time or
3 full time in this and surrounding communities. I don't
4 know whether you know these 5,000 students that I
5 mentioned. They really don't have a choice. Most of
6 them have to work because they can't afford or their
7 families can't afford to send them to college.

8 We think it's really important that these
9 people are able to graduate and find better jobs, but
10 they have to do it by being employed. So I think for
11 the human reason it makes a lot of sense to approve
12 this. Thank you.

13 MAYOR DELGADO: Thank you very much, John, for
14 coming tonight.

15 STEVE EMERSON: Good evening. Steve Emerson,
16 Marina resident and Marina business owner.

17 I'm struck by the fact that we're debating the
18 fact that this is a test well and the fact that we're
19 worried about feasibility. What if we were to kind of
20 change this around and, from my standpoint back in
21 college days or high school days being in an algebra
22 class and having a test, I don't get on to Algebra 2
23 unless I pass the test.

24 We don't get anywhere unless the test well is
25 successful, correct? I mean it's pretty simple. If it

1 turns out that the information and the results that come
2 from this test well are negative, this whole thing
3 stops. That's your question of feasibility. You can't
4 answer that now. You have to get the information one
5 way or the other.

6 So the idea -- you know, we know the economic
7 impacts. We know the impacts of not having water not
8 only on the peninsula but also in our community. But
9 isn't it -- isn't it reasonably foreseeable that this
10 doesn't work? Or that it does work? If we knew the
11 answer to that for sure, we wouldn't be here right now.

12 So if you can go through a process, as the
13 gentleman explained earlier, in creating dams throughout
14 California and you could do bore wells and you could
15 move a significant amount of earth and other materials
16 to try to determine if a dam is feasible, we're in the
17 same position here. We're trying to see if this project
18 is feasible at this particular location. If it's not,
19 there are others -- other projects and other things that
20 we'll have to make that determination at a later time.

21 And, yes, if it is successful, there will have
22 to be the full EIR. That's simultaneously being in the
23 works. But if this turns out not to work at all, that
24 EIR is thrown out the window to begin with.

25 Am I missing something here? It seems pretty

1 simple. We need to figure out if the information is
2 viable to even move forward. So rather than moving on
3 to Algebra 2 and going into the process of trying to
4 determine if we are capable of doing that, let's get the
5 answers that we need today, and then we can make the
6 decisions that we need to go forward.

7 Thank you.

8 MAYOR DELGADO: Thank you very much, Steve.

9 MICHAEL BARE: Good evening, Mayor and
10 Councilmembers. Thank you. I'm really impressed by the
11 diligence, you know, these big, fat things you're
12 reading, and the questions you're asking, and the
13 concern you're taking.

14 And also I want to thank you. I learned a lot
15 by your presentation.

16 I actually had one question for you, which is
17 you had mentioned that in terms of the Hydrogeologic
18 Working Group that were being represented by the Salinas
19 growers and Cal-Am, and it seems like a pretty small
20 group. It seems like there maybe should be some other
21 hydrogeologic experts into the equation. So I am
22 wondering if there are.

23 From the San Clemente Dam, which is going to
24 cost \$75,000,000 to deconstruct, to the 200-square-foot
25 pump station at the top of Eardly in Pacific Grove,

1 Cal-Am has showed a disheartening ability to manage
2 their facilities. They have no incentive to do
3 otherwise. Their mismanagement is profitable for their
4 shareholders. That profit comes at the expense of local
5 ratepayers.

6 I'd like to add that the local ratepayers on
7 the Monterey Peninsula, the residents subsidize the
8 commercial ratepayers, because we have a steeply tiered
9 rate and they have a flat rate, and we end up paying
10 more than our share.

11 Slant wells are expensive. You said millions
12 of dollars. And they have already been determined or
13 reported to be inadequate. If you actually look at what
14 Ron had said, that 2009 report that he was referring to
15 indicates that they probably aren't going to work. This
16 plays right into Cal-Am's wheelhouse, to use a baseball
17 term. Another expensive project paid by the peninsula
18 ratepayers, full of sound and fury and delivering
19 nothing.

20 I ask you to be a good neighbor to peninsula
21 ratepayers, not the mayors' group, and uphold the
22 recommendation of your Planning commission on this
23 issue.

24 Thank you.

25 MAYOR DELGADO: Thank you very much, Michael.

1 JODY HANSON: Good evening, Mr. Mayor and City
2 Councilmembers. My name is Jody Hanson. I'm the
3 president and CEO of the Monterey Peninsula Chamber of
4 Commerce. We have about 800 members. We have a lot of
5 Marina residents who are employees of our members, and
6 some of them are our member owners, too.

7 I wanted to just bring up a couple of points.
8 I think there have been a lot of good comments tonight.
9 When I look at this, this is just a test. It's a well.
10 It's not a whole project.

11 Cal-Am is trying to do the right thing with the
12 slant well intake. It is the California Coastal
13 Commission's preferred intake. And I think that's
14 really important, because they could do a lot of
15 different things, and that's where they are trying to
16 comply with the Coastal Commission.

17 You know, we have seen that your staff have
18 done a lot of work, and it makes sense to make it worth
19 their while to at least see if the test works. And I
20 think that's where I would go with it. Let's find out
21 if this is the right site. And if it is, then you can
22 discuss -- you know, the EIR is coming. It will come,
23 no matter what.

24 And we do ask that you -- we appeal to your
25 authority, and we ask that you certify the MND and --

1 the MND and approve the CDP.

2 Thank you very much.

3 MAYOR DELGADO: Thank you very much, Jody, and
4 for all your work at the Chamber.

5 NORM GRUDE: Good evening, Mayor Delgado and
6 Councilmembers. My name is Norm Grude. I'm the
7 Executive Director of Monterey County Farm Bureau. I
8 represent 430 family farms in the Salinas Valley as well
9 as 200 people who like to eat and support farming.

10 Obviously, this is a very complicated process,
11 and I know that for a fact, because my organization is
12 an intervenor in this process with the CPUC. And we
13 fought long and hard get the Hydrogeologic Working Group
14 included in the settlement agreement, and we, in fact,
15 are heavily invested in this process because we have two
16 representatives on that. Between my organization and
17 the Salinas Valley Water Coalition, we are supporting
18 that effort.

19 And for anyone out here who thinks that this is
20 just something you can participate in, it's not a cheap
21 process. It's something that we are heavily invested
22 in, and we want the peninsula to succeed and create a
23 new water supply system here for the greater good of all
24 of the county.

25 As was stated earlier, this is kind of a

1 feasibility process, but I look at it more as an
2 investigation of where we're at with the process and how
3 we're moving forward in developing a solution for a
4 long-term water supply.

5 This is information that will provide a
6 validation for what has been done with the bore holes to
7 this point. That created a model, and now we need to
8 validate whether or not that model can move forward in
9 the expectation that we have. And, believe me, the
10 Salinas Valley has a lot of concerns about where this
11 source water is going taken from, and that's why we got
12 involved in this process in the first place, because we
13 do have something to protect here, which is our
14 groundwater basin.

15 We also want to make sure that if this process
16 comes to fruition, there's a solution that works for all
17 of us and that there is a greater good here.

18 Personally, I would like to say that I'm a
19 member -- or, excuse me -- a resident of the peninsula
20 here. I have lived in Pacific Grove for three years now
21 since I moved to Monterey County. And, first of all, I
22 can't believe all the water wars that we're having here.
23 I come from Orange County where we've made a lot of
24 decisions about our water supply and have a very strong
25 recycled water process there. And it was for the

1 greater good of the community.

2 And I think the community here needs to pull
3 together and look at the greater good of what we all
4 have to do as a community. And if we don't do that,
5 everyone loses. You've heard a lot about the economic
6 discussion here. And, believe me, the Salinas Valley is
7 really worried that if the peninsula has to shut down
8 because there is no water for tourism, that greatly
9 affects the rest of the county here.

10 So we're looking at a CDO. There's no
11 guarantee that the State Water Board is going to extend
12 that, even though that's been a question they have been
13 asked. But they have stated repeatedly that this is not
14 the point in time they are going to discuss that. So I
15 don't think that we can all see that the CDO is going to
16 be extended, and it's a very real, hard deadline.

17 So, again, I repeat, we're one community here
18 on the peninsula, and I ask that you approve the permit
19 for the test well as well as the Coastal Development
20 Permit.

21 Thank you.

22 MAYOR DELGADO: Thank you very much, Norm.

23 HARVEY BILLICK: Hi. My name is Harvey
24 Billick; I'm a resident of Carmel. I'm very concerned
25 about us having water.

1 But in the process, I would encourage you to do
2 an entire EIR first. Because I think we can look to our
3 neighbors to the north, to Santa Cruz, and they did an
4 extensive study, which I have given all of you members
5 of the Council a copy, which meant that they look at all
6 the aspects of this and decided that deep-water intake
7 was a better approach.

8 Now, the State Water Resources Board has taken
9 the position in the last several months where they are
10 the controlling agency. Even if a local agency, they
11 have the right to overwhelm a local agency with regard
12 to these issues. And they specifically in their reports
13 say that they -- if there is mitigating circumstances,
14 that the properly screened deep-water intake is
15 appropriate.

16 So it's not like designing a dam where you're
17 deciding whether it will work. We are deciding -- there
18 needs to be a decision made about exactly what kind of
19 intake there is going to be, extra. And I'm afraid that
20 this is going to be a delaying factor, frankly. This is
21 two and a half years, can stretch to three and a half
22 years. They started testing slant wells in 2005 in Dana
23 Point. Guess what? There's no proof that they work.

24 So I think we have a tremendous problem here.
25 Those of us that really want water now, I think this is

1 colored by more emotional argument by people who just
2 say, we have got to have water, so let's go with Cal-Am.
3 I mean, I think that turns off your brain. I think what
4 the brain has to say is: What are all these options and
5 what work needs to be done to evaluate all these
6 options? Believe me, Santa Cruz has done that work.
7 When you study that, the report from September of 2011,
8 it's very clear exactly what they say.

9 And I think I agree with George Brehmer. I
10 think you're going to have lawsuits. The farm bureau
11 and the farmers on the agricultural coalition, they
12 are -- as soon as there is any chance that there's more
13 saltwater intrusion is going to do exactly what they are
14 going to do, they are going to sue, and you're going to
15 have suits, et cetera, et cetera.

16 I think it's -- sometimes it's better to think
17 first, and that means an EIR.

18 Thank you for your time.

19 MAYOR DELGADO: Thank you very much, Harvey.

20 GARY CURCIO: My name is Gary Curcio. I am
21 chair of the Monterey County Hospitality Association
22 Government Affairs Committee.

23 Mayor Delgado, Council, thank you for allowing
24 us the time to put some input up tonight.

25 It's rare in government affairs that we see the

1 political consensus that there is for this Cal-Am
2 project. From the peninsula mayors to four of the five
3 supervisors, Representative Sam Farr, it's really rare
4 that we get to see a coalition of all of the politicians
5 that are in favor of this project.

6 The clock is ticking. The California State
7 Water Resource Board is not just a threat, it's a very
8 strong possibility.

9 This, as others have said tonight, is simply a
10 test. I understand the need for all of your due
11 diligence, but this is a test. So we would urge that on
12 behalf of over 1,100 Marina residents that work in
13 hospitality whose jobs are dependent on a dependable
14 water source, that you please pass this resolution
15 tonight.

16 Thank you.

17 MAYOR DELGADO: Thank you very much, Gary.

18 MARC DEL PIERO: Mr. Mayor, my name is Marc Del
19 Piero. I'm here tonight on behalf of the Ag Land Trust
20 of Monterey County. With me in the audience is Sherwood
21 Derrington, who is our executive director.

22 For the record, both of us have served on the
23 board of directors of the Ag Land Trust since 1984. We
24 currently have, under permanent conservation easement or
25 outright ownership, over 25,000 acres of prime and

1 productive farm land in the County of Monterey.

2 We provided to you this evening a letter that
3 you all have before you. I want to thank Ms. Mall for
4 being kind enough to distribute it.

5 Mr. O'Connell, you asked earlier about letters
6 dated earlier than the last two years. Many of those
7 came from us, because one of the seminal questions that
8 has not been answered as part of this process is where
9 or whose water rights Cal-Am is supposedly relying upon.
10 The reason those letters were provided to you, along
11 with current correspondence, is because since 2006,
12 there is no answer to that question. Okay. We keep
13 asking, but no one -- no one returns our phone call.

14 The water rights issue has been addressed
15 pretty much ad nauseum. We have provided to your
16 Councilmembers and to your staff probably two and a half
17 inches of correspondence addressing a whole variety of
18 environmental issues.

19 We want to point out a couple of things this
20 evening. First of all, there is no identified
21 mitigation for the issue that we have raised
22 consistently, which is the fact that we believe that the
23 pumping of the test well will cause direct contamination
24 of our groundwater supply.

25 Would you mind very much putting that up, the

1 concentric map?

2 Rather than -- rather than rely on me as an
3 expert, even though I have been qualified as an expert
4 on at least six different occasions during the course of
5 my career, I will use your map to point something out.

6 While they are getting the map that shows the
7 concentric circles of the impact of the testing wells,
8 you will see, when the map comes up, that those
9 concentric circles don't just cover the CEMEX property.
10 In fact, they cover over 40 acres of our property and
11 our groundwater and our groundwater rights.

12 And the remedy that's identified in the
13 Mitigated Negative Declaration is not a mitigation. The
14 remedy that's supposedly identified is, well, Cal-Am
15 will just stop pumping if it shows up that our
16 groundwater supply is being contaminated. That's a
17 problem. That doesn't comply with the requirements of
18 CEQA. Okay?

19 Additionally, I wanted to just point out one
20 other thing. It's not reasonable for your Council to
21 conclude that no fair arguments have been made, because
22 our Ag Land Trust, in spite of all the correspondence
23 that has been provided to your consultants and your
24 staff and to you over the course of the last two and a
25 half years has never received a return phone call from

1 the consultants and staff that you employ expressly for
2 the purposes of the evaluation of Cal-Am's application.
3 You can't hear a fair argument if no one listens.

4 Thank you so much.

5 MAYOR DELGADO: Thank you very much, Marc.

6 MELODY KRISLOCK: My name is Melody Krislock;
7 I'm a resident of Carmel.

8 I think you can see that hospitality is very
9 excited about this project, and I think there's a good
10 reason for that. The difference in the commercial rates
11 and the residential rates for us on the Monterey
12 Peninsula are quite substantial.

13 I was at the Monterey City Council meeting
14 where Cal-Am recently presented those comparison of the
15 rates. And before that, I took my bills, my last three
16 summer bills. I'm on an acre with three people using --
17 I'm in tier 4. I figured out their commercial costs,
18 \$1.51 per 100 gallons, flat rate, and this is about 80
19 percent of all the commercial hookups, it's most of the
20 commercial users. \$1.51 per 100 gallons.

21 My last three summer bills, 3.55 to 4.11 per
22 100 gallons. I'm including all the surcharges, because
23 their \$1.51 includes all the surcharges.

24 So I think it's pretty easy to see why
25 hospitality wants this project to go forward. They are

1 getting a great deal. But the residential ratepayers
2 are really not getting a good deal at all.

3 So I'm all for a desal plant. I'm not so sure
4 Cal-Am's is the greatest idea. There are other options
5 out there. And I have heard nothing good about the
6 slant wells in Dana Point. They are not using the slant
7 well that they -- it's been sitting there for two years,
8 the same people that did the one that they are going to
9 do here. We have a letter from the project manager at
10 Dana Point to that effect. I don't know why it's still
11 sitting there, but it's not even functional right now,
12 after they spent the money. And he said it took them 18
13 months to get the information they needed.

14 Anyway, thank you. For the Monterey Peninsula
15 residential ratepayers, do us a favor and stop this in
16 its tracks.

17 MAYOR DELGADO: Thank you, Melody.

18 GEORGE RILEY: Hi, George Riley with Public
19 Water Now.

20 First of all, the arguments that have been made
21 about reasonably foreseeable consequences is such a
22 no-brainer that it's hard to make arguments that aren't
23 reasonable.

24 First of all, the EIR that you are dealing with
25 in the unmitigated -- I mean, the negative mitigated

1 dec, whatever.

2 COUNCILMEMBER MORTON: MND.

3 GEORGE RILEY: It's an EIR attempt, but there's
4 another EIR out there for the entire project. This
5 project has two EIR -- it's on two EIR tracks. So there
6 are expectations that there's going to be a project.
7 The design work is already underway, engineering work is
8 underway. The construction company has been contracted
9 for. A full EIR does expect to be ahead of scheduled
10 completion in early 2015. The PUC is expected to make a
11 decision sometime after that, early 2015.

12 This is clearly a track for a project that is
13 clearly expected to be completed. And so to expect that
14 there's not a connection between this test well and the
15 full project is kind of denying reality.

16 But that's not my point. My point is that I
17 think there's a way out of this. Cal-Am recently -- or
18 at least it was reported to me. Cal-Am -- this was
19 reported at a public meeting at the Technical Advisory
20 Committee, which I'm a member of. It was reported that
21 Cal-Am expects to appear before the Coastal Commission
22 for their development permit sometime in October, which
23 is -- there's one meeting day. I think it's around the
24 8th.

25 The expectation was that if your board -- your

1 Council approved the permit, they will be before the
2 Coastal Commission in October. If your City denied the
3 permit, they would appeal to the Coastal Commission at
4 that same October 8th meeting.

5 The point is that Cal-Am expects to go to the
6 Coastal Commission whether they have your approval or
7 not. Now, my question is perhaps you should ask Cal-Am
8 what are their expectations to proceed if it's denied
9 here. Because there are -- there is a plan. I'm
10 assuming there's a plan. That's the way it was reported
11 in public, and I haven't heard -- I haven't heard a peep
12 about what happens after tonight.

13 Thank you.

14 MAYOR DELGADO: Thank you very much, George.

15 JAY FAGAN: Good evening, Mr. Mayor, Members of
16 the Council, my fellow Mariners. Jay Fagan, Marina
17 homeowner and business owner.

18 I can't believe we're back again. There was a
19 question about how long this has been going on. To my
20 recollection, 35 years. Thirty-five years the Monterey
21 Peninsula has been trying to find a new water supply.
22 But thank god Marina is here to save the day.

23 We will ask the tough questions. We'll get to
24 the heart of all the things that their multiple
25 referendums, lawsuits, and other nonsense has failed to

1 determine. Thank god we're here. I mean, I'm so glad
2 I've got you guys right here to save the peninsula.

3 Because that's what we're talking about, right?
4 Without water, they're done. And there are some I've
5 talked to in Marina -- I notice there aren't a lot of
6 Marina residents here tonight because they have jobs on
7 the peninsula at night, trying to keep their families in
8 their apartment. Unfortunately, we don't have three
9 people on an acre in Marina. That isn't the usual
10 population density in this town. Although, I will say
11 that a hotel can put about a thousand people on an acre,
12 so take that as you may.

13 But here we are talking about whether or not we
14 should approve a test well. We're not talking about the
15 project. It's my understanding at the end of the day
16 the total project won't even come to us. But it's a
17 test well.

18 We should approve it. You heard me the last
19 time we were up here. That's what we do. We're good
20 neighbors. Now, charge the hell out of them. I'm fine
21 with that. Make it as expensive as you want. I don't
22 care about that. I'm not paying their water bill. And,
23 frankly, if you live in Carmel, you can afford a little
24 more.

25 But do it. Give them the well, at the very

1 least, so they can decide whether or not they are going
2 to continue to have an economy. If you don't, you know,
3 as a Marina citizen, here is what I say to the
4 peninsula, if this Council doesn't vote for you tonight,
5 starting next week and every week thereafter, fire 10
6 percent of your Marina residents. Don't sell Marina
7 homes. Don't shop in Marina.

8 Because that's what the peninsula is facing.
9 They are facing economic armageddon. December 16th --
10 or 31st, 2016, they will have 400 acre feet available of
11 water for non-residential uses. See, the residents
12 still get taken care of. They won't have a job, but
13 they still get taken care of. Thank god for that. Four
14 hundred acre feet, assuming a continued drought, that
15 probably won't even be there.

16 So give them the test permit and be done with
17 it. It's easy. It's an easy decision. You don't all
18 even have to vote for it. We only need three of you.
19 So some of you can sit back and say it's okay, I didn't
20 vote for it. And if it makes you feel better, great,
21 I'm okay with that.

22 But give us three. Give us three to help our
23 neighbors move forward. Charge them a billion dollars.
24 I don't care, but give them the well. And let's not
25 have another five-hour council meeting on the

1 peninsula's issue. They have been at this longer than
2 I've been alive. I'm hoping that they will get it done
3 before I die.

4 Thank you.

5 MAYOR DELGADO: Thank you very much, Jay.

6 PAUL BRUNO: Mr. Mayor, Members of the Council.
7 My name is Paul Bruno; I'm a Marina employer. I was
8 going to start off with maybe Rodney King with the old,
9 "Why can't we just all get along?" But actually I'm
10 kind of leaning towards more Ronald Reagan tonight with,
11 "Mr. Mayor, tear down these walls. Tear down these
12 walls."

13 There's a rumbling and an undercurrent of this
14 "us versus them." We heard it with Chandler Roland, the
15 second speaker tonight, we heard it at the Planning
16 Commission meeting.

17 Yes, we -- this "us versus them" doesn't really
18 reflect this community. We have cities. Yes, we have
19 cities with defined borders, but we also have this much
20 broader community. And we jointly use resources that
21 are available to us in this broader community, available
22 and necessary to our everyday life, but not really
23 necessary, not actually within the walls of the city.

24 You know, the mayor said you can hang glide
25 here, that's true, and you may get the best ice cream

1 here. But if you suffer a serious medical condition,
2 you're probably going to go to CHOMP over there in
3 Monterey. If you need to travel far away, you might
4 head over to the airport over there in Monterey. If you
5 want to play some golf, you're probably headed to the
6 peninsula. If you want to go deep sea fishing, you're
7 probably going to go to a party boat on the wharf.

8 Anybody here enjoy the fair last week over
9 there in Monterey? How many of you have attended MPC or
10 had family members attend MPC at the main campus over
11 there in Monterey? You need to send a last-minute FedEx
12 package? It's 5:30 over there at Ryan Ranch. Who
13 hasn't made a few trips to Costco in Sand City to fill
14 up your trunk, or perhaps bought a car at the Seaside
15 Auto Center, or even appreciate the services of the
16 regional landfill or the MRWPCA sewage facility, which
17 are nearby, but they are outside your city limits. They
18 are located in the county. And, finally, when you die,
19 the community's funeral homes and cemeteries are in
20 Monterey, Seaside and Salinas.

21 There is a broader community, and that broader
22 community needs Marina's cooperation tonight. So please
23 approve the application. Let us find out if it's
24 feasible.

25 MAYOR DELGADO: Thank you very much, Paul.

1 MARTIN FEENEY: I'm Martin Feeney; I'm a
2 hydrogeologist. I've been working on the peninsula for
3 over 30 years. I'm a member of the Hydrogeologic
4 Working Group.

5 We have spent quite a lot of time looking over
6 data, arguing over data, and making assumptions. And
7 geosciences built a relatively robust model. We're at
8 the point where it's past opinions. We need real data
9 to be able to confirm the assumptions about the impacts
10 of this project.

11 The test well is essential for being able to
12 get the data that allows us to validate the models so
13 that we can actually predict the impacts that go into
14 the EIR. We're at the point now where you can wave your
15 arms about the geology, but we need some real data. We
16 need to stress the system with the test well and to
17 figure out how the system actually reacts so we can
18 answer the questions about water rights, impacts, all
19 those things come out of the actual testing of the test
20 well and looking at the impacts in the monitoring wells
21 that we're putting in around it to see how the whole
22 system reacts. This is about a test well that helps us
23 define the actual response of a system to the pumping so
24 that we can accurately look at the impacts.

25 Now, a couple of other things for the record.

1 Yes, I did a study a couple -- about three miles down
2 the coast in Fort Ord. I said slant wells were a
3 challenge there. That's because the topography and the
4 geomorphology is completely different. The ground
5 surface elevation at the location we were talking about
6 at the time is 130 feet. The setback from the ocean
7 that you would need for the slant wells would be about
8 300 feet, and you couldn't get under the sea floor with
9 those geometries.

10 Likewise, the area where we're talking about
11 vertical wells that was cited earlier, the 180 in that
12 area is fresh. You wouldn't want to be able to put --
13 bring seawater in in the upper layer when you had
14 underlying freshwater. That is not the case at this
15 site.

16 We have drilled four monitoring wells. We took
17 water samples. I was up here before you, you know, six
18 months ago arguing to get the permission to get the
19 water samples. We got that.

20 So, please, let's move forward with getting the
21 test well so we can get some real data. Thank you.

22 MAYOR DELGADO: Thank you very much, Martin.

23 ERIC ZIGGAS: Good evening, Mr. Mayor,
24 Councilmembers. My name is Eric Ziggas. I work for a
25 firm in San Francisco called Environmental Science

1 Associates. We're under contract to the California
2 Public Utilities Commission, specifically the energy
3 division to prepare the Environmental Impact Report on
4 the Monterey Peninsula Water Supply Project, the
5 full-scale project you have heard about earlier.

6 We have no jurisdiction here. The CPUC has no
7 jurisdiction here whatsoever. This project in the
8 action before you today is completely independent of the
9 larger project at the moment. Your project purpose is
10 different, and it's a direct response to the State Water
11 Resource Control Board recommendations.

12 So as the lead agency on the Monterey Peninsula
13 Water Supply Project, we went out for scoping in 2012,
14 and we issued 3,500 scoping notices, and we held three
15 scoping meetings in the project area. We got a number
16 of comments about water rights. You have heard it from
17 Ag Land Trust. They have been filing those letters
18 since 2008, 2009. You have seen them all. It's all
19 about water rights.

20 And the CPUC stood back and said, we're not
21 water rights. We don't do that here. We need to defer
22 to the State Water Resources Control Board to understand
23 whether or not we even have a feasible project on our
24 hands. So the state -- California Public Utilities
25 Commission asked the State Board, is it feasible? What

1 do we need to know in order to make this work or not?

2 And the State Board concluded, and I quote:

3 "Cal-Am can legally pump from the basin
4 by developing a new water supply through
5 desalination and showing that the developed
6 water is surplus to the existing supply.

7 If Cal-Am's extractions are limited to water
8 that currently serves no beneficial use, for
9 example, it is entirely derived from brackish
10 or seawater sources, and Cal-Am returns all
11 the incidental freshwater to the basin in a
12 method that avoids injury to other users,
13 it's likely that the Monterey Peninsula Water
14 Supply Project could proceed without
15 violating other users' groundwater rights.
16 A no-injury finding would have to be shown
17 through monitoring, modeling, compensation,
18 project design or other means." Close quote.

19 So the State Board made three recommendations:
20 Drill, baby, drill. So the Hydrogeology Work Group went
21 out, Cal-Am funded. They drilled probably 13 holes, I
22 think, total. Thirteen holes from Moss Landing down to
23 the CEMEX property. And through that they developed a
24 conceptual model. Conceptually, how does the basin
25 work?

1 And the Hydrogeology Work Group, you just heard
2 Martin tell you, they struggled with concepts and
3 understanding, and they've come to what I think is a
4 common understanding of how the basin works. That's
5 allowed the team to now model the basin. So we're
6 modeling the basin. In the CEMEX area we're modeling in
7 three different models: A valley-wide model, a north
8 Marina groundwater model, and a very focused CEMEX
9 model. We're also modeling at Potrero Road. The UC has
10 an alternatives analysis and will be looking at
11 alternatives and take wells at Potrero Road. It is not
12 a done deal that there's going to be a project at CEMEX,
13 either it's not going to be feasible technically or
14 politically. And Cal-Am will have an option, and the
15 PUC will direct Cal-Am to build here or build there. It
16 could be up -- it could be up at the Potrero Road site.

17 So the CPUC is the lead agency on this EIR.
18 You all will be a responsible agency, because Cal-Am
19 comes back to you with an application for wells at
20 CEMEX, full-scale production wells, or they're going to
21 come back to you for a pipeline because they're shipping
22 water from Potrero Road on down.

23 But uncertainly really is a -- makes for risky
24 decisions, and risk can be reduced by gaining knowledge,
25 and the knowledge you can gain from the test well will

1 benefit not only Cal-Am, it will benefit every basin
2 user. It will benefit Marina Coast Water District, if
3 and when they decide to build a project. Their project
4 is included in our analysis. We're assuming they are
5 going to build 1.5 million gallon a day project that's
6 being modeled in our EIR to demonstrate the cumulative
7 effects.

8 We will also be able to tell you with certainly
9 what the impacts are associated with their wells, but we
10 will only be able to model it without the well. We
11 won't have real data. Okay?

12 So I do encourage you to learn more about your
13 basin, be better informed. When we come back in a year
14 with Cal-Am's application for the Coastal Development
15 Permit, that conversation should be more informed. It
16 should be informed by data and information, and that
17 information will be obtained through this test well.
18 Reduce your risk. Go ahead and learn the knowledge.
19 Learn more about your basin.

20 Thank you.

21 MAYOR DELGADO: Thank you very much, Eric.

22 Before the next speaker gets started, we have a
23 ten o'clock witching hour, and so we need to get a
24 motion to continue, if we're going to do that.

25 Councilmember Brown?

1 COUNCILMEMBER BROWN: I would like to move that
2 we continue until eleven o'clock.

3 MAYOR DELGADO: Okay. Nancy, do you want to
4 second that? Nancy, are you still with us? She might
5 have us on mute. She has to take us off mute. But it's
6 important that we make sure we still have her.

7 Councilmember Amadeo, are still there? Okay.

8 I'll second the motion, and we'll try to get
9 Councilmember Amadeo back and see what she has missed,
10 if anything.

11 Do any members of the public wish to comment
12 on the extension to eleven o'clock?

13 Okay. Coming back to the Council. All in
14 favor, please say "aye."

15 (Response.)

16 All opposed, say "no."

17 (No response.)

18 So the four of us, yes, and we'll try to get
19 Nancy back.

20 COUNCILMEMBER BROWN: Okay. Now, while we're
21 doing that, how about five-minute break?

22 MAYOR DELGADO: Yeah. Let's take a five-minute
23 break to try to get Councilmember Amadeo back.

24 UNIDENTIFIED MALE: I have her on the phone.
25 She's trying to get in.

1 MAYOR DELGADO: So we'll see you all back just
2 a few minutes after ten o'clock.

3 (Recess.)

4 MAYOR DELGADO: Please take your seats,
5 everybody. We're going to get started. We have got to
6 go through public comment. Okay.

7 Could the next speaker please come up, and
8 everyone else please give their respect to the speaker
9 on the podium.

10 JOHN MARIGI: Mr. Mayor, Members of the City
11 Council. John Narigi, co-chair of the Monterey
12 Peninsula Coalition of Peninsula Businesses.

13 I'd first like to, and I won't read it into the
14 record, but a letter from the Monterey-Santa Cruz County
15 Building and Construction Trades Council from CEO Ron
16 Chesshire. He is requesting that you approve the test
17 well, the items before you tonight. He also represents
18 3,500 workers in the Monterey Bay area with the majority
19 of them living in Marina.

20 You've received a letter from my organization,
21 Coalition of Peninsula Businesses. I will not read it,
22 but I've got copies for all Councilmembers. I would
23 just like to highlight a couple of points. And first
24 I'd like to start out with the Coalition represents
25 seven Monterey County business associations and CHOMP

1 Hospital. And one would have to ask themselves three
2 years ago why a group of business people got together,
3 who have full-time jobs, to get involved with this water
4 topic. But we're not just business people. We are the
5 families. We have kids. We are the residents. We are
6 the employers. And we also generate the tax revenue
7 dollars throughout Monterey County.

8 Twenty-five to 30 percent of your Marina
9 residents currently work on the Monterey Peninsula.
10 You've heard that time and time again this evening. And
11 these residents of yours are as at much risk as those of
12 us that work and live on the Monterey Peninsula.

13 As it's been stated, the CDO of 12/31/16, it is
14 very troubling for someone like myself who employs 450
15 people. But tonight we have heard a lot about extend
16 this, restudy that. I'm really confused. This is an
17 order from the State Water Resource Control Board, The
18 CDO, and I don't know quite why people don't understand
19 what is hanging over our head.

20 We already know the Cal-Am project, if you were
21 to approve the test well tonight, would not be in
22 operation until probably early '18. And you may not
23 know this, but GWR, the other portion of the three-prong
24 approach, is running way behind schedule as well.

25 Rationing. What about rationing? You can call

1 Water Management tomorrow and ask them. The current
2 rationing plan that is in front of the State, which they
3 have not agreed to discuss at this time, allows for 35
4 gallons of water per day for the residents within the
5 particular district we're talking about. That leaves
6 zero for commercial, as confirmed by Dave Stoltz,
7 General Manager of the Water Management District.

8 The process is critical, because that is what
9 the State is the looking at. Can the peninsula finally
10 get their act together with their sister cities and find
11 a water source. You are a sister city. And I believe
12 there's a lot of politics being played throughout this
13 whole ordeal. God knows we have plenty of politics that
14 have been played on our peninsula.

15 But we in the commercial sector are getting
16 kind of tired of it. This is a test well. If I am --
17 I'm not a technician, I'm not an attorney. But in
18 reading the two reports from both your consultant and
19 your city staff, it appeared to me they gave you a
20 pretty good positive way of approving what we're asking
21 you to approve this evening, test slant wells to get
22 this project continuing.

23 So from all of us on the peninsula, I can't
24 even imagine to figure how many businesses the Coalition
25 represents -- how many employees the Coalition

1 represents. We very much, I very much ask you to
2 approve what is before you tonight. The time is up.
3 Time is totally up for us.

4 And I guess some may want to gamble. Some may
5 want to do more research. Some may want to look at
6 deep-water desal. There's only one application in front
7 of the CPUC at this time, and that's the application and
8 the project that's before you.

9 I can tell you this, I am a supporter of
10 Cal-Am, because they have done what has been asked for
11 them to do.

12 MAYOR DELGADO: Excuse me, John -- John, I have
13 to ask you to stop.

14 JOHN NARIGI: I'm sorry. I'm sorry, Mayor.

15 MAYOR DELGADO: It's okay.

16 JOHN NARIGI: My apologies.

17 MAYOR DELGADO: John, I have to ask you to
18 stop.

19 JOHN NARIGI: That's fine. I'll stop. Thank
20 you.

21 MAYOR DELGADO: Thank you.

22 JOHN NARIGI: Unless -- fine.

23 MAYOR DELGADO: We give four minutes, which is
24 one minute longer than anybody else you know. But at
25 four minutes we try to be firm to everybody.

1 All right. Thank you very much, John, for
2 those comments and your letter in advance.

3 JAN SHRINER: I am Jan Shriner. Earlier I
4 spoke as one of the directors of the Marina Coast Water
5 District Board, but now I would like to speak with you
6 as a resident. And this has nothing to do with the
7 board, the work of the district. It's some information
8 that I would like you to consider from one person to
9 another.

10 So we have heard that there were other options
11 for the location of the intake for the desal project.
12 During the boring hole discussions we heard there were
13 nine other options that was used as a method to pressure
14 us for the tenth in Marina. Nine other options. Have
15 you heard about them this evening? Everybody is so
16 concerned about how they are going to get water and
17 aren't talking about the bulk of the options.

18 The Herald said that there was no financial
19 difference between the options, that all the options
20 penciled out approximately the same. So why is this
21 alternative preferred?

22 So I know you are distracted right now, but I
23 hope that someone will capture that question. Why is
24 this the preferred alternative? How many options are
25 there? Why is the Marina CEMEX location the only one

1 that we are hearing about? Why is it this the preferred
2 alternative?

3 And I hear a lot of language about
4 partnerships. I think we have to listen very careful
5 for the difference between "work with me" and "work for
6 me." I am hearing a lot of "work for me, Marina, work
7 for me." So I want you to listen carefully. The
8 extension paperwork for the CDO is already in the works.
9 That was presented to the Mayors' Authority, the Mayors'
10 Authority that excludes the mayor of Marina.

11 There are judgment calls, to be certain,
12 tonight. What are the risks to the other sites? I
13 would like to know what are the risks to the other
14 alternatives in this information gathering? I love
15 information gathering. Look at me with the papers. I
16 love going to the internet. That's information
17 gathering. I do a lot of information gather by talking
18 to people.

19 This has risk to the groundwater basin of our
20 drinking water, of our residents' drinking water. The
21 residents are human beings, and we're going to risk the
22 drinking water, the potable water for all of us to do
23 information gathering. I don't think that's a fair ask.

24 Earlier today I was talking with someone who
25 was trying to explain to me a play book I'm not familiar

1 with. She said that term "antibusiness," that's out of
2 a play book. Nothing left to say. That's out of a play
3 book. Saying something loudly and accusatory during a
4 session and then refusing to speak with me during a
5 break, I'm thinking that's probably out of that play
6 book I'm not familiar with.

7 But this is one she gave me today. It's about
8 the piecemeal and about the risk. It's about this
9 quote, "This is a well-intentioned piece, but it is
10 poorly written." "This is a well-intention piece, but
11 it is poorly written."

12 So my belief is the risks have not been
13 evaluated. It is well-intentioned. People do need
14 water, but what are the other alternatives? What are
15 the risks? This is not comprehensive information
16 gathering, and it's not going down a good path for our
17 residents here in Marina. So let's find someone who
18 will work with us and see if they will work with us.
19 Thank you.

20 MAYOR DELGADO: Thank you very much, Jan.

21 BRUCE STUBING: Hi. My name is Bruce Stubing.
22 I'm with Benchmark Resources. We're a land use
23 consultant. And I handed a letter to the Clerk, and you
24 also received an e-mail from CEMEX's attorney, Mitchell
25 Chadwick. So the letter speaks for itself.

1 I just wanted to -- because the commission or
2 the Council may not have had a chance to review that, I
3 just wanted to touch on a couple of the points that the
4 letters raises. There are five substantive issues that
5 CEMEX has with the Initial Study and Mitigated Neg Dec.

6 One, in terms of the scope of the project, the
7 IS/MND is inconsistent how it describes the project. At
8 some points it says it's a three-quarter-acre project
9 and at other times it discusses that it's a 400-acre
10 project, the whole CEMEX site. So you'll see in a
11 couple of the other points that that confusion makes the
12 analysis inaccurate.

13 So the second point has to do with the improper
14 characterization of the existing structures as a
15 historical district.

16 One, those districts are outside of that
17 three-quarter-acre property, so they shouldn't have been
18 evaluated as part of the project.

19 And, two, CEMEX disagrees that they are an
20 actual historic district.

21 Three, the initial study did not look at the
22 existing uses when it talked about recontouring the work
23 area at the end of the -- at the end of the access road.
24 It talked about recontouring it for the plover, rather
25 than what it is right now, it's an existing mine site.

1 Four, in terms of the settling ponds and the
2 dredger ponds, the Initial Study Neg Dec talks about it
3 being wetlands. That inaccurate for three reasons:
4 One, it's outside the project footprint; two, there's
5 code regulatory guidance that indicates that these types
6 of facilities are not wetlands; and, three, the
7 interpretation of the one parameter definition of the
8 Coastal Commission is inaccurate.

9 And then the last point has to do with the
10 hydrology analysis. The analysis did not evaluate the
11 watering impacts to the on-site well or the settling and
12 dredger ponds. So those are just the main issues that
13 the letter raises.

14 Thank you.

15 MAYOR DELGADO: Thank you very much for being
16 here tonight.

17 JASON BURNETT: Good evening, Mayor, Members of
18 the City Council staff, and members of the public. I am
19 Jason Burnett, the mayor of Carmel and the president of
20 the Monterey Peninsula Regional Water Authority, and I
21 am speaking on behalf of the Water Authority this
22 evening.

23 I'd like to start out by recognizing that this
24 is your judgment call. It is a judgment. The questions
25 before you of piecemealing, the questions of the

1 adequacy of a Mitigated Negative Dec are policy
2 adjustments that you must make. Your staff have
3 explained the reasons for their recommendations, but
4 ultimately this is -- this is your decision and your
5 decision alone.

6 I want to provide a little background. This is
7 probably review. But there is an incredibly broad
8 consensus for the broad outlines of this project.
9 Sixteen parties, diverse groups got together and signed
10 a settlement agreement last year. As part of that
11 agreement was the formation of the Hydrogeologic Working
12 Group.

13 The decision of the settling parties was that
14 we wanted to have experts, hydrogeologists, determine
15 what information was necessary in order to inform the
16 broader project, and that's exactly what this test well
17 would provide. This test well is being called for by
18 that Hydrogeologic Working Group.

19 This is, at its core, an environmental project.
20 Getting off the Carmel River is an environmental
21 project, and doing it in an environmentally sensitive
22 way, including surface intake, is an environmental
23 project. Unfortunately, there is only concern locations
24 that may work for subsurface intake, and, unfortunately,
25 perhaps for you this evening, one key location is in the

1 City of Marina. Had it been elsewhere, we wouldn't
2 necessarily have to be here today, but the physical
3 geology is the reason that we are here this evening.

4 I want to note that this is not just of
5 significance to the Monterey Peninsula, the broader
6 Monterey County community, but it's of statewide and
7 national significance. There's a push for subsurface
8 intake, for marine protection reasons. The Coastal
9 Commission, State Water Board, NOAA are all pushing
10 entities in that direction. There will be wide benefits
11 of whatever information is gained from this test well,
12 not just for the Monterey Peninsula or, as it was
13 pointed out earlier, Marina coast, should they choose to
14 move forward with a desalination plant, but benefits
15 throughout the state.

16 I want to speak to the issue of whether the
17 broader project is reasonably foreseeable. Let me first
18 observe that nothing is reasonably foreseeable when it
19 comes to water. We wouldn't be working on this 35 years
20 later if it was. Nothing is ever reasonably foreseeable
21 on Monterey Peninsula when it comes to water. This is a
22 new technology, a slant well, and we believe we are at
23 the cutting edge for the reasons I stated earlier, but
24 it is not reasonably foreseeable to conclude that that
25 technology will work. There are other locations.

1 And, finally, the CPUC process is not a process
2 that we can know what the outcome will be. We do know
3 that we will benefit from the information gathered from
4 this test well.

5 I will conclude by saying this test well would
6 be needed even if it were destroyed after a two-year
7 testing period. So it is a stand-alone project. That
8 would be a waste. It would cost us, the Monterey
9 Peninsula ratepayers, three million extra dollars. But
10 as a factual matter, I would be here today advocating
11 that if that were what was before you, and that
12 illustrates that, in fact, this is a separate issue
13 with -- for the purposes of gathering --

14 MAYOR DELGADO: Excuse me, Jason, I hate to do
15 this, but I've got to cut you off.

16 JASON BURNETT: Thank you very much.

17 MAYOR DELGADO: Thank you very much, Jason, for
18 your all your work on this project over the years.

19 MARGARET DAVIS: I'm Margaret Davis, Marina
20 homeowner and member of the Planning Commission that
21 refused this when it came before us. I'm not speaking
22 as a Planning Commission member.

23 But I must say that most companies have a --
24 make their potential business decisions based on an
25 established track record of the other party. Cal-Am has

1 an established track record that we can look at. Cal-Am
2 currently wants Marina to embark on an illegal adventure
3 by piecemealing the desal project into separate and
4 distinct CEQA review for the bore holes and now the test
5 slant wells. These two mini projects are integral to
6 and inseparable from the real project, which is a desal
7 plant. Clearly, the piecemealing of the project has
8 City of Marina complicit potentially in the
9 circumvention of CEQA law and the environmental
10 protections it's meant to provide.

11 Cal-Am asserts there's an urgency to complete
12 this project in 180 days. As has been stated, urgency
13 is not a recognized exception to CEQA enforcement. The
14 City of Marina should not participate in this violation
15 of environmental law.

16 Cal-Am's reputation, what is it? Overtaking on
17 the Carmel River, dumping arsenic in our Marina landfill
18 just three months ago where they had to pay almost a
19 half a million dollars in consequences, inflicting
20 billing spikes on water customers, fraudulent
21 representations to the public when it notified the CPUC
22 that it had pulled out of regional desal project, but
23 then sent a press release out to the public and its
24 partners that it was still participating. Pulling out
25 of that project has cost Marina resident \$18,000,000.

1 Cal-Am has failed to properly manage the
2 Monterey Peninsula Water Supply, failed to secure new
3 water sources as mandated in 1995, spent millions of
4 dollars to defeat Measure O, costs again being passed on
5 to ratepayers. Cal-Am ratepayers have paid the full
6 bill for stranded costs from prior Cal-Am failures total
7 approximately 32 million dollars with millions more on
8 the line in mitigation costs.

9 Cal-Am is now attempting to pit City of Marina
10 against its own Marina Coast Water District, our own
11 water board, and potentially and trigger lawsuits if you
12 fail to -- if you pass this, there will be lawsuits. Do
13 you want Marina Coast Water District to have to sue the
14 City of Marina? What a fine mess that would be. If you
15 turn Cal-Am down, they'll appeal. Let that be on their
16 head.

17 I agree with Mr. Brehmer, Marina is the city of
18 the future. I don't look down upon Marina residents who
19 work on the peninsula, and certainly not those who live
20 in an apartment. And I don't picture a squalid little
21 life where they are happy to get to work so they can
22 take a sponge bath in hotel bathroom. I mean, the
23 scenario is ridiculous. Marina residents come home.
24 They take a shower. They water their plants. Marina
25 residents need a water supply.

1 And your Water Board, the elephant in the room
2 who has been ignored tells you this Cal-Am plan will
3 compromise the Marina water supply by piecemealing,
4 illegally taking. It will cause harm to our city.

5 Marina residents who I have talked to in
6 campaigning for Water Board are very upset about
7 Cal-Am's aggression, and they resent the bullying, and
8 they're willing to stand behind candidates who will
9 stand behind them.

10 Thank you.

11 MAYOR DELGADO: Thank you very much, Margaret.

12 MARGARET-ANN COPPERNOLL: Good evening,
13 Mr. Mayor, Members of the City Council. My name is
14 Margaret-Ann Coppernoll, Marina resident and homeowner.

15 I'm here to strongly urge you to deny approval
16 for a Cal-Am permit to establish slant test wells and
17 consider a full EIR and a cost analysis and other
18 options.

19 The water is being pumped from the 180-foot
20 aquifer of the Salinas Valley Groundwater Basin. It is
21 not being pumped from the ocean. Pumping of the slant
22 test well will exceed the CEMEX maximum allocation of
23 500 acre feet per year. The rights to all water in
24 excess of the 500 acre feet from this coastal location
25 belong to Marina Coast Water District and other

1 preexisting legal users.

2 MCWD has established its rights to water from
3 within this coastal location. It is imperative that
4 Marina protect its own water rights and fend off
5 aggressive encroachment by a nationally controlled
6 corporation that seeks to acquire rights through
7 manipulation of the legal and environmental processes,
8 particularly CEQA, which disallows piecemealing
9 projects.

10 Cal-Am does not have rights to Salinas Valley
11 groundwater, so Marina should not grant any permit that
12 ignores this fact. Other cities such as Santa Cruz
13 rejected slant well technology as too complicated and
14 costly. Dana Point, not operational anymore for years,
15 spent 134 million. Can we afford it?

16 Marina models what a good neighbor does and is.
17 Marina respects the law and has a vision and mission to
18 do what is best not only for its own citizens but also
19 for the wider community and surrounding neighbors.

20 Money and pressure cannot produce this kind of
21 world-class quality city, a neighbor that is Marina, but
22 doing what is right can. It takes moral courage. Famed
23 Wild West Davy Crockett proved this as did Biblical
24 David when he defeated Goliath, the giant.

25 We must recognize that Cal-Am's national growth

1 strategy as documented in Securities and Exchange
2 Commission filings is based on a policy called tuck-ins.
3 Tuck-ins are intended to establish water supply
4 ownership in smaller communities, such as Marina, as a
5 prelude to serving the growth potential of that
6 community, such Fort Ord.

7 Cal-Am seems to have a covert goal to be the
8 water purveyor for Marina and Fort Ord development at a
9 significantly higher price tag than our current water
10 rates.

11 Cal-Am is a New Jersey based for profit company
12 guaranteed 9.99 percent return on every dollar invested.
13 Granting of the permit furthers the profits of Cal-Am
14 shareholders but weakens and irreparably harms MCWD and
15 its ability to provide water to Marina residents and the
16 entire former Fort Ord.

17 Let's have the moral courage and stalwart
18 leadership to stand up for our city and future
19 generations by protecting our own MCWD and its water
20 rights. We must require Cal-Am to demonstrate that it
21 can be a positive collaborative force that people can
22 trust before Marina residents and businesses place their
23 confidence and financial well-being in Cal-Am's
24 undertakings. So far, Cal-Am has not showed this
25 caliber of character.

1 So please do the right thing. Vote "no" on the
2 Cal-Am permit and require an EIR and cost analysis
3 benefit.

4 Thank you.

5 MAYOR DELGADO: Thank you very much,
6 Margaret-Ann, and happy birthday.

7 THOMAS MOORE: Okay. My name is Tom Moore.
8 I'm here representing the Board of Directors Marina
9 Coast Water District, of which I currently have the
10 interesting challenge of being the president.

11 For more than 40 years, the citizens of Marina,
12 from the Marina Coast Water District have been having
13 the reasonable expectation of getting clean, safe water
14 from the District. We hope that will continue into the
15 future, but the decision you make tonight may have some
16 impact on that.

17 So let me give you the bottom lineup first.
18 Marina Coast Water District believes that at the least,
19 the very least, a focused EIR is necessary. We had to,
20 with, unfortunately, ratepayer money, hire an expert
21 CEQA attorney from the firm of Remy, Moose and Manley,
22 in the form of Attorney Chip Wilkins, who will speak
23 after I do. He has found seven fatal flaws in the
24 IS/MND which we believe could potentially be corrected
25 with a focused EIR.

1 So this is just a list of some of the
2 interesting problems. The one that first struck me when
3 I first read the IS/MND was the fact that it makes
4 reference to a Mitigation, Monitoring and Reporting
5 Plan, but no such plan appears in any of the documents.
6 It's a promised plan. I'd like to know when the public
7 will get to weigh in on the adequacy of such a plan.
8 And I'm wondering why that's not a part of the
9 environmental review that's going on right now. What
10 is, in fact, the deadline for the creation of this plan?

11 There's not a lot of time, as a number of
12 speakers have pointed out, and we have concerns that the
13 whole point of this test well is to find out what
14 impacts it has on the basin. But it doesn't appear as
15 though anyone has baseline information on the so-called
16 natural fluctuations of the basin. It will take some
17 time to obtain that. But that's all in this
18 non-existent Mitigation, Monitoring and Reporting Plan
19 which the public has not had an opportunity to comment
20 on.

21 Cal-Am has known for at least four years that
22 slant wells might very well be necessary and that this
23 site might be a place to find them. I'm wondering what
24 they have been doing for the last three years and, you
25 know, and four months before they began this process.

1 It's also unfortunate that there is this 1997
2 annexation agreement which provides, in part, an intent
3 to help protect this intruded groundwater basin. I
4 would very much hate for Marina Coast Water District to
5 have to file against either CEMEX or the City or any
6 other party if our legal counsel advises us that we
7 would need to do so in order to protect our rights under
8 that 1996 contract.

9 Lastly, let me show you -- as some of you know,
10 we built a 300-acre-foot desalination plant a number of
11 years ago. It was based on one well in the first
12 aquifer located there at the end of Reservation Road.
13 It's hard to see in this color scheme. Red. No. Right
14 here. If we have to expand that to 3,000 acre feet, we
15 would need 10 more wells like that. If we put them onto
16 the CEMEX site, we would need a series of wells that
17 looks like that, takes up about half the CEMEX site. I
18 would certainly urge you to follow the physicians'
19 philosophy of, first, do no harm to your own ratepayers,
20 your own water source.

21 I will point out that the Governor, I believe,
22 has signed legislation changing the entire groundwater
23 regulation regime in the state of California, which our
24 counsel advises us could trigger adjudication of the
25 Salinas Valley Groundwater Basin, in which case we might

1 actually be limited in terms of groundwater to our
2 current pumping, which is approximately one-third of the
3 10,000 acre feet that we currently pump.

4 MAYOR DELGADO: Excuse me, Tom. Thank you,
5 Tom. I wish I could give you more time. But maybe the
6 next speaker will fill in for you.

7 HOWARD "CHIP" WILKINS: Good evening, Mayor
8 Delgado, Councilmembers. My name is Howard Wilkins or
9 Chip Wilkins, as I signed my letter, and I represent
10 Marina Coastal Water District.

11 I guess I would like to respond to some things
12 I heard tonight. One is that you have a policy decision
13 here to make and that you need to be good neighbors and
14 make that policy decision in support of the entire
15 community.

16 Well, as your attorney pointed out to you
17 earlier, this is not a policy call here since you have a
18 Mitigated Negative Declaration in front of you. You get
19 to make a policy call if you have an EIR, and then you
20 get to decide whether the impacts associated with the
21 project are significant, unavoidable, or mitigated. If
22 you have significant and unavoidable impacts, you get to
23 decide whether economic and other considerations make
24 approving the project anyway justifiable. So you do get
25 to make a policy call, but you don't get to make it at

1 this point in time.

2 As we've laid out, Marina Coast Water District,
3 in several comment letters now, there is a potential
4 impact here. And I will, I think, necessarily start
5 with the piecemealing argument, because that is
6 something that I was surprised when I saw the document,
7 that it didn't identify any potential cumulative impacts
8 associated with the project.

9 Your counsel has ably described the Laurel
10 Heights. I think a lot of you now, at least a couple of
11 you, have read the decision. And it's clear that if
12 there's a foreseeable project, that you need to look at
13 that either as part of this project or definitely as
14 part of your cumulative analysis. And the cumulative
15 analysis at minimum needs to include that. It does not
16 here.

17 I'm going to hand out something I pulled off
18 the website today from the Marina Coast Water District.
19 I have five copies. I could put it up there on the
20 screen, I guess. Can I hand these to the Clerk or
21 whoever? And it's the Monterey Peninsula Water Supply
22 Project progress report from July 31st, 2014.

23 And if you take a look on the last page, and
24 you can't really see it on the monitor there, you will
25 see that this test well project, as it's -- as it is

1 labeled, is the first phase of this project. It is
2 clearly contemplated to be the first phase of this
3 project. This is not a separate project.

4 And if you take a look inside this document, it
5 talks about the fact -- if you look at page 3, it says
6 the full-scale project will consist of up to nine
7 additional slant wells. So it's talking about
8 additional wells. It's not saying it will include nine
9 wells, it's saying nine additional wells.

10 So is this part -- is this a foreseeable part
11 of this project? And the record demonstrates that it
12 is. If you take a look at the other earlier April
13 progress report, you'll see the same timeline in there,
14 you'll see other information that indicates this is part
15 of the same project.

16 And here you don't get to make a determination
17 whether you think it's reasonably foreseeable from a
18 policy perspective. You have to look at the facts, and
19 a court will not give you deference on that particular
20 decision. This is not a policy call.

21 And I'm going to move on quickly because I see
22 I already have a yellow light. I will just say briefly,
23 in terms of the potential impacts of this project, the
24 EIR -- I'm sorry, the negative declaration states there
25 are problems or potential significant impacts and it

1 proposes mitigation. So the idea there are no potential
2 significant impacts here is completely ridiculous,
3 because the document itself says there are potential
4 impacts and it proposes mitigation. And as outlined in
5 our letter, that mitigation doesn't satisfy CEQA, and I
6 believe Tom specifically said there is a deferral of
7 mitigation there.

8 It's not that the plan itself isn't -- or at
9 least a plan is not included with the documents, but
10 there is deferral of exactly what will happen if there
11 is an impact. Cal-Am gets to decide what the baseline
12 conditions are, and they get to decide under this plan
13 if mitigation is necessary. And I've cited case law
14 that says that that is inconsistent with CEQA
15 requirements.

16 And I see my time is up.

17 MAYOR DELGADO: Thank you very much, Chip. We
18 might have questions for you later. I think at least I
19 will.

20 LARRY PARISH: I hope my voice holds up. My
21 name is Larry Parish. I'm a Cal-Am ratepayer from
22 Carmel Valley.

23 First let me say that I'm not opposed to
24 desalination as a new water supply source. If I was, I
25 wouldn't be here. I simply let Cal-Am act out their

1 charade, fail like they always do, and move on
2 accordingly.

3 However, what I am opposed to is yet another
4 investment and yet another failed project which Monterey
5 Peninsula ratepayers will have to pay for. And that's
6 what these slant wells will be, just another Cal-Am
7 failure.

8 Most people that have honestly examined slant
9 wells know this. They will fail. There are so many
10 problems with these slant wells, any one of which should
11 give you ample reason for denial of the permit: From
12 site location of not just one well, but maybe up to 20
13 wells, lack of aquitard, unnecessary and excessive
14 costs, water quality issues, lack of water rights, the
15 piecemeal problem, just to name a few.

16 Consider this: There are more than 15,000
17 desal plants across the globe, and not one uses slant
18 wells. That means zero. Not one desal uses slant
19 wells. They have been recently studied in Santa Cruz,
20 as we've heard, and determined to be infeasible. In
21 Southern California at Dana Point, we also heard about
22 that, they drilled one slant well which still has
23 unresolved issues with the filtration system, unsolved
24 water chemistry problems, and it's been shut down for a
25 couple of years now.

1 Here is what the South Coast Water District
2 General Manager, Andy Brunhart, the project manager of
3 that desal said in a recent e-mail to me. It's
4 difficult -- quote:

5 "It's difficult to estimate future
6 problems, but we anticipate that
7 redevelopment of the slant wells will
8 require some innovative techniques that
9 are not currently used for vertical wells."
10 Unquote.

11 In other words, technology is undeveloped,
12 untested, and unproven, totally experimental.
13 Mr. Brunhart also estimates that their project, should
14 they keep on pursuing it, might be complete -- this is
15 what he said, the best-case scenario might be complete
16 in 2027 at the earliest. It started in 2006.

17 So let's get real. Let's end the charade. Put
18 down the Cal-Am Kool-aid. Do peninsula ratepayers a
19 favor, do Marina a favor, deny this permit. It's a big
20 waste of time and money. Four million dollars and two
21 to three years of testing, of wasted time. Just listen
22 to your Planning Commission, listen to Marina Coast
23 Water District. Let's not invest in failure. We don't
24 want delay. What was up there is. We want desal.

25 Thank you.

1 MAYOR DELGADO: Thank you very much, Larry.

2 SHERWOOD DERRINGTON: Mr. Mayor and City
3 Councilmembers, my name is Sherwood Derrington, and I'm
4 the managing director of the Ag Land Trust. And I just
5 wanted to clarify and correct a couple of statements and
6 a little bit more information that was given to you
7 tonight.

8 I have had two meetings with representatives of
9 Cal American. I can recognize sign language, too. I
10 have had two meetings with representatives of Cal
11 American. The first one was in June, and the other
12 people there was a representative from the Mayors' group
13 and president of Cal American and their engineers, their
14 in-house engineer.

15 The second meeting was about two days ago. And
16 the representative, besides myself, was one of our board
17 members who is Marc Del Piero who spoke earlier, the
18 engineer from Cal American, and an attorney -- plus an
19 attorney on the phone that was in San Francisco or
20 someplace where they charge a lot of money.

21 But at the first meeting, it was expressed to
22 me that the test well that they are proposing was going
23 to be turned into a production well, you know, if their
24 project goes forward.

25 And at the second meeting yesterday I asked

1 that same question if it was going -- if the test well
2 was going to be a production well, and their response
3 was that's their plans at that time. It could be
4 different today, you know. And they could get a permit
5 today, and it could be different tomorrow.

6 But at the current time, it appears that they
7 are looking at that test well to have a future to it,
8 other than just a test well today. Tomorrow it could be
9 different.

10 The other -- the other thing is that the Ag
11 Land Trust has two wells on our property, which is
12 adjacent to CEMEX. And the one that doesn't show on the
13 map, that actually is a little bit closer to the well
14 site than the one that does. So if there's any
15 revisions done in their document, we would request that
16 document be modified to show the actual facts there.

17 But the real reason that I'm here today is
18 about the letter that I presented tonight. The real
19 request in that letter is to ask you that if you do
20 approve the request tonight, that you approve it subject
21 to an approval condition, and that condition would be
22 that prior to any drilling of a well, that Cal American
23 and the Ag Land Trust agree to a mitigation project that
24 protects the water rights and the property of the Ag
25 Land Trust.

1 Thank you very much.

2 MAYOR DELGADO: Thank you very much, Sherwood.

3 And we might have questions for you later, too.

4 Anyone else? Okay. We'll go ahead and close
5 public comment.

6 Come on up. Sorry about that, Ian. I thought
7 you said if there were questions.

8 IAN CROOKS: That's all right. I'll make this
9 quick, because I would like to reserve most of my time
10 for my counsel on piecemealing to help you answer that
11 question.

12 But I would just like to make a couple of
13 points that the test well is a test. We need the data
14 to move it to the next stage. If it's successful and it
15 becomes a production well, the production well comes
16 before you in the full EIR. You will get a chance to
17 evaluate it, ask questions, and make comment.

18 The other point I would like to make is on the
19 piecemealing MND, Dana Point has been mentioned. Dana
20 Point was processed as an MND. There was a slant test
21 well built in an estuary on a state beach with an MND
22 with a pilot plan. We're talking about a sand mine in a
23 disturbed area, and we're trying to get an MND with no
24 pilot and no processing. So it's a much simpler project
25 than Dana Point with the same end.

1 And then a couple of comments on monitoring.
2 We have a plan in place that is a monitoring plan. It's
3 in a technical memo. The HWG group put it all together,
4 and it's certainly available to the public.

5 And then a little bit about the MCW production
6 wells. We had a meeting with MCWD's interim general
7 manager, Brian Lee, and we agreed to model any Marina
8 Coast Water District production needs for desal or
9 brackish down at Reservation Road, and we were going to
10 model that for them to see if there were any impacts
11 between any production wells and their needs down south.

12 And there is no real technical reason that MCWD
13 would want to use slant wells. They are under an
14 in-basin user. They can use brackish vertical wells
15 economically. It would make no sense them for them to
16 do so. And they also don't -- as far as I know, don't
17 need 10,000 acre feet. I've been told they only need
18 2,400. I think that's pretty well documented.

19 So I reserve the rest of my time for my
20 counsel, Tony, to talk about piecemealing.

21 ANTHONY LOMBARDO: Good evening, Mr. Mayor and
22 Members of the Council. Anthony Lombardo appearing on
23 behalf of Cal-Am. I'm going to hit the legal highlights
24 of many of the comments tonight.

25 We heard about fair arguments, and some

1 questions were asked about what constitutes a fair
2 argument. Fair argument is considered to be information
3 that is based on substantial evidence. I'm going to
4 read briefly from the CEQA definition of what is not
5 substantial evidence. Guideline section 15384 says:

6 "Arguments, speculation or unsubstantiated
7 opinion or narrative evidence is not
8 substantial evidence."

9 There's nothing in your record either at
10 tonight's hearing or anything that was submitted to you
11 in writing that constitutes a fair argument that there's
12 going to be an unmitigated environmental impact
13 resulting from the test well. The negative dec -- the
14 very thorough negative declaration prepped by your staff
15 describes potential environmental impacts and
16 mitigations for every one of those impacts resulting
17 from the operation of the test well.

18 There's been not one shred of evidence that or
19 testimony that refutes the conclusions that the
20 potential environmental impacts, like to plover or to
21 sensitive dune habitats or what the city's consultant
22 believes are historic resources, which we already
23 commented on behalf of CEMEX we did not believe were
24 that either. Every one mitigated. There's no evidence
25 whatsoever that this test well will have -- that there's

1 a fair argument of a possible substantial impact from a
2 test well.

3 The second question came up was a disagreement
4 among experts. There are none. There is no expert
5 opinion that's been submitted to you that contradicts
6 the expert opinions that are contained in your negative
7 declaration. None. You heard none tonight. There is
8 none provided to you in writing.

9 Finally, let's talk about piecemealing.
10 Piecemealing is what you put into environmental comment
11 letters when you don't have anything else of substance.
12 In the 17-page letter, which as Sherwood said, was
13 prepared by a law firm that probably charges a lot of
14 money, there isn't one shred of evidence that supports
15 the conclusion that there is a potentially significant
16 environmental impact.

17 There is a lot of supposition. For example,
18 there is a page that says, well, if you approve the test
19 well, I'm sure that the EIR prepared by the PUC will not
20 analyze the impact of full production of the production
21 wells. It will assume that water out of the test well
22 is already the baseline. There's no evidence to support
23 that. Pure speculation. And you heard from Mr. Ziggas,
24 they're analyzing that as the full production project as
25 a stand-alone project.

1 Let me hone in and close with what piecemealing
2 is. Piecemealing is what developers do when they have a
3 huge project, like a subdivision or a big shopping
4 center or some big hotel, and they break up the
5 components of that permit for that project into a bunch
6 of small, individual components that therefore they can
7 say, well, it's only a few traffic trips, it's only a
8 little bit of air pollution, it's only a little bit of
9 water use for each of these components, and, therefore,
10 never look at the big picture.

11 The cases that involve piecemealing, as
12 Councilmember Morton mentioned, for example, Laurel
13 Heights in San Francisco. The University of California
14 or University of San Francisco -- yeah, UC, not the
15 Jesuits -- the State bought a huge building complex with
16 over 300,000 square feet. And they said, well, we're
17 just going to look at the one building now because we
18 don't know what we're going to do in the future. The
19 court said, look, you bought 300,000 square feet. You
20 didn't buy 300,000 square feet to use 100 and leave the
21 rest of it empty.

22 Cal-Am doesn't have any right to drill any
23 wells on the CEMEX property beyond this test well. We
24 don't own anything on the CEMEX property. We don't have
25 a project that we're trying to say, well, just look at

1 each one of the wells individually. That's
2 piecemealing. If we came forward next year and said,
3 well, just consider one of the production wells, then
4 we'll be back next year with another one.

5 You heard from the PUC that's not what they're
6 doing. They're doing an EIR on everything: The desal
7 plant, the test wells, the pipe -- I mean, the
8 production wells, the test well, everything, including
9 the entirety, the pipelines, everything.

10 Piecemealing is when you break something up to
11 avoid analysis of the totality of the project. That
12 isn't what's happening here. There's an -- in the cases
13 that counsel from the Coast Water District mentioned
14 were just those. For example, one of them came from
15 Carmel. We all know where the Mission Ranch is,
16 Mr. Eastwood's beautiful hotel. That was originally
17 proposed for development as a condominium project.

18 The County of Monterey in the case of City of
19 Carmel versus Board of Supervisors cited in the
20 letter -- pardon me -- approved rezoning. The rezoning
21 was a prerequisite to apply for the residential
22 development. The Board of Supervisors said, well,
23 there's no impact from rezoning. We're just rezoning.
24 Somebody comes along with a development of a condo
25 later, we'll analyze that. The court said, no, you

1 can't have the condos unless you have the rezoning.

2 That's not the case for the test well. We can
3 forget the test well, go through the whole PUC process,
4 come back to you a year and a half from now with the gun
5 really at our head and say, okay, now we're going to get
6 approval for the production wells, go through all of
7 that, drill the first one and find out, guess what, it
8 doesn't work. Because that's a possibility. And when
9 it doesn't work, then we're going to have to start with
10 a whole new process over again.

11 This project is covered -- the impacts from
12 this project are covered by the Mitigated Negative
13 Declaration. This project does not short-circuit, avoid
14 or preclude the environmental analysis of the whole,
15 and, in fact, is only for the purpose, as you heard from
16 all of the technical speakers, to gain information as
17 quickly as we can as to whether this project works or
18 not so we don't get our neck stuck way out further a
19 year and a half from now.

20 Because, remember, when the snowy plover comes
21 back from their vacation in Mexico, we can't drill
22 anything. So the problem waiting for the EIR for the
23 PUC is that we're going to lose another year to year and
24 a half.

25 Finally, Mr. Mayor, we are at the end of the

1 time for a decision to be made by the City. This is the
2 last day under your -- or last hearing that you have got
3 scheduled under your code in which you need to render a
4 final decision. And so I respectfully request in
5 whatever form, based on whatever decision you make
6 tonight, that you do render a decision tonight so that
7 the project can move forward.

8 Thank you.

9 MAYOR DELGADO: All right. Thank you very
10 much, Tony, for those succinct remarks. And, Ian, thank
11 you very much as well.

12 Okay. Counsel, our process normally is to
13 answer the questions that have been raised. That's
14 going to take us past eleven o'clock. What is your
15 pleasure?

16 And, Nancy, are you still with us?

17 COUNCILMEMBER AMADEO: I'm still here.

18 MAYOR DELGADO: Have you been able to hear
19 everything?

20 COUNCILMEMBER AMADEO: I was able to hear
21 everything, yes.

22 MAYOR DELGADO: Okay. We hear you loud and
23 clear well.

24 So, Council, do you want to talk about how late
25 we're going to go tonight? Because we're not going to

1 finish by 11:00, obviously.

2 COUNCILMEMBER MORTON: I'll move to continue
3 until 11:30.

4 MAYOR DELGADO: Okay. I'll second that.
5 Does any member of the public want to comment
6 on that extension motion?
7 Okay. All in favor, please say "aye."
8 (Response.)
9 All opposed, please say "no." That passes 3 to
10 2, I guess. I don't know. Maybe it's unanimous because
11 silence is -- that's a yes. Okay. Pass unanimously.

12 All right. As far as housekeeping, it's
13 possible we're not going to finish by 11:30, so do you
14 want to leave it open to extend again? Or do you want
15 to start now talking about adjourning to tomorrow night?

16 COUNCILMEMBER BROWN: Let's start now.

17 MAYOR DELGADO: Start now and see how it goes?

18 COUNCILMEMBER BROWN: I don't think we should
19 go to midnight.

20 MAYOR DELGADO: So we'll bring it up again at
21 about 11:25, if we get there without finishing.

22 Okay.

23 UNIDENTIFIED MALE: Mayor, a procedural
24 question?

25 MAYOR DELGADO: I'm sorry?

1 UNIDENTIFIED MALE: If I might, we have an
2 individual, Jonas Minton, who I believe is still here,
3 who traveled from Sacramento today and is traveling home
4 this evening. I think you said you may have a question
5 for him. He is waiting here for that.

6 MAYOR DELGADO: Okay.

7 UNIDENTIFIED MALE: If you're able to ask that
8 question, that would be good.

9 MAYOR DELGADO: Sure. Let's start there.
10 Jonas, are you here?

11 JONAS MINTON: Yes.

12 MAYOR DELGADO: Can you come on up, please?

13 And thank you for all your service in the
14 Department of Water Resources and also the league that
15 you serve now.

16 You mentioned that most water districts have a
17 separate investigation phase from their ultimate
18 project, and that in this case there is not the
19 reasonable foreseeableness that is a key question.

20 Can you -- can you explain how large dam
21 projects can do things, such as move earth and do boring
22 and testing, but perhaps we wouldn't be able to hear.
23 So can you describe the differences?

24 JONAS MINTON: Sure. I'm not sure they are
25 different in this case, which is why I brought it to

1 your attention.

2 California's currently looking at five large
3 dams in the state of California, each over a billion
4 dollars. Those projects have a variety of questions
5 associated with them: Financing, environmental,
6 geotechnical issues. So I will focus on geotechnical
7 for a moment, because that's similar to the well
8 testing.

9 You have to be sure that you have a competent
10 abutment structure if you are going to put a dam in.
11 You want to be sure that the sides where you are placing
12 the dam on both sides can hold the dam. What that means
13 is there is going to be a considerable amount of
14 excavation they call dental work to clear it off to see
15 what the underlying rock composition is. Now, this
16 involves earth moving, it involves boring, geotechnical
17 assays.

18 Relevant to this point also is that that work
19 may or may not lead to something. They hoped it does.
20 The governor just signed a bond measure for the ballot
21 with 2.7 billion dollars for those dams, but no one
22 knows if they will work.

23 So past practice and continued to this date and
24 into the future, they do that without doing the full
25 Environmental Impact Report; for instance, on enlarging

1 Shasta Dam. So they are doing that work now.

2 The work itself would assist the dam if it is
3 built. So isn't -- you know, there is a utility that
4 extends if the project is completed. They are clearing
5 off some of the abutment material, which they would have
6 to do anyway.

7 So that has been the practice. And I know that
8 other water agencies assist who have done dam
9 projects -- I has a water agency manager in Northern
10 California. When we looked at dams, we had crews out
11 there doing similar sort of work, prior to the full
12 environmental impact process, which we would undertake
13 in the project proceeded to that point.

14 MAYOR DELGADO: Okay. So similar to separate
15 investigative phases before the ultimate project for
16 dams, for instance, you see this paralleling --

17 JONAS MINTON: Yes.

18 MAYOR DELGADO: -- our project before us
19 tonight?

20 JONAS MINTON: Uh-huh.

21 MAYOR DELGADO: Okay.

22 JONAS MINTON: With no -- I've done this for 35
23 years, and there's been no contesting the ability of
24 lead agencies to do that, to do those investigations
25 without the full EIR. In fact, it would be upsetting

1 precedent to do it in that manner.

2 MAYOR DELGADO: Okay. Jonas, before you go,
3 let me ask other Councilmembers, Nancy included, if
4 anyone has any questions for Jonas or follow-up before
5 he heads home safely.

6 Gail or David, do you have any questions for
7 Jonas?

8 COUNCILMEMBER BROWN: No, I don't.

9 MAYOR DELGADO: Nancy, are you okay?

10 COUNCILMEMBER AMADEO: No, I have no questions.

11 MAYOR DELGADO: Okay. At ease, soldier.

12 JONAS MINTON: Thank you very much.

13 MAYOR DELGADO:. Thank you very much.

14 COUNCILMEMBER BROWN: It's too late now.

15 MAYOR DELGADO: All right. Chandler Roland
16 asked some questions that may not be environmental, but
17 let's try to get to them.

18 Will businesses be charged -- will Marina
19 businesses be charged more in the future for water if we
20 were to go down this road of approving tonight's
21 project?

22 I'm not sure. Who would be the best person to
23 answer this?

24 Tom, do you see any -- would you like to answer
25 that question?

1 THOMAS MOORE: Repeat the question.

2 MAYOR DELGADO: If Marina business will be
3 charged more for water in the future if we go down this
4 process of approving the slant test wells and
5 foreseeably going to the desal project.

6 THOMAS MOORE: There is a -- sorry. One of our
7 concerns is with access to source water for desal. It
8 was mentioned that the base reuse plan for the Ord
9 community calls for 2,400 acre feet. We have an
10 existing but moth-balled 300 acre foot desal project.
11 So we've totaled up 2,700 hundred there. We're trying
12 to get that number revised in the sense of for accuracy,
13 because that's a number that came from 1997, 1998.

14 But if the basin goes into adjudication, we're
15 currently using about 4,400 acre feet of rights, if you
16 count CEMEX, Armstrong Ranch, central Marina and the Ord
17 community rights, a little over 11,000 acre feet.
18 That's about one-third of paper rights. Those papers
19 rights could disappear in an adjudication, and we could
20 be limited or even cut back from what we're actually
21 using today. If that were to happen, absent access to
22 source water for desalination, all redevelopment and
23 Marina and the Ord community would have to cease because
24 there would be no water for them.

25 MAYOR DELGADO: Okay. So that's a pretty scary

1 projection.

2 THOMAS MOORE: I should add we are EXPLORING
3 surface water. We're exploring reclaimed water, but you
4 just never know.

5 MAYOR DELGADO: Okay. So if we were
6 adjudicated and needed a new source of water, such as
7 desal, how would the approval of the MND tonight affect
8 our ability to find that source water?

9 THOMAS MOORE: Well, it could take up a good
10 hunk of the coastal sites. You can't put two wells two
11 feet apart and not have them affect one another and
12 affect your ability. So there is some minimum
13 separation.

14 The District would like to know what the test
15 well results are, but we'd also like to know what the
16 Mitigation and Monitoring Plan is going to be. We would
17 certainly like some consideration given in this entire
18 process for our future access to source water. I mean,
19 because right now this kind of looks like a first-come,
20 first-serve situation. And the bigger need indeed is on
21 the Monterey Peninsula at the moment, but that could
22 change with this new law.

23 MAYOR DELGADO: All right. Did you understand
24 where Eric Ziggas was going, and we'll ask him to
25 clarify if we need to, with the potential that some of

1 your future needs will be modeled and benefit you if we
2 were to down this road of approving the MND tonight?

3 THOMAS MOORE: Well, as I indicated, there
4 would be some potentially useful information to come
5 from the test well itself.

6 MAYOR DELGADO: Okay. Now, Tom, imagine that
7 we approve the MND tonight and in a year, year and a
8 half when we were asked to approve the production well,
9 do you think that the data gained between now and then
10 would make you better prepared to tell us then of the
11 impacts that approving that production well might have
12 on our need for future source water? Or do you think
13 that the slant test wells, if they were to go ahead,
14 would be a fatal flaw potentially for your needs for
15 future source water as our purveyor?

16 THOMAS MOORE: Well, as I understand it, in
17 order to get something on the order of 20,000 acre feet
18 to feed a 10,000 acre foot desalination project, they
19 may need upwards of 40 wells and perhaps 400 feet apart.
20 I don't know. I'm not the hydrological expert in that.
21 And I don't see really good coverage in this MND on that
22 particular issue. And maybe it's because the Hydrologic
23 Working Group doesn't know, or maybe my lack of
24 knowledge is because Marina Coast Water District is not
25 a part of the Hydrological Working Group. We were never

1 invited.

2 MAYOR DELGADO: Okay. I don't know the answer,
3 if this is correct thinking or not. But if we allowed
4 the slant test wells to collect the data, and that had
5 some potential benefit to MCWD and Cal-Am's district,
6 wouldn't we still have the chance to say no to the
7 production well permit? Wouldn't we get another bite at
8 the apple, in your opinion, to protect our future source
9 water before the production well, but after the test
10 slant wells?

11 THOMAS MOORE: That almost sounds like a legal
12 question that I'm not sure I know the answer to.

13 MAYOR DELGADO: Okay. All right. Any other
14 questions for Tom?

15 COUNCILMEMBER MORTON: I do. Tom, I guess it's
16 okay if I use "Tom"?

17 THOMAS MOORE: Yes, absolutely.

18 COUNCILMEMBER MORTON: So, Tom, my
19 understanding is that your district is required to
20 provide the water to downtown central Marina, and you're
21 also required to provide -- oh, thank you. I'm pretty
22 loud, though -- required to provide 6,600 acre feet for
23 the future development of former Fort Ord and the
24 currently development, but you're required to do that.

25 And is it true, my understanding from reading

1 this annexation agreement, is that the source of your
2 water is a 180 aquifer, a 400 aquifer and a 900 aquifer,
3 and all three of those aquifers are part of the Salinas
4 Valley Basin; is that correct?

5 THOMAS MOORE: All true statements.

6 COUNCILMEMBER MORTON: And is it true also that
7 the basin is in overdraft?

8 THOMAS MOORE: Also true, although there's some
9 uncertainty about what's going on in the 900-foot
10 aquifer. We have a monitoring well at our beach office
11 that goes down that deep as sort of the canary in the
12 coal mine to see if things --

13 COUNCILMEMBER MORTON: Okay. I read this
14 agreement, and I also am going to disclose I am one of
15 the city's representatives on the joint city water.

16 MAYOR DELGADO: Which agreement?

17 COUNCILMEMBER MORTON: The annexation
18 agreement. So my understanding from this agreement is
19 that MCWD is required, they are to take 5,200 of the
20 6,600 acre feet for use on the development of former
21 Fort Ord. They can take up to 5,200 feet. The
22 preferred source of that is the 180- and the 400-foot
23 aquifers.

24 THOMAS MOORE: Because it's cheaper to pump
25 from those aquifers.

1 COUNCILMEMBER MORTON: Okay. Now my question
2 is, in this agreement if the basin is in overdraft and
3 you are required to have that water, if the slant well
4 is pumping from the 180-foot aquifer, isn't it a true
5 assumption to say they are taking your water?
6 Regardless of the character of the water. I'm not
7 talking about the character of the water. I'm talking
8 about your annexation agreement that says you agree that
9 this is where you are going to get your water from.

10 THOMAS MOORE: That seems like a reasonable
11 assertion to make.

12 COUNCILMEMBER MORTON: So, in fact, in allowing
13 this permit for a test permit, the test well, that then
14 allows further well production in the future, that it
15 may well be, isn't it, in fact, then that that water
16 potentially is water coming from the participants in
17 this agreement, this annexation agreement?

18 THOMAS MOORE: That's the potential. I'm
19 hesitating a little bit, because we've already had a
20 closed session to try and discuss things having to do
21 with the 1996 annexation agreement. I'm not sure what I
22 should be saying publicly about that.

23 COUNCILMEMBER MORTON: All right. It seems
24 like a pretty straightforward contract. The Marina
25 Coast Water District signed it and is a party, correct?

1 THOMAS MOORE: Correct.

2 MAYOR DELGADO: The City of Marina signed it,
3 correct?

4 THOMAS MOORE: Yes. CEMEX is a party.

5 COUNCILMEMBER MORTON: And the document was
6 recorded; is that correct?

7 THOMAS MOORE: Yes.

8 COUNCILMEMBER MORTON: And the agreement
9 specifies that it was effective upon signature by all
10 the parties, correct?

11 THOMAS MOORE: Yes.

12 COUNCILMEMBER MORTON: Annexation was not a
13 condition to the agreement being effective. It's the
14 framework for annexation in the future, correct?

15 THOMAS MOORE: You are now beginning to ask me
16 a legal question about contract law. But, yes, my
17 understanding is that this agreement, this contract is
18 today in effect.

19 COUNCILMEMBER MORTON: Well, your Marina Coast
20 Water District submitted letters to the City Council,
21 and I'm trying to make sure that the public understands
22 what's in these letters, and I'm not reiterating
23 anything different than a portion of what was pointed
24 out in your letters. And one of those letters is that
25 Lone Star, now CEMEX, is limited to 500 acre feet per

1 year to take from the Salinas Valley Groundwater Basin.

2 THOMAS MOORE: Correct.

3 COUNCILMEMBER MORTON: Is that correct?

4 THOMAS MOORE: That's correct.

5 COUNCILMEMBER MORTON: If the basin is in
6 overdraft, CEMEX, anybody coming in in a junior person,
7 or any other entity that wants to come in and take from
8 this pot of water, the basin, if it's in overdraft, then
9 that means every little bit of it is already spoken for
10 and taken; is that correct?

11 THOMAS MOORE: Yeah.

12 COUNCILMEMBER MORTON: That's why we have
13 saltwater intrusion is my understanding.

14 THOMAS MOORE: Right. Right. That's the
15 physical answer.

16 COUNCILMEMBER MORTON: So if, in fact, Cal-Am
17 wants to pump, they must take the rights from a
18 preexisting water holder? Does that make sense?

19 THOMAS MOORE: Makes sense to me.

20 COUNCILMEMBER MORTON: Isn't that what this
21 agreement says?

22 THOMAS MOORE: Again, that makes sense to me,
23 but, again, we're (inaudible) on the legal question.

24 COUNCILMEMBER MORTON: Okay. But your counsel,
25 the letters, you have said, have said that?

1 THOMAS MOORE: Yes.

2 COUNCILMEMBER MORTON: In fact, the agreement
3 says it inures to the benefit of successors.

4 THOMAS MOORE: Yes.

5 COUNCILMEMBER MORTON: So unless you are
6 granted under that Marina Coast Water District wants to
7 give their water to Cal-Am, or Lone Star, now CEMEX,
8 wants to give their water to Cal-Am, or the Ag Land
9 Trust or other legal users wants to give their water to
10 Cal-Am, Cal-Am doesn't have the right to pull from these
11 aquifers is what this agreement states. Is Marina Coast
12 Water District willing to give any of its water to
13 Cal-Am?

14 THOMAS MOORE: Well, I suppose if Cal-Am made
15 us an offer.

16 COUNCILMEMBER MORTON: It's a "yes" or "no,"
17 are you?

18 THOMAS MOORE: Well, I don't know. Do I hear
19 two billion? Do I hear three billion dollars? No, we
20 can't.

21 COUNCILMEMBER MORTON: So my next question is
22 my understanding in all these meetings that I go to with
23 the Water Board, that I sit there, because one of the
24 suggestions two years ago in 2012 was sell -- Marina
25 Coast Water District, you are not using all your water.

1 If you are not using all your water, sell it to the
2 peninsula.

3 Now, this agreement, and my understanding from
4 conversations and getting educated at these meetings, is
5 Lone Star can take -- now CEMEX, can take 500 acre feet,
6 but it has to be used on the site; is that correct?

7 THOMAS MOORE: I don't know that the agreement
8 allows them to sell that to anyone else to compensate.

9 COUNCILMEMBER MORTON: Can you sell your water?
10 Marina Coast Water District, can you sell your water to
11 Cal-Am?

12 THOMAS MOORE: We can't sell any of our
13 groundwater to Cal-Am. I guess, in theory, if we made
14 desalinated water, we could.

15 COUNCILMEMBER MORTON: Let's just talk about
16 the groundwater. So the answer is "no"; is that
17 correct?

18 THOMAS MOORE: For groundwater, that's correct.
19 Can't leave the basin.

20 COUNCILMEMBER MORTON: So why would you give it
21 away? If you can't sell it to Cal-Am, why would you
22 gave it away to Cal-Am? What right would that fall
23 under.

24 THOMAS MOORE: I don't think we would do any
25 such thing.

1 COUNCILMEMBER MORTON: Okay. Thank you.

2 THOMAS MOORE: And I hope the voters would
3 throw me out of office if we did.

4 COUNCILMEMBER MORTON: I think so, too.
5 Thanks.

6 MAYOR DELGADO: Thank you very much. Thanks,
7 Tom. Thanks, Gail.

8 COUNCILMEMBER AMADEO: Mr. Mayor, can I ask Tom
9 a question?

10 MAYOR DELGADO: Yes, I'm sorry, Nancy. I
11 didn't clear that with you. Go ahead, Nancy. Thank
12 you.

13 COUNCILMEMBER AMADEO: My question is really
14 very basic because we're talking about Marina Coast
15 Water District and their obligations.

16 So my question to Tom is did not the Board of
17 Directors from Marina Coast Water District within the
18 last several months vote not to do a desal project
19 themselves because it wasn't needed?

20 THOMAS MOORE: Essentially what we determined
21 was to not do it right now. There have been folks -- if
22 you folks who have advocated doing it right now, and
23 there has been a board majority to not just immediately
24 start building a desalination project, because the board
25 majority felt that we would only be able to take it so

1 far through planning, environmental detailed process,
2 and then we would run out of money because, oh, by the
3 way, we already spent 18 million dollars pursuing the
4 Regional Desalination Project and nobody has paid us
5 back for that, so our reserves are, how should we say,
6 slightly depleted.

7 So as a consequence, we might be able to get
8 part way through some engineering design, and then we
9 would run out of money. And without a customer to pay
10 for it, it wouldn't go any further, and it would seem
11 like a waste of money.

12 COUNCILMEMBER AMADEO: So I'd like to ask
13 further, the reason for not doing it is you said you
14 couldn't afford it. The original project, which as a
15 result of some illegal activity, became null and void.
16 The group project between yourself, Cal-Am, and the
17 County, that project was a shared water project. Marina
18 Coast Water District would produce it, and Cal-Am would
19 receive it. Now Cal-Am wants to do it on their own, and
20 Marina Coast Water District is saying, no, we can't
21 afford to do a project. You can't -- you can't have the
22 project either. This was a shared project, and now
23 nobody has a project? Is that what Marina Coast Water
24 District is basically telling us?

25 THOMAS MOORE: No. Let me be clear. The

1 current position of Marina Coast Water District with
2 respect to the issue before the Council tonight is that
3 we believe a focused EIR should be done to answer a
4 number of the issues that have been raised.

5 We didn't -- with respect to the Regional
6 Project, our assertion is that those contracts between
7 County Water Resources Agency, Cal-Am, and Marina Coast
8 Water District are still valid, and that is subject to
9 litigation up in San Francisco Superior Court. And we
10 expect we'll eventually prevail in that area and
11 somebody will have to pay damages and reimburse us. But
12 the contract's valid.

13 Any other?

14 COUNCILMEMBER AMADEO: I'm sorry, I didn't
15 understand the last thing you said.

16 THOMAS MOORE: The contract that put together
17 the Regional Desalination Project, I'm just referring to
18 your remark that it's no longer valid. It's a contract
19 that's been repudiated by both Cal-Am and the County,
20 but Marina Coast Water District's official position is
21 that that contract is still a valid contract,
22 enforceable, and we are in the process of trying to get
23 that determined through the courts and enforcing that
24 contract.

25 COUNCILMEMBER AMADEO: Okay. So I guess a

1 better way of putting is it is not that it's not valid,
2 it's being adjudicated and not being acted upon by any
3 of the parties at this point?

4 THOMAS MOORE: Yeah. None of the parties are
5 actively building something under that contract at the
6 present time.

7 COUNCILMEMBER AMADEO: One party is trying to
8 go out on its own, and the other party -- one of the
9 other parties is saying, no, not on your own. The only
10 way on your own is with a full EIR?

11 THOMAS MOORE: With respect to the matter
12 today, we requested a focused EIR, not necessarily a
13 full EIR.

14 COUNCILMEMBER AMADEO: All right. Thank you.

15 THOMAS MOORE: Okay. Thank you.

16 MAYOR DELGADO: Tom, in your estimation,
17 what's -- and I'll ask our city consultants, too, what's
18 the difference between a focused EIR and an EIR, and how
19 long does the focused EIR take to produce?

20 THOMAS MOORE: Good question. I'll turn to our
21 expert on CEQA law if he is still here.

22 MAYOR DELGADO: Are you still here?

23 HOWARD CHIP WILKINS: I'm still here. And I
24 think your -- the city attorney would probably be answer
25 this also.

1 A focused EIR just means that you have focused
2 out certain areas where there are no potential impacts,
3 so you can zero in on those issues that require an EIR.
4 And there would be a number of them, but, you know, it
5 just means you're not doing everything. It doesn't
6 necessarily mean it's going to be a shorter process. It
7 could be a lot shorter process. It all depends on what
8 information you need to gather to put into that EIR.

9 MAYOR DELGADO: Okay. With both of you up
10 here, I wanted to broach the subject of the MND's
11 contention and the State Water Resources Control Board's
12 seeming to support this idea that if it's non-beneficial
13 use water that you are taking from the slant test wells
14 proposed, it's intruded water, it's landward bound, it's
15 not seaward bound, so you are taking ocean water. Does
16 that, in your opinion, affect the right to pull out more
17 than 500 acre feet per year because it's surplus water
18 that nobody else can use?

19 HARVEY CHIP WILKINS: First all, I'll qualify
20 that I'm not a water rights attorney, and the District
21 has water counsel. But I'll say that the State Water
22 Resources Control Board report says we need studies and
23 additional information to make that determination. It
24 does not say that water is being pulled solely from the
25 seaward side. It does say we believe there will be some

1 freshwater. We don't know how much. And that's one of
2 the purposes for this report.

3 And our contention is if the Regional Water
4 Quality Control Board has said we need to study this to
5 figure out how much freshwater you are going to take,
6 that analysis needs to be done in a focused EIR rather
7 than a Mitigated Negative Declaration for the reasons
8 that we've outlined. It's not exempt from CEQA, like
9 other projects where you made -- like I said, the boring
10 here was exempt apparently. I believe the City made
11 that determination. For many big projects, they can go
12 and do some exploration, and those activities are
13 exempt. They are not proposing -- I mean, the State
14 Water Resources Control Board -- if DWR is not going out
15 and building partial dams or part of a dam and saying,
16 we're going to build this part of the dam. See if it
17 stands up and then we'll build the rest of the dam.

18 Because if it's a permanent fixture, as your
19 counsel told you earlier today, that makes it very
20 different than the cases that have been outlined.

21 MAYOR DELGADO: All right. Thank you, Chip.
22 Thanks, Tom.

23 Do you have anything more, Gail?

24 COUNCILMEMBER MORTON: No, I don't. Thank you.

25 MAYOR DELGADO: All right. Let me ask our

1 consulting team. One of your responses to my questions,
2 Emily, was that the most recent modeling from the
3 Hydrogeologic Working Group estimates that 96 percent of
4 the water from the test slant wells will be coming from
5 the seaward direction. To me, that means coming from
6 the ocean and heading inland toward dry land. And that
7 4 percent would be taken the other direction. It would
8 be water coming from dry land heading toward the ocean.

9 So do you think that that at all makes it okay
10 to draw more than 500 acre feet of water from the CEMEX
11 plant per year? Or do you see them as totally separate
12 issues?

13 EMILY CREEL: I see them as totally separate
14 issues. The environmental issue is where are you going
15 to take water, and what are the impacts to the
16 groundwater basin going to be as a result of the pumping
17 program.

18 The 500 acre foot limit is a legal water rights
19 issue. It's a contractual rights issue. So that's why
20 it doesn't really play into the environmental analysis
21 in the MND.

22 You know, the MCWD's comments indicate that it
23 is an agreement dealing with groundwater, but there's no
24 scientific evidence within the agreement that I can pull
25 out and say this is useful to, you know, our scientific

1 environmental analysis.

2 MAYOR DELGADO: Okay. Well, that agreement
3 uses that 500 foot maximum. And the MND says -- well,
4 the comments back and forth between Cal-Am and MCWD, the
5 comments -- the response from Cal-Am is basically, well,
6 we're not taking potable water. We're taking impaired
7 water that nobody else can use; therefore, the '96
8 agreement doesn't really cover that. Are you familiar
9 with that back and forth?

10 EMILY CREEL: Yes, a little bit familiar.

11 MAYOR DELGADO: So unless I'm characterizing it
12 wrong, can you explain why it matters what kind of water
13 it is?

14 EMILY CREEL: I don't know what the agreement
15 says about potable versus non-potable water or how that
16 plays into the limit. But I do think that you correctly
17 stated the findings of the State Water Board, which in
18 that report they put out did indicate -- you know, they
19 did a study about Cal-Am's ability to do the larger
20 project at this site and said there is a way. They have
21 to prove no injury. But drawing non-potable water would
22 be no injury. It's not -- it's not usable. So there's
23 no injury to adjacent well users.

24 MAYOR DELGADO: Just a separate issue from the
25 annexation agreement's 500 foot figure?

1 EMILY CREEL: Right. Separate.

2 COUNCILMEMBER MORTON: Okay. In one of these
3 comment letters it was said that environmental impacts
4 include existing zoning, planning, and other agreements,
5 and that the 1996 annexation agreement would be an
6 example of one of those other agreements that CEQA does
7 require consideration for.

8 Do you remember seeing that comment? What's
9 your opinion on that?

10 EMILY CREEL: CEQA only allows you to look at
11 physical changes to the environment. So the presence of
12 an agreement and its applicability does not result in
13 any physical change to the environment, so there's no
14 change that we can analyze under the thresholds that are
15 established in CEQA to say this is a significant impact
16 or it's not, this is an adverse impact or it's not.

17 Beyond that, I don't know what use of the
18 agreement would lend towards an environmental analysis.
19 The CEQA document is required to be tailored to these
20 physical changes to the environment. So, similarly,
21 CEQA says specifically social impacts, economic impacts.
22 Those are not significant environmental impacts because
23 they are not related to physical changes to the
24 environment. There are some exceptions to that.

25 COUNCILMEMBER MORTON: Okay. All right. Thank

1 you. And I'm sorry to everyone in the room that I can't
2 remember who made those comments. Is anyone in the room
3 the one behind those comments that certain planning
4 documents had to be considered in the CEQA process?

5 Chip, can you come up and explain what you
6 think about -- what your opinion is and what kind of --
7 if there is any substantial evidence behind it, that we
8 should consider this annexation agreement as
9 environmental impact?

10 HOWARD CHIP WILKINS: It was on page -- towards
11 the end of my letter, I believe at about page 16. Yes.
12 It was on the very -- page 16 at the very bottom.

13 What it says is that the IS/MND has an impact
14 criteria or threshold that states specifically:

15 "Would the project conflict with any
16 applicable land use plan policy or
17 regulation of an agency with jurisdiction
18 over the project, including but not limited
19 to several types of projects."

20 MAYOR DELGADO: I'm sorry. Excuse me. Wait
21 just one second, Chip. I want to be with you. I'm not
22 seeing that on page 16.

23 HOWARD CHIP WILKINS: It's actually on the top
24 of page 17. It starts on 16 and then the top of 17.

25 MAYOR DELGADO: Okay. Got ya. So the top of

1 page 17?

2 HOWARD CHIP WILKINS: It has a quote of the
3 threshold from IS/MND there.

4 MAYOR DELGADO: Can you say what you were going
5 to say?

6 HOWARD CHIP WILKINS: These are straight out of
7 the CEQA guidelines.

8 MAYOR DELGADO: Would you go back to what you
9 were saying when I interrupted you.

10 HOWARD CHIP WILKINS: I was just reading the
11 actual threshold. Do you want me to read it?

12 MAYOR DELGADO: Yeah.

13 HOWARD CHIP WILKINS: So:
14 "Would the project conflict with any
15 applicable land use plan, policy, or
16 regulation of an agency with jurisdiction
17 over the project, including but not limited
18 to general plan, specific plan, local
19 coastal plan, zoning ordinance" -- those are
20 examples -- "adopted for the purpose of
21 avoiding or mitigating an environmental
22 effect."

23 MAYOR DELGADO: Okay.

24 HOWARD CHIP WILKINS: What we have set forth in
25 our prior comments is that this was adopted to address

1 environmental effects, and, therefore, it is part of the
2 land use ordinances, planning documents of the city, the
3 water district, and it should have been addressed under
4 this impact criteria.

5 And, alternatively, even if you don't include
6 it in here as a potential impact, you needed to provide
7 a reasonable response to the comment rather than
8 completely avoiding it. But we believe it falls within
9 this particular threshold and that -- I don't know what
10 the City's position is on that.

11 MAYOR DELGADO: Okay. Kathy, can you come up
12 to the microphone, please?

13 KATHY JENSEN: This may be splitting hairs a
14 little bit, but I don't consider a contract to be a
15 regulation. A regulation is something that you adopt,
16 and it applies in case after case after case. A
17 contract is just a contract between two parties. Not to
18 say that the parties aren't bound by it. They are.

19 And it's my understanding that they are staying
20 within the acre feet that are allocated, and that is
21 ground -- you know, it references groundwater. So I'm
22 assuming, based on your previous questioning, that you
23 were going -- if there's some -- if there's groundwater
24 being extracted as part of the pumping process, I'm
25 assuming that groundwater is going to count towards that

1 limit.

2 MAYOR DELGADO: All right. So isn't the
3 two-year -- isn't the annual pumping volume in excedence
4 of 500 acre feet per each of the two years?

5 KATHY JENSEN: Of groundwater?

6 MAYOR DELGADO: Correct. From the -- from the
7 sand dune aquifer and the 180-foot aquifer.

8 KATHY JENSEN: I don't know what the volumes
9 are.

10 MAYOR DELGADO: Emily, can you help us out
11 there?

12 EMILY CREEL: Well, again, this is a question
13 that everyone is hoping will be answered by the test
14 well. But the slant test well and the larger project is
15 designed to draw seawater. So if that is successful,
16 zero groundwater would be captured by the well.

17 So you're probably looking at -- I mean, all we
18 have right now are the analytical models which say, you
19 know, the vast majority of water will come from a
20 seaward direction that will likely be replaced with
21 water that is percolating through the sea floor just by
22 sheer gravity and, therefore, would be sourced with
23 seawater. But no one knows to what extent.

24 MAYOR DELGADO: So these slant test wells that
25 are in the sand dune aquifer and the 180-foot aquifer,

1 you're saying could be said to be pulling seawater and
2 not groundwater from those two aquifers?

3 EMILY CREEL: Yes. And that's why the slant
4 wells are being proposed. Cal-Am has no rights to
5 groundwater, as everyone has mentioned. So they have to
6 take this more expensive, less proven approach of slant
7 wells, because those get out under the ocean floor and
8 can be fed by seawater.

9 MAYOR DELGADO: Okay. All right.
10 Councilmember Morton?

11 COUNCILMEMBER MORTON: Just a follow-up
12 question.

13 So my reading of the MND was that the project
14 was going to take --

15 MAYOR DELGADO: Excuse me, Gail. I hate to do
16 this, but we are at 11:30. So if we go beyond 11:30,
17 then I will like it even less.

18 So what do we do as far as tonight?

19 COUNCILMEMBER MORTON: What are our
20 alternatives to going?

21 MAYOR DELGADO: To decide anything, we're going
22 to need to go past 11:30. So I'll suggest we go to
23 12:00, if we need to, and we can adjourn before then if
24 the Council wants to, rather than pick this up again
25 every 15 minutes.

1 So I will motion we go to midnight, if
2 necessary, and it may not be.

3 MAYOR PRO-TEM O'CONNELL: I'll second.

4 MAYOR DELGADO: Okay. Any members want to
5 comment on the extension till midnight?

6 Yes, sir. Come to the microphone, please, just
7 on he extension to midnight. No other comments.

8 UNIDENTIFIED MALE: I would like to see the
9 extension so I can make a clarification on that 1996
10 agreement.

11 MAYOR DELGADO: Okay. Thank you.

12 All in favor of the motion, please say "aye."

13 (Response.)

14 Nancy, are you with us?

15 COUNCILMEMBER AMADEO: Yes. I said "aye."

16 MAYOR DELGADO: Okay. All right. Gail, can
17 you go ahead and proceed, please?

18 COUNCILMEMBER MORTON: Yes. I just wanted --
19 Emily, in reading the Negative Mitigated Dec, that the
20 project extraction is estimated to be 1,613 to 4,032
21 acre feet per year, correct? Okay?

22 EMILY CREEL: I'm not looking at it, but I
23 trust that that's correct.

24 COUNCILMEMBER MORTON: But they are just
25 numbers much bigger than 500?

1 EMILY CREEL: Right. I think the theory is,
2 you know, the test well will be turned on, and the water
3 that's captured will go through all of its sort of
4 process of flowing where there is the ability to flow
5 and being blocked by areas where there's less
6 permeability, and then after a certain period of time, a
7 week, several weeks, the flow of water into the well
8 will stabilize. And once that condition is reached, the
9 information being monitored by the monitoring wells will
10 be fairly consistent. And that's when the applicant
11 will kind of know, okay, here's what's going to happen.
12 So as soon as that point is reached, their current
13 estimate, and the hope is that it will show that the
14 source water is being captured from the sea. But it is
15 a large amount of water.

16 MAYOR DELGADO: Emily, if on the other hand
17 once things stabilize it's demonstrated that you are
18 actually getting brackish groundwater from the CEMEX
19 plant and not seawater, would that be halted before 500
20 feet? Or if we pass this MND tonight, could that be a
21 condition of the MND?

22 EMILY CREEL: I don't expect, although I'm not
23 really the expert that should answer this question
24 maybe.

25 MAYOR DELGADO: Who is the expert in the room

1 that should answer that question?

2 EMILY CREEL: Maybe Cal-Am or the person from
3 the Hydrogeologic Working Group. But my expectation is
4 that the 500-acre-foot limit would be exceeded prior to
5 that stabilizing condition.

6 MAYOR DELGADO: I thought you said five minutes
7 ago that it wouldn't be exceeded because it would be
8 seawater.

9 EMILY CREEL: Well, that is talking about the
10 continual source of water. The well, when it's
11 immediately turned on, will pump 2,500 gallons per
12 minute. So it will take a period of time, almost all of
13 that water will come from a seaward direction, but it
14 will take a period of time for the water to be recharged
15 and pulled from the ocean. So it won't immediately, you
16 know, create a direct line, a direct intake of seawater.
17 There will be this transitional period, like I said,
18 where the water conditions kind of move where they need
19 to as a result of the pumping.

20 MAYOR DELGADO: Okay. All right. You have
21 made it as clear as mud.

22 KATHY JENSEN: I just wanted to add that if you
23 wanted to add a condition of approval -- if you wanted
24 to add a condition of approval that they -- that the
25 pumping be in compliance with that limitation in that

1 agreement, that's certainly something you could do.

2 MAYOR DELGADO: Cal-Am, Ian Crooks, is that
3 even feasible?

4 IAN CROOKS: I would turn that over here to
5 Chartavoigne (phonetic) to address and Finley are better
6 representatives for that.

7 DAVID CHARDAVOYNE: Thank you, Mr. Mayor and
8 Members of the Council. My name is David Chardavoigne.
9 I'm the general manager of the Monterey County Water
10 Resources Agency.

11 The Water Resources -- pardon me? The Water
12 Resources Agency was a party to the 1996 annexation
13 agreement along with the Marina Coast Water District and
14 Lone Star, which is now CEMEX, and the Armstrong Ranch.

15 The agreement is complicated. And what you are
16 going to hear is different than what you heard before,
17 okay? The annexation, there are actually two
18 annexations that are going on here. There is an
19 annexation into zone 2B of the Water Resources Agency,
20 and there's annexation into the Marina Coast Water
21 District.

22 The Armstrong Ranch, we just mentioned and put
23 it aside, they had to request to be annexed as part of
24 the annexation agreement, so they had to have a
25 follow-on request.

1 The Lone Star property was automatically, upon
2 signature of the document, annexed into 2B, zone 2B of
3 the Water Resources Agency. However, it was not
4 effective until the Marina Coast Water District annexed
5 the CEMEX property into the Marina Coast Water District
6 service area, and there was a payment to the agency of
7 \$250,000.

8 What has not happened is there has been no
9 payment to the agency, and there's been no annexation
10 into the Marina Coast Water District. So, therefore,
11 the 500 acre feet number is not operative because the
12 annexation was not consummated into zone 2B. Okay? So
13 that's where that sits.

14 Assuming the annexations went through and we
15 took a look at it, and this goes I think to your
16 question, Mr. Mayor, to Emily, is that was -- the 500
17 acre feet was for the CEMEX well, which is a vertical
18 well, and it's in the fresh groundwater aquifer.

19 So the Cal-Am wells are slant wells. They are
20 out in the ocean and they draw in saltwater. It's
21 assumed right now that they're going to be about 95
22 percent saltwater and 5 percent freshwater. If you say
23 you can have 500 acre feet of freshwater in that
24 arrangement, Cal-Am could actually pull 10,000 acre feet
25 of water through its slant well. But, again, the 500

1 acre feet doesn't even apply as we speak today.

2 MAYOR DELGADO: So, David, if there was a
3 condition of approval not to exceed 500 acre feet of
4 freshwater, even though it wasn't potable, it was
5 impaired and not useful to anyone else, could that --
6 could that feasibly let this project go ahead? Or is it
7 a fatal flaw to be restricted to less than 500 acre feet
8 of freshwater?

9 DAVID CHARDAVOYNE: I'll let Cal-Am answer that
10 question. I think your question is, is the restriction
11 to 500 acre feet of freshwater a year?

12 MAYOR DELGADO: Right, including start-up
13 phase, which Emily told us is the problem time frame.

14 DAVID CHARDAVOYNE: Okay. I'll turn that one
15 over to Cal-Am, because I haven't practiced engineering
16 in 20 years.

17 ROBERT DONLIN: And I never have. I'm an
18 attorney, a water attorney from Sacramento, Cal-Am's
19 water attorney, Robert Donlin.

20 The agreement isn't applicable to the test well
21 for the reasons that Mr. Charveoigne said it's not in
22 effect. The 500-acre-foot limitation applies to CEMEX's
23 use of water from the basin on the CEMEX property has no
24 bearing on water developed for appropriation.

25 The issues involving impacts is as described by

1 the CEQA experts, and that's been analyzed in the
2 environmental document. It's possible that either in
3 the test well or in the full phase project that more
4 than 500 acre feet will come from the landward side or
5 having a chemistry that looks like -- more like basin
6 water, brackish basin water than seawater.

7 The limitation will not apply. That's CEMEX's
8 water. That's what they are buying into when they
9 annexed to the Marina Coast Water District and to the
10 Monterey County Water Resources Agency.

11 MAYOR DELGADO: So even though you think it's
12 not applicable, if it were a condition of approval
13 tonight, could Cal-Am technically function?

14 ROBERT DONLIN: I think from a quantity
15 standpoint. I'll let Ian answer that, but I don't think
16 that's a condition that Cal-Am can live with.

17 MAYOR DELGADO: Okay. Thank you, Robert.

18 IAN CROOKS: Yeah, I think, Mayor, the whole
19 point of the test well is to find this out. If we
20 test -- if we perform the test well and we see that the
21 draw is from the inland brackish water and it won't
22 work, we turn it off and it's over. The whole point of
23 doing a test well is for that.

24 So putting a limit on it at this point of a
25 test well is not really in the best interest of the

1 projects.

2 MAYOR DELGADO: Well, the problem is that I'm
3 detecting that some Councilmembers do not want to, in
4 their opinion, violate the agreement even though David
5 and others have told us it's not in effect.

6 So if we were to move ahead without violating
7 that agreement, would it be possible to continue with
8 the test slant well? And I'm kind of hearing a "no."

9 IAN CROOKS: No, we would not prefer that, no.

10 MAYOR DELGADO: I know you wouldn't prefer.

11 IAN CROOKS: No, we don't want that condition.

12 MAYOR DELGADO: Okay. So basically you
13 couldn't function?

14 IAN CROOKS: No.

15 MAYOR DELGADO: It's a fatal flaw, if we were
16 to restrict you to that as a condition of approval?

17 IAN CROOKS: That's right.

18 MAYOR DELGADO: Okay. Thank you very much,
19 Ian.

20 All right. Phil asked if there's benefits to
21 CEMEX. What are the benefits to CEMEX? And is that
22 something we need to answer? He asked if there's any
23 financial payments to CEMEX. Is that something we need
24 to answer?

25 Does Council want that question to be answered?

1 Okay.

2 What position is CEMEX taking? That was one of
3 Phil's questions. And basically they had, in their
4 words, several demands to revise the MND. And we heard
5 them go over that letter at some point tonight.

6 COUNCILMEMBER MORTON: I just had one follow-up
7 question on what you were just -- is CEMEX relinquishing
8 their 500 acre feet? Or are they going to continue to
9 draw their 500 acre feet or whatever they are currently
10 drawing if this permit's approved? Because both people
11 can't use it. I'm sorry. I forgot your name.

12 BRUCE: My name is Bruce and I have not been
13 authorized to answer that question.

14 COUNCILMEMBER MORTON: Okay. Thank you.

15 BRUCE: Better make sure he says the right
16 answer.

17 ANTHONY LOMBARDO: Anthony Lombardo. The
18 answer is no. Whatever water right they have, we're not
19 exercising that. Whether it's 500 or 50,000. So it's
20 independent of that for the reasons that were discussed.

21 COUNCILMEMBER MORTON: Thank you.

22 MAYOR DELGADO: But I think, Gail, the answer
23 is it's assumed anyway by Cal-Am and the proponents of
24 the test slant wells that CEMEX can take 500 feet and
25 Cal-Am can take as much as they want.

1 COUNCILMEMBER MORTON: Yes.

2 MAYOR DELGADO: Because the agreement is not in
3 effect, so it's not an additive situation is what I'm
4 hearing.

5 Right. Is that something that our consultants
6 agree with, that that agreement is not in effect and the
7 500 acre foot has no bearing?

8 EMILY CREEL: That's way outside of my scope.
9 I can't really make an opinion as to the enforceability
10 of that agreement.

11 MAYOR DELGADO: Okay. Kathy?

12 KATHY JENSEN: I know some of the annexations
13 are not in effect, but I didn't read the limitation
14 on -- the 500 feet acre feet limitation. To me, I read
15 that as being effective upon the execution of the
16 agreement, not -- that's how I read it. But I'm --

17 COUNCILMEMBER MORTON: Yes, that's paragraph
18 2.9.

19 MAYOR DELGADO: That it's not in effect until
20 annexation happens?

21 KATHY JENSEN: I read it in 7.2.

22 COUNCILMEMBER MORTON: Yes.

23 MAYOR DELGADO: What does it say in 7.2?

24 KATHY JENSEN: It says:

25 "Commencing on the effective date of

1 this agreement and framework, Lone Star
2 shall limit withdrawal and use of groundwater
3 from the basin to Lone Star's historical use
4 of 500 acre feet per year of groundwater."

5 MAYOR DELGADO: Of groundwater.

6 KATHY JENSEN: I don't know if Deb can --

7 MAYOR DELGADO: So, Kathy, your opinion of what
8 you just read is that it's effective as to the signing
9 of the agreement, not whether or not it's been annexed?

10 KATHY JENSEN: That's correct. That's how I
11 read the agreement.

12 MAYOR DELGADO: Okay. Let me ask our city
13 attorney.

14 CITY ATTORNEY MALL: Yeah, I also agree that it
15 wasn't completely clear to me. It seemed like there was
16 kind of dual purposes to the agreement that in one fact
17 it led you to believe that it wasn't effective until
18 annexation, and then other places it said it was
19 effective upon signed. So I came to the conclusion that
20 there's a dispute resolution process through this
21 agreement if it's not clear, and that the parties would
22 have to maybe go into the dispute resolution portion of
23 it to really determine whether that was the intent of
24 the parties or not.

25 MAYOR DELGADO: Okay. Phil's last question was

1 how does the no sale -- it's not up for sale, and I
2 think Ron brought this up as well, does that have any
3 effect on anything we're talking about tonight? Okay.

4 COUNCILMEMBER MORTON: Mayor Delgado, it
5 doesn't look like we're going to finish by midnight.

6 MAYOR DELGADO: No.

7 COUNCILMEMBER MORTON: Can we pick a date? Use
8 this time to pick a date?

9 MAYOR DELGADO: Well, our city manager wanted
10 to make sure of the availability of our consultants
11 tomorrow night.

12 Layne, do you want to take over for a few
13 minutes and do this?

14 CITY MANAGER LONG: I'm just assuming that
15 Council would want both Emily and Kathy available. And
16 I have no idea if they are available tomorrow or not.

17 KATHY JENSEN: I will be, if needed.

18 MAYOR PRO-TEM O'CONNELL: Mr. Mayor, if I may?
19 I know this may sound strange coming from this end, but
20 I'd like to just go and get this over with tonight.
21 Everyone's here. I know. It's late. I'm dragging too.
22 But everyone's here and everyone has to come back again
23 for it to address some things that probably could be
24 addressed a lot quicker. I think if we just stay to
25 answering the questions that have been given instead of

1 partially opening public comment again like as has been
2 happening for the last couple of minutes, we'd probably
3 get this done.

4 But I'm in favor of staying and getting it
5 done. Thank you.

6 MAYOR DELGADO: Okay. Well, these follow-on
7 questions are when we're on a topic, they are going to
8 come back when Council has questions if we don't answer
9 them at the same time that we're answering the public.
10 So I think it's an efficiency of time to answer the
11 questions related to a topic when we breach the topic.
12 Different ways of skinning a cat.

13 Okay. Ron's question or -- well, Ron's
14 assertion was that tapping into the 180-foot --

15 COUNCILMEMBER BROWN: Hold on, Mayor. Are we
16 not then going to talk about a date? Has it already
17 been decided we're going to go past midnight?

18 MAYOR DELGADO: Sorry. Sorry.

19 Did you have a preference?

20 COUNCILMEMBER BROWN: Well, I haven't heard a
21 motion to continue past midnight.

22 MAYOR DELGADO: Well, we don't need one yet.
23 But what would be your preference? Adjourning until
24 tomorrow or continuing tonight?

25 COUNCILMEMBER AMADEO: Mr. Mayor, I would

1 prefer to continue tonight.

2 MAYOR DELGADO: Okay. Thank you, Nancy.

3 Gail and David?

4 COUNCILMEMBER BROWN: Well, no.

5 COUNCILMEMBER MORTON: I have a trial at 8:30
6 in the morning.

7 COUNCILMEMBER BROWN: Yes, some of us have to
8 work and aren't retired like Councilmember O'Connell.

9 COUNCILMEMBER AMADEO: I am at a conference. I
10 have to be up and at the conference at 7:30.

11 MAYOR DELGADO: All right. So why doesn't
12 someone motion how to continue. Either tomorrow night
13 or tonight and we'll take that motion.

14 COUNCILMEMBER MORTON: Well, how many more
15 questions? You are the one with the list.

16 MAYOR DELGADO: We have several and then we
17 have Council questions and deliberation.

18 COUNCILMEMBER BROWN: I'm not staying until two
19 o'clock. That what it's going to wind up.

20 MAYOR DELGADO: Would someone like to make a
21 motion, please.

22 COUNCILMEMBER MORTON: I make a motion that we
23 continue to tomorrow night.

24 COUNCILMEMBER BROWN: Second.

25 MAYOR DELGADO: At what time?

1 COUNCILMEMBER MORTON: 6:00.

2 COUNCILMEMBER BROWN: Second.

3 MAYOR DELGADO: Okay. Do any members of the
4 public wish to comment on that motion?

5 If someone, like -- Alex says 6:30. Alex?

6 ALEX: That's the standard meeting time, we
7 should just keep it standard.

8 MAYOR DELGADO: Okay. Alex, you don't get a
9 vote.

10 Okay. So the motion was six o'clock tomorrow?

11 COUNCILMEMBER BROWN: Yeah.

12 MAYOR DELGADO: All right. Nancy, do you
13 understand the motion?

14 COUNCILMEMBER AMADEO: I heard the motion. I
15 can't support it.

16 MAYOR DELGADO: Okay. So all those in favor of
17 the motion of adjourning tonight's meeting to tomorrow
18 night at 6:00 p.m., please say "aye."

19 (Response.)

20 All opposed, please say "no."

21 COUNCILMEMBER AMADEO: No.

22 MAYOR DELGADO: Okay. So that motion passes 4
23 to 1 with Councilmember Amadeo in opposition. Sorry to
24 do this, everybody. But it's probably better that we're
25 fresh making these decisions than doing it when we're

1 all tired and want to go home.

2 Thanks everybody for your comments. We'll get
3 to the questions tomorrow that we didn't get to tonight.

4 (End of recording.)

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I, Kelli A. Rinaudo, a certified shorthand reporter in and for the state of California do hereby certify:

That the foregoing transcript was prepared by me, to the best of my ability, via an audio recording;

That I was not present to ascertain speaker identities, and some misidentified or nonidentified speakers may appear in the transcript;

That I was not present to clarify certain words, and some unintelligible or inaudible phrases may appear in the transcript;

I further certify that I am not related to any party to said action, nor in any way interested in the outcome thereof.

DATED: October 24, 2014



KELLI A. RINAUDO, CSR NO. 6411

RMR, CRR, CCRR



DRAFT

MINUTES

Agenda Item: **6a(2)**
City Council Meeting of
October 28, 2014

Thursday, September 4, 2014

6:00 P.M. OPEN SESSION

**ADJOURNED REGULAR MEETING
CITY COUNCIL, AIRPORT COMMISSION,
MARINA ABRAMS B NON-PROFIT CORPORATION,
AND SUCCESSOR AGENCY OF THE FORMER MARINA REDEVELOPMENT AGENCY**

Council Chambers
211 Hillcrest Avenue
Marina, California

TELECONFERENCE LOCATION:¹

JW Marriott Hotel
900 West Olympic
Los Angeles, CA 90015

VISION STATEMENT

Marina will grow and mature from a small town bedroom community to a small city which is diversified, vibrant and through positive relationships with regional agencies, self-sufficient. The City will develop in a way that insulates it from the negative impacts of urban sprawl to become a desirable residential and business community in a natural setting. (**Resolution No. 2006-112 - May 2, 2006**)

MISSION STATEMENT

The City Council will provide the leadership in protecting Marina's natural setting while developing the City in a way that provides a balance of housing, jobs and business opportunities that will result in a community characterized by a desirable quality of life, including recreation and cultural opportunities, a safe environment and an economic viability that supports a high level of municipal services and infrastructure. (**Resolution No. 2006-112 - May 2, 2006**)

1. **CALL TO ORDER**



2. **ROLL CALL & ESTABLISHMENT OF QUORUM:** (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency Members)

Nancy Amadeo, David W. Brown, Gail Morton, Mayor Pro-Tem/Vice Chair Frank O'Connell, Mayor/Chair Bruce C. Delgado

3. **CLOSED SESSION:** *As permitted by Government Code Section 54956 et seq., the (City Council, Airport Commissioners, Marina Abrams B Non-Profit Corporation, and Redevelopment Agency Members) may adjourn to a Closed or Executive Session to consider specific matters dealing with litigation, certain personnel matters, property negotiations or to confer with the City's Meyers-Milias-Brown Act representative.*

¹ Note: Pursuant to Government Code Section 54953(b), this meeting will include teleconference participation by Council Member Nancy Amadeo from the address above. This Notice and Agenda will be posted at the teleconference location

- a. ~~Conference with Legal Counsel—Existing Litigation—(Paragraph (1) of subdivision (d) of Section 54956.9)—One case~~

~~(1) Marina v. Fort Ord Reuse Authority~~

6:30 PM - RECONVENE OPEN SESSION AND REPORT ON ANY ACTIONS TAKEN IN CLOSED SESSION

4. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE (Please stand)

5. SPECIAL PRESENTATIONS:

- a. Employee Service Awards

i. ~~Rachel Anderson, Police Officer—10 Years~~

- b. Proclamations

i. ~~Jacobs Heart~~

6. ~~SPECIAL ANNOUNCEMENTS AND COMMUNICATIONS FROM THE FLOOR: *Any member of the Public or the City Council may make an announcement of special events or meetings of interest as information to Council and Public. Any member of the public may comment on any matter within the City Council's jurisdiction which is not on the agenda. Please state your name for the record. Action will not be taken on an item that is not on the agenda. If it requires action, it will be referred to staff and/or placed on a future agenda. City Council members or City staff may briefly respond to statements made or questions posed as permitted by Government Code Section 54954.2. In order that all interested parties have an opportunity to speak, please limit comments to a maximum of four (4) minutes. Any member of the public may comment on any matter listed on this agenda at the time the matter is being considered by the City Council*~~

7. ~~CONSENT AGENDA FOR THE **SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY:** *Background information has been provided to the Successor Agency of the former Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda for Successor Agency to the former Marina Redevelopment Agency and placed at the end of Other Action Items Successor Agency to the former Marina Redevelopment Agency.*~~

8. ~~CONSENT AGENDA: *Background information has been provided to the City Council, Airport Commission, Marina Abrams B Non Profit Corporation, and Redevelopment Agency on all matters listed under the Consent Agenda, and these items are considered to be routine. All items under the Consent Agenda are normally approved by one motion. Prior to such a motion being made, any member of the public or the City Council may ask a question or make a comment about an agenda item and staff will provide a response. If discussion or a lengthy explanation is required, that item will be removed from the Consent Agenda and placed at the end of Other Action Items.*~~

- a. ACCOUNTS PAYABLE:

~~(1) Accounts Payable Check Numbers 72308-72435 totaling \$874,883.65
Wire transfers totaling: \$169,189.12~~

- b. MINUTES: None

- c. CLAIMS AGAINST THE CITY: None

- d. AWARD OF BID: None

- e. CALL FOR BIDS:

- ~~(1) City Council consider adopting Resolution No. 2014-100, authorizing advertising and call for bids to repair asphalt concrete paving at Hangar 510 at the Marina Municipal Airport.~~

~~f. ADOPTION OF RESOLUTIONS:~~

- ~~(1) City Council consider adopting Resolution No. 2014-101, authorize release of Request for Proposals (RFP) to qualified firms for fiscal advisor services.~~

~~g. APPROVAL OF AGREEMENTS:~~

- ~~(1) City Council consider adopting Resolution No. 2014-102, approving an agreement between the City of Marina and JHW Architects, Inc. of Monterey, California, to provide design services and construction documents for repairs to the restaurant building at 771 Neeson Road at the Marina Municipal Airport, and; authorizing the City Manager to execute the agreement subject to final review and approval by the City Attorney.~~

~~h. ACCEPTANCE OF PUBLIC IMPROVEMENTS: None~~

~~i. MAPS: None~~

~~j. REPORTS: (RECEIVE AND FILE): None~~

~~k. FUNDING & BUDGET MATTERS: None~~

~~l. APPROVE ORDINANCES (WAIVE SECOND READING): None~~

~~m. APPROVE APPOINTMENTS: None~~

9. PUBLIC HEARINGS:

- a. City Council open a public hearing, take any testimony from the public, and; consider appeal of Planning Commission action of July 10, 2014 regarding adoption of Resolution No. 2014- : (1) certifying a Mitigated Negative Declaration and adopting a Mitigation and Monitoring Program, and; (2) approving Coastal Development Permit CDP 2012-05, for the California American Water Slant Test Well Project located at CEMEX's Lapis Road property (APN's 203-011-001 & 203-011-019).

SEE COURT REPORTER TRANSCRIPTS (ATTACHED)

10. OTHER ACTIONS ITEMS OF THE SUCCESSOR AGENCY TO THE FORMER MARINA REDEVELOPMENT AGENCY: *Action listed for each Agenda item is that which is requested by staff. The Successor Agency may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*
11. OTHER ACTION ITEMS: *Action listed for each Agenda item is that which is requested by staff. The City Council may, at its discretion, take action on any items. The public is invited to approach the podium to provide up to four (4) minutes of public comment.*

Note: No additional major projects or programs should be undertaken without review of the impacts on existing priorities (Resolution No. 2006-79 – April 4, 2006).

12. COUNCIL & STAFF INFORMATIONAL REPORTS:

- a. Monterey County Mayor's Association [Mayor Bruce Delgado]
- b. Council and staff opportunity to ask a question for clarification or make a brief report on his or her own activities as permitted by Government Code Section 54954.2.

13. ADJOURNMENT: 8:55 PM

Anita Sharp, Deputy City Clerk

ATTEST:

Bruce C. Delgado, Mayor

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CITY OF MARINA
CITY COUNTY REGULAR MEETING

COUNCIL CHAMBERS
211 HILLCREST AVENUE
MARINA, CALIFORNIA

THURSDAY, SEPTEMBER 4, 2014 - 6:00 P.M.

TRANSCRIPTION OF AUDIO RECORDING

AGENDA ITEM NO. 9:

Consider appeal of Planning Commission action of July 20, 2014, regarding adoption of Resolution No. 2014-__:
(1) certifying a Mitigated Negative Declaration and adopting a Mitigation and Monitoring Program; and, (2) approving Coastal Development Permit CDP 2012-05 for the California-American Water Slant Test Well Project located at CEMEX's Lapis Road property (APNs 203-011-001 & 203-011-019).

CITY COUNCIL:

- MAYOR/CHAIR BRUCE DELGADO
- MAYOR PRO-TEM/VICE CHAIR FRANK O'CONNELL
- COUNCILMEMBER NANCY AMADEO (via teleconference)
- COUNCILMEMBER DAVID BROWN
- COUNCILMEMBER GAIL MORTON

1 P R O C E E D I N G S

2 MAYOR DELGADO: I'm looking through to see the
3 questions that the public had. I have a lot of
4 questions that I had. But it might not be very long to
5 finish answering the questions from the public.

6 COUNCILMEMBER AMADEO: Mr. Mayor, point of
7 order, please?

8 MAYOR DELGADO: Yes, go ahead, Nancy.

9 COUNCILMEMBER AMADEO: This is more a question.
10 With an adjourned meeting, are we not required to open
11 it back up for public comment?

12 CITY ATTORNEY MALL: No. Public comment has
13 been closed at yesterday's meeting, so only to receive
14 new information would we open up the public comment
15 period.

16 MAYOR DELGADO: Could you hear that, Nancy?

17 COUNCILMEMBER AMADEO: No, I couldn't.

18 MAYOR DELGADO: Basically the public hearing
19 closed last night, so the only public comment we'll have
20 tonight is if we ask someone up to answer questions or
21 to clarify things that were said.

22 CITY ATTORNEY MALL: Technically, that's not
23 public comment. It would be just to receive new
24 information, and the Council would have to decide to
25 reopen the public hearing.

1 COUNCILMEMBER AMADEO: Okay. Thank you.

2 MAYOR DELGADO: Okay. Jan had a few questions.
3 Her first is: Why is the CEMEX site the preferred
4 alternative? And who would be the best person to answer
5 that? Emily, do you want to start off and take a shot
6 at it?

7 EMILY CREEL: Sure. So the CEMEX site is the
8 preferred alternative for the slant test well project
9 because that's where the larger project is being looked
10 at. They need to do the testing at the same location as
11 the permanent wells are proposed.

12 And the MND does not look at alternatives.
13 It's not required to. So the MND itself does not
14 consider other project alternatives to the test well.
15 It only looks at that one proposed project.

16 MAYOR DELGADO: Okay. So that kind of answers
17 her next question: Why is the CEMEX alternative the
18 only one being discussed tonight? And that's because
19 it's the only one that's required. There's only one
20 option that's required to be discussed.

21 EMILY CREEL: Right. And if we were to look at
22 alternatives, they would be alternatives only to a test
23 project. You know, should they do the test well further
24 inland? Should they do it somewhere else on the CEMEX
25 site? Should they do it only for a year? It wouldn't

1 look at alternatives to the larger project.

2 MAYOR DELGADO: Or they could do it at Potrero,
3 as we heard last night was where they may go next if
4 this doesn't work out for them for whatever reason.

5 EMILY CREEL: Right. You would consider the
6 environmental effects amongst those different
7 alternatives. That's the types of analysis that would
8 be required in an EIR.

9 MAYOR DELGADO: Okay. Jan asked: What are the
10 risks to the other alternatives? And I'm not sure we're
11 prepared to go into that tonight, correct?

12 EMILY CREEL: Correct.

13 MAYOR DELGADO: It's not part of the MND, and
14 that would be a substantial body of information.

15 EMILY CREEL: And I think that question may
16 have been geared more towards the full-scale project.

17 MAYOR DELGADO: Okay.

18 EMILY CREEL: That's just my assumption.
19 Otherwise, you're talking about, you know, drilling a
20 test well at Potrero and looking at that site.

21 MAYOR DELGADO: I think that's probably more
22 where she was going.

23 EMILY CREEL: Okay.

24 MAYOR DELGADO: How would -- Jan's last
25 question is: How would slant test wells risk Marina's

1 potable water supply?

2 EMILY CREEL: I'm not sure. You know, we did
3 an analysis of water quality impacts. We looked at
4 seawater intrusion and found there to be no risk. We
5 looked at the discharge into the ocean and found there
6 to be no risk. We found that all water that -- based on
7 the analytical modeling, all water that would be
8 captured and impacted by the test well project is
9 non-potable, seawater-intruded water. So I'm not sure.

10 MAYOR DELGADO: Okay. And is it that you found
11 no risk or that you found potential risks that could be
12 mitigated if it came to pass?

13 EMILY CREEL: We found no risk to potable water
14 sources. We found potential risks associated with
15 draw-down, but that was of a non-potable source. The
16 risk there is increased pumping costs for those wells
17 that are in a deeper aquifer.

18 MAYOR DELGADO: Okay.

19 EMILY CREEL: And we did propose mitigation for
20 that potential impact.

21 MAYOR DELGADO: All right. Thank you, Emily.

22 EMILY CREEL: Sure.

23 MAYOR DELGADO: And moving through here --
24 okay. Those are all the public questions that I have
25 noted.

1 Has anyone else noted any questions I may have
2 missed?

3 Okay. So where we go from here -- Gail has
4 something to say. Where we go from here, I think, is to
5 hear Council comments, questions at this time, since
6 we've just finished public comment and response to their
7 questions.

8 COUNCILMEMBER MORTON: So my question is, is it
9 appropriate to make a motion at this time?

10 MAYOR DELGADO: Yeah, I think you can make a
11 motion whenever you would like. There's a lot of
12 questions that I would like to ask still. But we can
13 always call for the question and I could be overruled
14 and wanting to ask more questions or have more comments.
15 But, yeah, you're welcome to make a motion.

16 COUNCILMEMBER MORTON: So I have requested an
17 alternative resolution. And Ms. Jensen, our CEQA
18 attorney, has prepared it, but I'm asking that it be
19 passed out and put on the monitor.

20 MAYOR DELGADO: Just so what everyone knows
21 what we're talking about, there's, I suppose, a
22 resolution in our staff report tonight about what we
23 could do, and that's Resolution Number 2014-xx, a lot of
24 whereases, and then at the end a "therefore, be it
25 resolved."

1 And what we're starting to look at now is an
2 alternative resolution that we will consider tonight to
3 the one that's in the staff report. And the one that's
4 in the staff report starts on page 25 and goes to page
5 32.

6 COUNCILMEMBER AMADEO: Mr. Mayor?

7 MAYOR DELGADO: Yes, Nancy.

8 COUNCILMEMBER AMADEO: Obviously, I do not have
9 this. Can it be e-mailed to me so that I can see it? I
10 won't be able to read it on the screen.

11 MAYOR DELGADO: Anita, our City Clerk
12 representative is going to e-mail it to you ASAP.

13 KATHY JENSEN: Layne, can we use yours to put
14 on the overhead?

15 CITY MANAGER LONG: Sure.

16 KATHY JENSEN: Thank you.

17 MAYOR DELGADO: And who is the author of this
18 alternative resolution? Is it Emily? Is it someone
19 else?

20 KATHY JENSEN: It's me.

21 MAYOR DELGADO: Kathy?

22 KATHY JENSEN: I prepared it just as -- so you
23 need to take an action one way or the other today,
24 because you are coming up on your deadline to act. And
25 so I already had a resolution of approval, so I was

1 requested to prepare a resolution of denial. And based
2 upon what I've heard, the denial would be based upon
3 CEQA grounds, and so I've prepared one that lays out an
4 alternative. If that's the direction you go. I'm not
5 suggesting that that's the direction. Again, it's your
6 call, because, again, it's factual issues.

7 But it's set up so that if you did want to deny
8 the project based upon the CEQA issue, you can deny it
9 without prejudice to considering it when you have what
10 you would consider the appropriate CEQA document.

11 MAYOR DELGADO: So are we waiting until Nancy
12 has it in front of her?

13 COUNCILMEMBER MORTON: Or I can start. I
14 thought I had to wait.

15 MAYOR DELGADO: Let's ask, because I think that
16 Nancy has to be party to everything we do for her to be
17 able to vote on this; is that correct?

18 COUNCILMEMBER AMADEO: I just received it,
19 Mr. Mayor.

20 CITY ATTORNEY MALL: I think it's more the City
21 Clerk documenting the resolution. The City Clerk's not
22 here to document the resolution.

23 MAYOR DELGADO: Okay. So we're waiting for the
24 City Clerk to return after e-mailing to Nancy.
25 Otherwise, Nancy, are you ready to go and consider this?

1 COUNCILMEMBER AMADEO: Yes.

2 MAYOR DELGADO: Just so the public knows,
3 cutting to the chase, at the end of this alternative
4 resolution we have findings and a Coastal Development
5 decision to not approve the project and find the MND to
6 be incomplete, the project description to be incomplete.
7 So that's the short of it, but we're going to get into
8 the long of it.

9 COUNCILMEMBER MORTON: Yes. The short of it is
10 because it's part of a bigger project.

11 MAYOR DELGADO: Right.

12 COUNCILMEMBER MORTON: And that it is
13 piecemealed. And my understanding is that --

14 MAYOR DELGADO: Be careful, because everything
15 we say is going to have to be repeated when our City
16 Clerk comes back.

17 COUNCILMEMBER MORTON: Oh. I'll wait. Sorry.

18 MAYOR DELGADO: Are there copies in the back
19 for people to see? I can't read that from here, and I
20 doubt anyone else can, except maybe for Jean.

21 While we're waiting -- well, can we ask any
22 questions? I guess we can.

23 UNIDENTIFIED FEMALE: Yeah, you are being
24 recorded.

25 MAYOR DELGADO: I have a question for Theresa

1 Szymanis. When the Planning Commission didn't approve
2 this project, it seems to me that they didn't reject it
3 and they didn't approve it. They couldn't get a
4 majority to vote either direction. Can you explain
5 that?

6 THERESA SZYMANIS: As I recall, the first
7 resolution was to not approve the Mitigated Negative
8 Declaration.

9 KATHY JENSEN: I was there. I can explain it.
10 The first resolution was to approve the project and --
11 sorry, to approve the -- certify the Mitigated Negative
12 Declaration and approve and adopt the Mitigation
13 Monitoring Plan, and that failed by -- I don't remember
14 the vote.

15 MAYOR DELGADO: 2 to 4.

16 KATHY JENSEN: 2-4. Then there was another
17 motion to approve the project, that failed by --

18 MAYOR DELGADO: The Coastal Development Permit.

19 KATHY JENSEN: Yes, the Coastal Development,
20 that failed by a larger --

21 MAYOR DELGADO: 1 to 5.

22 KATHY JENSEN: Then everybody started getting
23 up. And I said, "Wait a minute. You only have two
24 failed motions. You really -- you need to take an
25 action on the project."

1 So there was a motion to disapprove the
2 project, and that failed because one of the members who
3 had voted against the first motion really wanted to have
4 it, the matter, continued. So he voted "no" on the
5 second one as well, so then you had yet another failed
6 motion. So you had three failed motions and no real
7 action, which is one of the reasons why you actually
8 need to take an action on this project, because you need
9 to have some result. Right now we have failed motions,
10 which is really not an action.

11 MAYOR DELGADO: Okay. Thank you.

12 Okay. Gail?

13 COUNCILMEMBER MORTON: So I move that a
14 resolution of the City Council of the City of Marina on
15 appeal disapproving a Mitigated Negative Declaration and
16 denying the Coastal Development Permit CDP 2012-05 for
17 the California-American Water Slant Test Well Project
18 located at CEMEX's Lapis Road property, the APN numbers
19 are given -- and because it can't be read, I assume we
20 need to read all these whereas?

21 KATHY JENSEN: No, you don't.

22 COUNCILMEMBER MORTON: Okay. The primary --
23 the purpose of this motion is that the CEQA document
24 that is before us specifically states and contemplates
25 that the successful slant test well will be converted

1 into a permanent facility connected to the subsurface
2 intake system of one of the several permanent MSP
3 subsurface intake wells, and that would be one of the
4 findings, and that this is part of a larger project,
5 which is the desalinization plant, and that is a summary
6 of what is in this very long document.

7 MAYOR DELGADO: All right. So do you believe
8 that the description of the project is incomplete as
9 this finds? Because it doesn't describe in detail the
10 whole desal project.

11 COUNCILMEMBER MORTON: Yes. The Mitigated
12 Negative Declaration is insufficient, inadequate to
13 support the project, because this is a component of a
14 larger project. The decommissioning of the test well,
15 whereas even though the project currently proposes
16 decommissioning test well after the testing, the project
17 would involve the installation of infrastructure that
18 ultimately could become part of the major project if
19 certain future approvals were granted; that this is
20 to -- whereas, in order to avoid potential piecemealing
21 or segmentation of the project, the City required that
22 once constructed and operated for a maximum of 24
23 months, the test -- slant test well would be
24 decommissioned in accordance with the regulations of the
25 California Department of Water Resources, and the

1 concerns that have been raised by members of the public
2 and other public agencies, including our Marina Coast
3 Water District who are the providers of water to our
4 city; that given the large capital investment associated
5 with the project infrastructure, it is unlikely the
6 facilities associated with the project will be
7 decommissioned, and it's unlikely the applicant will be
8 seeking to utilize -- and it is likely, excuse me -- it
9 is likely that the applicant, Cal-Am, will be seeking to
10 utilize the infrastructure for the larger project.

11 And that is the crux of this motion. It is
12 based on -- and it's my understanding in reading the
13 law, that the piecemealing is a question of law, that we
14 make an independent judgment that we can decide that.
15 So this is not a policy decision. It doesn't go to --
16 it is that because it's piecemealing, this Mitigated
17 Negative Declaration is insufficient. It doesn't
18 satisfy CEQA.

19 MAYOR DELGADO: Okay. Let me interrupt you
20 just for a second and then we'll give you back the
21 floor, because we don't have a second yet.

22 COUNCILMEMBER MORTON: Okay.

23 MAYOR PRO-TEM O'CONNELL: Second.

24 MAYOR DELGADO: Okay. We have a second.
25 Please continue.

1 COUNCILMEMBER MORTON: So we had a long
2 discussion yesterday about the foreseeable --
3 contemplated and foreseeable use of the test wells; that
4 this test well, as Emily has indicated to us, who wrote
5 the Mitigated Negative Declaration, that it is not being
6 removed, that it is there in the project; that the
7 preparer of the Mitigated Negative Declaration, Emily,
8 has indicated that Cal-Am proposed development of a
9 full-scale subsurface intake water project. The bore
10 holes were the first step. This test slant well is the
11 second step. This evening Emily addressed us and said
12 the test wells are at the CEMEX location because that is
13 the location of the larger project. There is no
14 independent utility of the test wells that has been able
15 to be focused to us other than the furtherance of the
16 larger project.

17 And the comments, the letters, the voluminous
18 documents that I can sit through -- sift through, point
19 to, all indicate that this is a piecemeal approach. The
20 City has identified in its documents that this is part
21 of a larger project.

22 And the California Supreme Court is very clear
23 that when you have a contemplated and foreseeable use of
24 the test well, that failing to do the full CEQA analysis
25 on the totality of the project is a violation of CEQA,

1 and that is why I am making this motion at this time.

2 It doesn't preempt that a full environmental
3 impact review can be done, that the progress of what's
4 happening on the full project cannot be done. What
5 we're indicating is that this is too narrow a focus.
6 And by taking bites at the apple of the total project,
7 you are lessening the environmental impact so that you
8 can get this little bit approved and then this little
9 bit approved. That is not what CEQA requires.

10 CEQA requires a very broad interpretation
11 within the statutory scheme that looks to protect the
12 environment. That is why we need to look at the
13 totality of the project and the impact in our coastal
14 area, which is a very environmentally sensitive area.

15 MAYOR DELGADO: Okay. I have some
16 disagreement, because it seems as if we've been told,
17 and there's some evidence to substantiate, that there's
18 an industry standard in California to do this kind of
19 testing with Mitigated Negative Declarations such as at
20 the slant test well certified by the Municipal Water
21 District of Orange County. They also did a Negative
22 Mitigated Dec for the slant test well before they had
23 done their full project, and that there's never been a
24 CEQA challenge to this approach, and it's used -- you
25 heard last night it's used in large water projects.

1 And Jonas Minton from the Planning and
2 Conservation League has given us this information today
3 to support what he told us last night.

4 So while I agree with you that the slant test
5 well really has no purpose other than to hopefully
6 provide good data suggesting that the desal could become
7 a full-scale project at that location, apparently
8 there's plenty of precedent that this kind of
9 pre-project testing has approvals with MNDs and not full
10 EIRs. So if that's the way it's done elsewhere, why
11 would it be non-compliant CEQA-wise for us to do it
12 here?

13 COUNCILMEMBER MORTON: May I answer? My
14 understanding from the testimony provided, and I'm
15 relying on the testimony in the Mitigated Negative
16 Declaration, one of the first slides, which was the
17 picture on the cover of the Mitigated Negative
18 Declaration, indicated that there was going to be a
19 slant well that extends into our 180-foot aquifer, will
20 penetrate the 180-foot -- pump out of the 180-foot
21 aquifer, that it will be a maximum 1,000 foot beginning
22 at 200 feet to 1,000 foot.

23 As I understand the Mitigated Negative
24 Declaration, there is -- how it's going to be sealed is
25 the first 40 feet. It is leaving in place this large

1 pipe and structure as being maintained in our
2 environment.

3 As I understood Jonas's testimony last night,
4 which I completely understand, when you are looking at
5 developing a dam, for example, he talked about that you
6 go into the bedrock to see that it's secure -- to make
7 sure I use this example, that's why I am repeating it --
8 that you make sure the bedrock is solid that is going to
9 hold the dam. When you are doing that kind of testing,
10 you are not leaving behind a thousand foot pipe into
11 your environment. You are not doing the damage, you are
12 not penetrating an aquifer.

13 If -- that would be different if, in fact, you
14 were going to put a bore hole in to see that it was
15 going to hold a dam and you were going to cause a rock
16 slide, devastating damage, then you would need an EIR.
17 It's a very different impact that this permanent
18 structure going into our ground is going to have than
19 doing testing of the quality of the ground or the
20 foundation for a dam. It is very different.

21 Our coastal area is very protected. Emily, in
22 her comments, also one of the evaluations that she said
23 was that she doesn't expect erosion to be a problem
24 because she's not expecting, which she said, it's not
25 likely to occur within the two years that there will be

1 a risk of a storm for erosion hazards, and based on
2 these facts we made the assumption there is not going to
3 be erosion. But this well is going to be there for a
4 long period of time and it may not be decommissioned.
5 So the extent of the Negative Declaration didn't look at
6 what if there is a storm?

7 The other thing that's not evaluated in this
8 Mitigated Negative Declaration as part of this project,
9 they are going to continue to pump from the 180-foot
10 aquifer. The character and quality of that water is
11 going to change with rainfall. We're in three years of
12 drought. The water character is going to change. If
13 you have -- if we have significant rains, there's going
14 to be less saltwater and more freshwater penetrating
15 down in. That's how the Salinas Valley Groundwater
16 Basin works. That was part of the reason for the five
17 years of analysis and looking at it is what are you
18 dealing with, not just today after three years of
19 drought.

20 It is inadequate because we are going to be --
21 more than likely it's foreseeable the conclusion of this
22 project is going to be long-term pumping at this
23 location.

24 MAYOR DELGADO: Okay. The point about -- that
25 you made that what if there is a storm, that it wasn't

1 adequately addressed, there are many pages devoted to
2 coastal erosion in the MND, and they are also included
3 in the MND's appendices, independent review of that
4 analysis by SE Engineering. And I agree with you that
5 even SE Engineering said in their letter that's in the
6 appendix at the back of the MND that there was a
7 possibility of casings becoming unearthed during a
8 hundred-year storm.

9 And so I think that we could approve this
10 tonight on the condition that the entire casing be
11 removed, and that was one of the two suggestions made in
12 that technical memo that you either reduce or remove the
13 casing to no less than 40 feet; that is, you go down 30,
14 40 feet, and everything above 40 feet you take out of
15 the ground so that it would be highly unlikely to be
16 unearthed in the future, or you remove the entire
17 casing.

18 And so if -- if it's a strong concern of this
19 Council that even below 40 feet that casing could be
20 unearthed by future hundred-year or larger storms, we
21 should consider modifying this approval to require the
22 complete removal of the casing as was suggested in this
23 technical memo.

24 And I would like to ask Cal-Am or Emily if that
25 would be in the realm of possibility to remove the whole

1 casing, since it was mentioned in SE Engineering's
2 technical memo.

3 EMILY CREEL: Yeah, I'll clarify and I'll defer
4 to Cal-Am the question of whether that's feasible.

5 So we did look at coastal erosion, the
6 potential impacts. Because this is a temporary project
7 and it would only be there for two years, the risk of
8 erosion is significantly reduced. CEQA typically
9 requires you to look for a hundred-year storm event.
10 We're talking about two years. So there's not a huge
11 risk there of coastal erosion impacting this project.

12 However, there are policies in the City's LCP
13 that says you cannot put infrastructure within a
14 delineated storm erosion hazard zone. So we actually
15 did include mitigation that said move it out of there.
16 You have to move it. Even though the risk is small, we
17 require the applicant to move the well. So it is being
18 taken out of that erosion hazard zone.

19 COUNCILMEMBER AMADEO: Mr. Mayor?

20 MAYOR DELGADO: One moment, Nancy.

21 Are you finished, Emily?

22 EMILY CREEL: I was going to touch on the depth
23 of decommissioning. What was proposed by the applicant
24 originally was decommissioning of the well consistent
25 with California well standards, and those only require

1 you to remove five feet below the surface. So we looked
2 at that, the proposed project, and said this is
3 insufficient. The ESA report and the peer review done
4 by our independent subconsultant showed that in a very
5 worst-case scenario, up to 40 feet of the well casing
6 could eventually be exposed. I believe it's 35 feet.

7 So to ensure that that event never occurred, we
8 included mitigation saying you must remove the casing
9 down to 40 feet. So that mitigation should be adequate
10 to eliminate that potential.

11 MAYOR DELGADO: Please stay at the podium
12 because there's going to be a couple more questions.

13 Nancy, go ahead.

14 COUNCILMEMBER AMADEO: I don't have a question
15 about the discussion, except you keep referring to a
16 memo, an engineering technical memo. Did you just
17 receive that tonight or are you talking about something
18 that's actually in the document?

19 MAYOR DELGADO: It's an April 18, 2004 [sic]
20 technical memo. It's the second to last document.

21 COUNCILMEMBER AMADEO: When you abbreviate what
22 you are saying, because I'm not there and I'm seeing on
23 the screen things out of sync, I'm not sure where you
24 are talking about. If you can be specific, that would
25 be helpful to me.

1 MAYOR DELGADO: Okay. So the second to last
2 document in the MND binder is one of an April 18, 2014,
3 technical memo written by SE Engineering, S-E.

4 And on page 2 at the bottom of that three-page
5 memo it says:

6 "At project completion of the test slant
7 wells, one of two alternatives should be
8 employed. Remove the well casing to a depth
9 which would eliminate the potential for
10 future resurfacing, or remove the well casing
11 completely to eliminate potential resurfacing
12 altogether."

13 And, Emily, my question to you is are you
14 saying that the plans for locating the well have been
15 changed since this MND was published and that location
16 has been moved further inland?

17 EMILY CREEL: The MND includes mitigation that
18 the slant test well be moved outside of the coastal
19 erosion hazard zone, so that would include, at minimum,
20 a movement of about 40 or 50 feet.

21 And I understand that Cal-Am has been working
22 on identifying another location directly adjacent to the
23 current one within that CEMEX access road. The
24 mitigation measure has some standards. It doesn't
25 specify a new location, but it says you have to move it

1 out of this erosion zone. You have to keep it within
2 the CEMEX disturbed roadway. You have to avoid
3 sensitive plant species, things of that nature.

4 MAYOR DELGADO: Right. So if it was moved out
5 of the erosion zone, then why was the depth required to
6 be removed increased from 25 to 40?

7 EMILY CREEL: It wasn't increased. The
8 horizontal slant of the well would still be subject to
9 coastal erosion based on its depth at that level of
10 shoreline retreat. So that's why it's 40 feet. It's
11 actually not 40 feet below, you know, the ground
12 surface. It's just the length of 40 feet along that
13 diagonal well is the point where the technical studies
14 have said you are clear of any potential worst-case
15 shoreline erosion and bluff retreat.

16 MAYOR DELGADO: Okay. Wasn't one of the
17 hydrological mitigation measures changed in the last
18 couple of weeks? HYDMM1, I think it was, to be 40 feet
19 instead of 20 or 25 feet that it was before?

20 EMILY CREEL: The distance wasn't changed.
21 That measure was changed in response to comments we
22 received during the public circulation period. And the
23 comment that we addressed in making that change was a
24 comment from the MRWPCA, which is the owner of the
25 outfall, and they had concerns about removing it upon

1 completion of the testing program, because it might do
2 damage to their outfall.

3 So we modified that measure to say either it
4 has to be removed to 40 feet immediately upon completion
5 of the test well, or you can do it in time, as
6 necessary, to ensure that the casing is not ever exposed
7 based on shoreline erosion.

8 MAYOR DELGADO: Okay. So given that that's one
9 concern, can we hear from Cal-Am if it's feasible for
10 Cal-Am to remove the entire casing, not just to the
11 40-foot figure?

12 RICH SPINLAND: Good evening. I haven't
13 introduced myself yet, since I didn't speak yesterday,
14 but I'm Rich Spinland; I'm the Director of Engineering
15 for California-American Water. So thanks for the
16 opportunity.

17 MAYOR DELGADO: Thanks for being here, Rich.

18 RICH SPINLAND: It's pretty much impractical to
19 pull out a piece of casing that's a thousand feet long.
20 The friction that is resting on that pipe is too massive
21 to pull back out. It's different when you are drilling
22 it and you are pushing it because you have removed that
23 friction because you have this big void. But once
24 everything is locked in there, it's really tough to pull
25 out. So the mitigation is we basically cut off what we

1 can get to, and then we fill the rest of that stream
2 with concrete, and that's how we prevent any type of
3 movement of the water between the different aquifers if
4 it's abandoned.

5 And there's a county standard to do that. It's
6 a state standard and a county standard, and we comply
7 with all those standards to decommission the well.

8 MAYOR DELGADO: Okay. All right. Thank you,
9 Rich.

10 I think, Gail, your main point was that this is
11 piecemealing?

12 COUNCILMEMBER MORTON: Yes.

13 MAYOR DELGADO: So I would like to hear from
14 Emily and/or Kathy whether this piecemealing that we're
15 seeing here -- because I agree that the test slant wells
16 have no purpose other than hopefully they are successful
17 and the desal uses them for permanent production wells.
18 But apparently that's the way it's done elsewhere. We
19 not only have the Orange County Negative Declaration
20 example, which is very similar to this, but we have a
21 Bay Delta Conservation Plan which allows for
22 geotechnical borings, cone penetration tests, test pits
23 to investigate the soils in the delta with the hope that
24 larger projects can follow if those test results are
25 positive.

1 So I'm hearing from Jonas Minton -- Minton or
2 Milton?

3 JONAS MINTON: Minton.

4 MAYOR DELGADO: -- Minton that this is
5 commonplace, that what we're calling piecemealing
6 tonight is commonplace in approved MNDs that have never
7 been CEQA challenged on this point. So can you discuss
8 that?

9 EMILY CREEL: Sure. So I have been taking some
10 notes on this issue. It's been a big one, and I'm just
11 going to go through and touch on some of the comments
12 that we heard last night as well as ones we've heard
13 tonight.

14 So your city has to recognize this as an issue
15 early on. We talked a lot about how to deal with it.
16 Like I mentioned yesterday, a project description that
17 would include the larger project is already being
18 handled by the CPUC and an EIR is already being prepared
19 for that.

20 So like Kathy mentioned, we're in this unique
21 situation where this project is running two separate
22 tracks. So what we elected to do was look at the
23 application in front of us, prepare an environmental
24 document based on that project and disclose, disclose
25 all of these connections to a larger project, disclose

1 to the public that there was a future desal plant
2 project out there being proposed and that those impacts
3 were being looked at in a separate document.

4 We talked a little bit about the risk of
5 piecemealing, and it is to minimize or hide potential
6 impacts. And I think by disclosing those facts in the
7 MND, we have greatly reduced that risk. We have said,
8 you know, there is this larger project, but those
9 impacts are outside the scope of this document. There's
10 another document, another lead agency, another
11 environmental review process that's already covering all
12 those impacts as well as the impacts associated with the
13 slant test well.

14 So this is a very strange case where instead of
15 taking a small piece out of the project and looking at
16 it separately, we're taking a small piece out of the
17 larger project and looking at it a second time. You
18 know, we're looking at it in this MND, and it's also
19 being looked at in the larger EIR as part of that
20 project.

21 Kathy mentioned this happening in the past, it
22 being a practice that is utilized in CEQA. When you
23 have a project like this that is needed to determine the
24 feasibility of a larger project, I agree there is case
25 law that supports that approach in oil drilling

1 activities. Courts have said if your project is for
2 exploratory purposes and you need to drill oil wells to
3 see if oil production wells at that location would be
4 feasible, the environmental process for those
5 exploratory wells is not required to look at future
6 production. And that's similar to this case because,
7 you know, it's the same location. The wells wouldn't be
8 drilled but for a desire to move forward with production
9 at a later date.

10 We've also seen a similar process in my office
11 in the context of a large land development project that
12 requires some environmental review along the way. For
13 instance, if you have a very large residential
14 subdivision, 100 lots, the lead agency may say you have
15 to do a water supply assessment. You have to look at
16 groundwater supplies at that location. That requires a
17 well test, and a lot of times those well tests require
18 permits. If they are discharging, you know, to an
19 adjacent location, the permit will come from the RWQCB,
20 a lot of times local regulations, excuse me, require
21 permits for well tests.

22 So in that case, the well test would not be
23 required but for this larger development project. If
24 the well test shows good results, it's reasonably
25 foreseeable that the larger project will move forward.

1 But the permitting agencies for that well test, they
2 don't consider a second time the larger project, because
3 it's already being handled by the lead agency for that
4 project. So that's a situation that we've seen as well.

5 We talked about the issue with decommissioning
6 versus staying in the ground. And this is the area I
7 think that's gray. There's no case law that we can
8 point to specifically to say this is not piecemealing
9 when this is allowed. I think that the reason we
10 disclosed it in the MND was, again, full disclosure,
11 disclose to the public, tell them everything that could
12 happen.

13 Decommissioning of the well would -- would help
14 the piecemealing defense if it were raised. But it
15 would also result in greater environmental effects,
16 because Cal-Am would be forced to come again and drill
17 another well at the same location, you know, when the
18 larger project comes back around. So I think it's
19 reasonable to assume that CEQA, you know, may not be
20 interpreted in a manner that would -- excuse me -- that
21 would be damaging to the environment. I think it's an
22 argument that common sense would say leaving the well in
23 the ground and allowing Cal-Am to avoid future
24 additional environmental effects is a good approach.

25 Councilmember Morton mentioned the first step

1 and the second step of the project being the bore holes
2 and the test well. For clarity, those were the first
3 and second steps of the Hydrogeologic Working Group's
4 work plan, which is an independent body, you know,
5 looking at the larger project. Those are not proposed
6 by Cal-Am. Cal-Am would most likely rather not do them
7 because they are expensive.

8 I think that the test well does have
9 independent utility. I think its independent utility is
10 based on its feasibility study. Its utility is not to
11 provide water, which is the purpose of the larger
12 project. Its independence is in doing the testing and
13 providing that data.

14 And I think, finally, I wanted to make a point
15 on if you didn't allow this type of an activity to go
16 forward without looking at the larger project, no one
17 would really win. In every event where a feasibility
18 study is needed to provide data that's essential to a
19 larger project, if you couldn't do that without
20 encompassing the impacts of the larger project and
21 allowing that information to be gathered ahead of time,
22 then in every instance you would just be faced with an
23 environmental document and a project in front of you
24 without the best information. So I think that's why
25 CEQA does carve out exceptions for feasibility studies,

1 and that's why this approach has been taken
2 historically, it's because the purpose of CEQA is to
3 provide the best information available to the decision
4 makers and to the public when they are deciding on a
5 project.

6 MAYOR DELGADO: Emily, can you speak to the Bay
7 Delta Conservation Plan project or the Municipal Water
8 District of Orange County's MND for their slant test
9 well?

10 EMILY CREEL: I'm not intimately familiar with
11 that project, but I know that they did look at the slant
12 well alone, and they prepared an MND, and it was
13 certified, and they went forward with the slant test
14 well.

15 MAYOR DELGADO: Do you know of any major
16 differences where that would not be piecemealing, but
17 what we're talking about tonight would be piecemealing?

18 EMILY CREEL: I see no differences. And, in
19 fact, as was mentioned last night, that project was on
20 the beach, on a very publicly used beach and in very
21 close proximity to a river outlet into the ocean and
22 there were some sensitive, you know, resources in that
23 area as well.

24 MAYOR DELGADO: Kathy, did you have something?

25 KATHY JENSEN: Just a couple of points. That

1 first study that was sent to us today, it does involve
2 borings and what I would call standard types of testing,
3 like our boring holes, and so I think to me that's -- I
4 don't even know that a Mitigated Neg Dec is necessary.

5 MAYOR DELGADO: Which study is that, the Bay
6 Delta Plan?

7 KATHY JENSEN: The Bay Delta one. I opened
8 that today and took a look at it. And the nature of the
9 things that they were doing were borings, those types of
10 things which are definitely, you know, not subject to
11 CEQA at all.

12 MAYOR DELGADO: They are less substantial than
13 test slant wells.

14 KATHY JENSEN: Yes, they are less substantial.
15 And I wanted to point out, not to make this more
16 confusing, but CEQA actually exempts completely
17 feasibility studies. And there's a statutory exemption
18 for feasibility studies, and it specifically says
19 projects involving only feasibility or planning studies
20 for the possible future actions which the agency has not
21 approved, adopted or funded, does not require the
22 preparation of an EIR or a negative declaration but does
23 require the consideration of environmental factors. And
24 it says -- then there's also a categorical exemption for
25 information gathering.

1 So CEQA definitely provides for and lets you do
2 information gathering. That's really not an issue. So
3 I mean, I think it's a little bit of an unusual
4 situation where you -- the information gathering leaves
5 behind a piece of -- what could become a piece of the
6 bigger project.

7 But I wanted to just kind of reiterate what the
8 standard is. Is it a reasonably foreseeable consequence
9 of this slant well project that the bigger project is
10 carried out? That's -- is it, or is this a consequence
11 of that? I mean, really it is a little chicken and
12 egg-ish, and it really comes down to your judgment on
13 whether or not you think that the larger project is a
14 consequence of this action. You know, I struggle with
15 this, in all honesty.

16 MAYOR DELGADO: So, Kathy, wouldn't that key
17 question have been on the table in Orange County?

18 KATHY JENSEN: Yes. I mean, I don't know. In
19 all honesty, I don't know what they did. I wasn't
20 involved in that project. The fact that something has
21 been done and not challenged, you know, it's
22 interesting. But what we -- as attorneys, what we look
23 at are what are the published cases out there.
24 Sometimes we even look at unpublished cases just to get
25 an idea. But we haven't seen anything that is

1 equivalent of this.

2 We do have -- there are definitely cases
3 involving exploratory drilling, actual drilling where
4 they have said that it's not necessary when you are
5 doing the exploratory drilling to analyze the production
6 impacts. But in those situations they have kind of gone
7 on to say because you are in a situation until you do
8 that exploratory drilling can you even really assess the
9 impacts of the production. So trying to apply that here
10 is very complicated because what we've heard is that
11 they are going ahead and they are preparing an EIR on
12 the larger project, but they are planning on not
13 finalizing it until they get the test data from these
14 wells. So it's a very -- it's a complicated issue.

15 I do want to point out also that after the
16 meeting last night I was approached and I was reminded
17 that of the pieces that would be going in, the physical
18 components of this slant test well, not all of them
19 would ultimate -- even if you decided to approve their
20 retention and they didn't decommission, it wouldn't be
21 the whole thing that would be used, but it would be, as
22 Councilmember Morton pointed out, you know, the one
23 structure.

24 So it's a gray area. I really think it's
25 something that's within your judgment to decide. You

1 know, I think on the practical side of things if you
2 don't approve it, they will be faced with preparing the
3 larger EIR without knowing the feasibility -- this is
4 really key -- without knowing the feasibility of one of
5 the locations.

6 MAYOR DELGADO: All right. All right. Let's
7 go to Councilmember Brown.

8 COUNCILMEMBER BROWN: Thank you, Mayor.

9 So, Kathy, continuing on with this, in essence,
10 are you saying that at least according to the published
11 or unpublished case law you've seen with regard to
12 exploratory oil drilling, one does not, in order to
13 satisfy CEQA, have to do an EIR on what happens if the
14 exploratory oil drilling pans out and, therefore,
15 there's going to be a whole field of oil wells?

16 KATHY JENSEN: There's been at least three
17 cases that I can think of that have dealt with that
18 issue and have concluded that it wasn't necessary. And
19 in two of those three cases, the determination was made
20 because the impacts of the production couldn't be
21 determined without the exploratory happening.

22 And in the third one, the Brentwood case, they
23 concluded that because the thing -- the borings that
24 they were doing, based upon the history of the city
25 doing them, only about 45 percent of those were

1 successful, so they really thought it wasn't -- the
2 court used that analysis saying that 45 percent of the
3 time they lead to nothing, therefore, it didn't --
4 wasn't probable.

5 So we don't have those kind of statistics to
6 deal with. So you're in a little bit of a gray area,
7 but I feel comfortable with you making either decision.
8 You know, you -- it's really your judgment, whatever you
9 all feel in your own independent judgment as to whether
10 or not -- you know, that basic question of whether or
11 not it's a foreseeable consequence of -- is the bigger
12 project a foreseeable consequence of this project,
13 that's really the key issue.

14 COUNCILMEMBER BROWN: Well, how is -- you know,
15 if we have this case law that deals with not requiring
16 an EIR for a bigger project when we're only looking at
17 an exploratory oil well --

18 KATHY JENSEN: How does it differentiate?

19 COUNCILMEMBER BROWN: -- how does it differ
20 when you are drilling for water instead of oil?

21 KATHY JENSEN: Well, I look at those cases and
22 differentiate them to some degree in my mind by the fact
23 that the EIR is being prepared without that data. And
24 at least two of those cases, that was not the case. The
25 court made a big deal that you could not -- in those

1 situations, their understanding was it could not be
2 analyzed. So that's a little bit different.

3 And again with that other -- there's also
4 another case from 1977 where a production or an
5 exploratory well was struck down because it didn't
6 analyze the impacts of the pipeline that would be
7 necessary to move the oil if, in fact, it was
8 successful. So the cases are not always consistent, and
9 some of them are older, but -- you know, but there are
10 definitely cases out there. They don't exactly fit our
11 scenario.

12 And the cases aren't really clear with that
13 exploratory drilling if the actual drilling -- the
14 temporary drilling ultimately would become the permanent
15 drilling. I can't tell that from reading the cases.

16 COUNCILMEMBER BROWN: Okay. Thank you. Now,
17 if I could step back and go into a different area.

18 Aside from the piecemealing issue, not looking
19 at the piecemealing issue, is it correct that our role
20 here is that we are supposed to determine whether there
21 is substantial evidence, that there is a fair argument
22 in support of there being the possibility of substantial
23 environmental effects?

24 KATHY JENSEN: That's correct.

25 COUNCILMEMBER BROWN: Okay. So we're supposed

1 to look at the question of whether there is -- there are
2 arguments -- in addition to the arguments in this
3 Mitigated Negative Declaration, we're supposed to look
4 at other arguments that are made by members of the
5 public and in documentation, correct?

6 KATHY JENSEN: I would not use the word
7 "arguments." I would say has there been substantial
8 evidence submitted outside of that that raises an issue.
9 Because, remember, unsupported argument does not
10 constitute substantial evidence.

11 COUNCILMEMBER BROWN: And you said we could
12 reject as not credible testimony or purported evidence
13 by somebody who is arguing, but they are arguing
14 something outside their field of expertise, correct?

15 KATHY JENSEN: Correct.

16 COUNCILMEMBER BROWN: Have we heard from any
17 hydrologists or geologists to the effect that there is
18 the possibility of environmental harm?

19 KATHY JENSEN: Not that I can recall.

20 COUNCILMEMBER BROWN: Okay. Thank you.

21 MAYOR DELGADO: Before you go, we still have
22 other questions, I think.

23 We'll go to Councilmember Morton in just a
24 second.

25 Councilmember Amadeo, did you have anything at

1 this time.

2 COUNCILMEMBER AMADEO: No, I don't have any
3 questions. You guys are covering it quite well.

4 MAYOR DELGADO: Okay. Councilmember Morton,
5 did you have more?

6 COUNCILMEMBER MORTON: Not at this time.

7 MAYOR DELGADO: Okay. Kathy, you stated CEQA
8 exempts feasibility studies for possible future
9 projects. Are these test slant wells proposed
10 feasibility studies for a possible future project?

11 KATHY JENSEN: I don't think they fit -- I
12 don't really think they fit exactly into the concept of
13 a feasibility study. I think of a feasibility study as
14 not involving that type of, you know, well installation.

15 It is -- again, I don't know of any cases that
16 deal with -- specifically with what types of physical
17 activities can go into a feasibility study.

18 MAYOR DELGADO: So the definition of
19 feasibility study is not well-defined?

20 KATHY JENSEN: There's no definition of
21 feasibility study in CEQA.

22 MAYOR DELGADO: But CEQA exempts feasibility
23 studies but doesn't have a definition for them?

24 KATHY JENSEN: That's correct.

25 MAYOR DELGADO: Okay. So an exemption means

1 you can do a categorical exemption, you don't even have
2 to go an MND?

3 KATHY JENSEN: Correct.

4 MAYOR DELGADO: So we're not talking tonight
5 about using CEQA's exemption?

6 KATHY JENSEN: No. I was trying to make a
7 point that CEQA encourages data collection feasibility.

8 MAYOR DELGADO: Right. So we could be arguing
9 tonight that it's a feasibility study, and it could be a
10 categorical exemption to cover it, but we're not --
11 we're not arguing that.

12 KATHY JENSEN: We're not. We are certainly
13 more conservative than that.

14 MAYOR DELGADO: Right. So something that is in
15 the realm of feasibility study, sounds like it's
16 ambiguous because there is no definition, we have
17 treated with a MND.

18 KATHY JENSEN: And obviously other slant wells,
19 test wells have been done that way as well.

20 MAYOR DELGADO: Okay.

21 KATHY JENSEN: Such as Dana Point.

22 MAYOR DELGADO: All right. So the one thing
23 that worries me is this key question that you mentioned
24 last night, and you talked about it and beat it up like
25 a dead horse tonight: Is it a foreseeable consequence

1 of the test slant wells that a desal project would
2 follow? Of course, that's the purpose of their --

3 KATHY JENSEN: Consequence, though. Keep in
4 mind the word "consequence."

5 MAYOR DELGADO: Right. The consequence of a
6 successful test slant well -- a foreseeable consequence
7 of a successful test slant well is that it would be
8 turned into a production well for a desal. Nobody would
9 be surprised if that happened, because that's the whole
10 point of doing the test slant well.

11 So I mean if that's a question key question and
12 it's "yes" or "no," to me it's a definite "yes". But
13 then you mentioned that the judges in another case said
14 having a 45 percent chance does not mean it's a
15 foreseeable consequence. And to me if four and a half
16 times out of ten something happens, you can foresee it
17 happening again, so that's why I'm confused about this
18 key question.

19 KATHY JENSEN: It is a perplexing question. I
20 wish I could give you a definitive answer. I can --

21 MAYOR DELGADO: Okay.

22 KATHY JENSEN: There's a lot of facts, and it
23 ultimately ends up with your judgment.

24 MAYOR DELGADO: Okay. So my next question is
25 on this fair argument. We have a thick MND document

1 that has a lot of expert analysis in it supporting an
2 MND. And the question I've heard from those opposing
3 this project is that, including Chip, the CEQA counsel
4 for MCWD, that the opposing arguments meet the fair
5 arguments standard. But I think I've heard you and
6 Councilmember Brown just a few minutes ago saying that
7 there's been no evidence presented by experts in the
8 last day and a half or in the documents that have been
9 submitted to us that I itemized last night that include
10 substantial evidence that would meet the fair argument
11 standard; is that right?

12 KATHY JENSEN: I think that is correct.

13 MAYOR DELGADO: Okay.

14 KATHY JENSEN: With regard to the analysis that
15 was done, you know, calling into question the
16 conclusions that are in that document.

17 MAYOR DELGADO: Okay. Well, I sort of would
18 like to ask other counsel in the room that may disagree
19 with you if there is any -- or maybe I'll ask Council.

20 Council, are you aware of any substantial
21 evidence provided in the record, oral or written, that
22 you find to meet the fair argument standard of being
23 substantial evidence provided by an expert in their
24 field?

25 COUNCILMEMBER MORTON: I believe the

1 indications from Marina Coast Water District has filed
2 their multiple letters objecting to this project
3 identifying the extraction from the area will impact
4 their water rights, the extraction is going to
5 potentially increase the saltwater intrusion.

6 When you look at -- I'm now looking at our
7 staff report.

8 MAYOR DELGADO: Which document were you
9 mentioning had those arguments about extraction
10 affecting water rights and saltwater intrusion being
11 increased?

12 COUNCILMEMBER MORTON: Well, what I'm looking
13 at is the comments that were also made on page 89 and 90
14 of our staff report where the problems -- the correction
15 is money for increased cost of pumping is what the
16 Mitigated Negative Declaration says, but there is no
17 correction for saltwater intrusion or reduction in
18 freshwater.

19 MAYOR DELGADO: Can we take that? Because if
20 you go to other points, can you keep the other points in
21 mind?

22 COUNCILMEMBER MORTON: Well, those are my main
23 points.

24 MAYOR DELGADO: So let's deal with that last
25 point that's on 89 and 90.

1 COUNCILMEMBER MORTON: Yes, that two
2 foreseeable injuries were identified as no cure provided
3 for reduction in freshwater or correction of saltwater
4 intrusion, that the one correction was covering the cost
5 for increased pumping cost if you reduced the or lowered
6 the groundwater table, as I understand that.

7 MAYOR DELGADO: So, firstly, are those comments
8 by MCWD, do they meet the fair arguments substantial
9 evidence by an expert in their field standard on page 89
10 and 90?

11 KATHY JENSEN: Well, 89 and 90, I think those
12 are our responses.

13 COUNCILMEMBER MORTON: Right. They are.

14 EMILY CREEL: I'm sorry, what's the MCWD's
15 assertion?

16 COUNCILMEMBER BROWN: It's on 81 and 82, 83,
17 84.

18 MAYOR DELGADO: I thought we were 89 and 90.

19 COUNCILMEMBER BROWN: Well, that's their
20 answers.

21 COUNCILMEMBER MORTON: That's their answers.

22 COUNCILMEMBER BROWN: But the MCWD assertion is
23 on --

24 COUNCILMEMBER MORTON: Yes, their letter page
25 81.

1 COUNCILMEMBER BROWN: 81 and 82.

2 COUNCILMEMBER MORTON: It's hard to go back and
3 forth.

4 COUNCILMEMBER BROWN: Yeah.

5 MAYOR DELGADO: So they are saying that the
6 slant test well pumping itself could have a significant
7 impact on the Salinas Valley Groundwater Basin. That's
8 on page 82.

9 KATHY JENSEN: I start out with this letter
10 that it's executed by Brian Lee. I don't know anything
11 about Brian Lee. Is he an engineer? I don't know.

12 COUNCILMEMBER MORTON: Brian Lee is an
13 engineer. He's here, so let's get --

14 KATHY JENSEN: I don't know what his hydrology
15 background is, so I would start from that.

16 MAYOR DELGADO: So we can call him, we could
17 ask him. I mean if that's a major point, it seems like
18 we would answer that question. That's a good question.

19 Brian, can you come on up, please? Tell us
20 your Social Security, where you were born.

21 COUNCILMEMBER MORTON: Your passwords.

22 BRIAN LEE: Mayor Delgado, Councilmembers,
23 thank you very much. I want to start by saying I would
24 never consider myself an expert at anything. So just
25 make that very clear. It's up to everyone else to make

1 that decision.

2 I am a civil engineer. I have been practicing
3 for almost 20 years now in the water industry. I have
4 experience with a number of water wells, having been on
5 the design team and the construction team for no less
6 than six. So I have experience in groundwater in the
7 San Lorenzo Valley, which is down in San Diego County,
8 City of Oceanside, looking at aquifer storage and
9 recovery down there. I was on a team that prepared a
10 report for that.

11 And the concerns I have that maybe go into a
12 little bit more layman's terms in that regard is that
13 desalination is not an all-or-nothing prospect.
14 Everybody would rather desalination brackish water away
15 than seawater.

16 MAYOR DELGADO: Brian, I want to interrupt
17 you --

18 BRIAN LEE: No problem.

19 MAYOR DELGADO: -- because we wanted your
20 qualifications to find out if you qualified as an
21 expert.

22 BRIAN LEE: Fair enough.

23 MAYOR DELGADO: And I'm sorry to put you
24 through this.

25 BRIAN LEE: No problem.

1 MAYOR DELGADO: And then we're going to look at
2 these comments. And you can stay standing because we
3 might have more questions.

4 But, Emily, is Brian Lee an expert in his
5 field?

6 KATHY JENSEN: Kathy, you mean?

7 MAYOR DELGADO: I'm sorry, Kathy.

8 KATHY JENSEN: Yes, he is.

9 MAYOR DELGADO: Okay. So in his June 17th
10 letter on page 81 and 82, he argues some points. So do
11 those --

12 KATHY JENSEN: I was looking at the comment
13 that was related to those other pages that you were
14 referring to, which was comment number 4. So on 81 --

15 MAYOR DELGADO: It's also comment number 3 that
16 slant test well pumping itself could have a significant
17 impact on Salinas Valley Groundwater Basin.

18 KATHY JENSEN: I think we've addressed that
19 issue.

20 MAYOR DELGADO: But when experts disagree and
21 they have a fair argument that meets the fair argument
22 standard, I heard last night that we're to take this to
23 a full EIR.

24 KATHY JENSEN: Why don't you -- if you want to
25 respond on number 3?

1 MAYOR DELGADO: Thank you, Brian.

2 EMILY CREEL: So I want to cite a CEQA section.
3 It's in the CEQA statute. It is also repeated in the
4 CEQA guidelines, and I think it will be helpful. The
5 existence of public controversy --

6 MAYOR DELGADO: What was the section, I'm
7 sorry, Emily?

8 EMILY CREEL: This is Public Resources Code
9 Section 21082.2. And it's also CEQA Guidelines Section
10 15064.

11 COUNCILMEMBER MORTON: And the one on
12 controversy is subsection --

13 EMILY CREEL: 21082.2(b) as in boy.

14 COUNCILMEMBER MORTON: And in section 15064,
15 it's paren 4. I believe it's F(4).

16 EMILY CREEL: It is --

17 COUNCILMEMBER MORTON: F(4).

18 EMILY CREEL: Yes, F(4). Thank you.

19 So both of those sections state the existence
20 of public controversy over the environmental effects of
21 a project will not require preparation of an EIR if
22 there is no substantial evidence before the agency that
23 the project may have a significant effect on the
24 environment.

25 So the question is here: Do you have public

1 controversy? Do you have opposition to the project? Or
2 do you have factual evidence?

3 And I think our position is that the MCWD and
4 other members of the public and other organizations have
5 provided comments on the project, and there is
6 opposition to the project, but those comments are their
7 assertions that there will be impacts, but there is no
8 substantial evidence underlying those assertions.

9 MAYOR PRO-TEM O'CONNELL: Mr. Mayor, if I may?

10 MAYOR DELGADO: Yes. Are you -- I forget who
11 we were with. Was it me or was it with you, Gail? Are
12 you done?

13 COUNCILMEMBER MORTON: It was with you.

14 MAYOR DELGADO: Okay. I'm done for now.
15 Councilmember O'Connell?

16 MAYOR PRO-TEM O'CONNELL: Yes, I read this into
17 the record last night, and if I may read it again. It
18 says:

19 "If a lead agency is presented with a
20 fair argument that a project may have a
21 significant effect on the environment, the
22 lead agency shall prepare an EIR even
23 though it may also be presented with other
24 substantial evidence that the project will
25 have a significant effect."

1 EMILY CREEL: So, again, this is further
2 interpreting what a fair argument means.

3 MAYOR PRO-TEM O'CONNELL: Right.

4 EMILY CREEL: And CEQA requires a fair argument
5 to be supported by some type of evidence. It can't just
6 be, you know, claims made in a comment letter.

7 MAYOR DELGADO: But he just -- he just read
8 that it could be unsubstantiated evidence.

9 EMILY CREEL: Can you cite that statute section
10 for me?

11 MAYOR PRO-TEM O'CONNELL: I'm reading it out of
12 the staff report on page 3 of -- I believe it's on page
13 3 of the staff report. Bear with me a moment.

14 Well, it's on page 3 and 4 of the IS/MND up
15 near the top. There's a quote at the bottom, and then
16 there's a quote at the top. The one that goes from 3 to
17 4 says:

18 "If there is a disagreement among expert
19 opinion supported by facts over the
20 significance of an effect of the environment,
21 the lead agency shall treat the effect as
22 significant and shall prepare an EIR."

23 I was just told that Mr. Lee is considered to
24 be an expert. The documents that he submitted to us
25 certainly, in my opinion, based on the fact that he has

1 been declared an expert after the question was asked,
2 that certainly sets forth a fair argument that we should
3 address and take an EIR.

4 I mean, we can play all day and go down the
5 letter and read little comments and question it, and we
6 can be here till eleven o'clock or twelve o'clock again.
7 But the fact of the matter is that based on the fact
8 that he was just determined to be an expert and he has
9 submitted documents expressing his concern that it may
10 be a significant effect on the environment, we should
11 move ahead. And CEQA seems to say that we must move
12 ahead to an EIR.

13 So we were here till midnight last night. So
14 the way we're going right now, we're probably going to
15 be here until ten o'clock. In my opinion, we shouldn't
16 have to be. But I'm still open to more discussion, but
17 it's starting to get to the point where we are starting
18 to pick words one at a time.

19 So do you still stand by your position that
20 he's considered to be an expert? So I -- thank you.
21 Thank you, Mr. Mayor.

22 MAYOR DELGADO: Thank you, Frank.

23 COUNCILMEMBER MORTON: I just want to make sure
24 that you are answering audibly for everybody to hear.
25 Because I just see you shaking your head. So the answer

1 was "yes."

2 KATHY JENSEN: Well, what I was -- I was going
3 to just explain my thought on looking at M3, that
4 comment 3. There's a general statement at the beginning
5 of it that the pumping could have an effect.

6 MAYOR DELGADO: When you say "M3" --

7 KATHY JENSEN: It's their MCWD-3.

8 MAYOR DELGADO: Okay.

9 KATHY JENSEN: It's on page 82 of the staff
10 report. I'm trying to look at the specific comments
11 that you are looking at and saying is this substantial
12 evidence.

13 What I see in that comment is a general
14 statement at the beginning that the slant well could
15 have an -- or could have an impact on the groundwater
16 basin, but it quotes the neg dec, then it has nothing
17 more than what I'll call statistical analysis about what
18 that means.

19 Then I don't see a connection of, you know,
20 they are saying, well, that would be a certain amount of
21 percentage. To me that is interesting information, but
22 it doesn't then say, you know, you don't have somebody
23 then saying that because of this statistical stuff, now
24 you go back and it will be an impact. We have the data
25 that it isn't. So I would consider this

1 unsubstantiated, even though it's coming from an expert.

2 You can go through these -- this is a general
3 statement followed by quoting the document and just
4 calculations about percentages. To me, that doesn't
5 translate into an impact.

6 COUNCILMEMBER BROWN: Okay. May I ask a
7 question, Mayor?

8 Well, if you look at Marina Coast Water
9 District, General Manager Brian Lee's letter, I think
10 what you are saying is that, well, he's making
11 statements, but he hasn't submitted what's behind the
12 statements. But isn't that also true with the Mitigated
13 Negative Declaration? I mean aren't you -- aren't
14 you --

15 KATHY JENSEN: We do have hydrology studies.
16 There are technical studies that wrap up the
17 conclusions.

18 COUNCILMEMBER BROWN: But they are not
19 presented here, just as Mr. Lee's supporting documents
20 for making his statements aren't presented here. Isn't
21 that kind of a double standard?

22 KATHY JENSEN: Well, they are presented in the
23 Mitigated Neg Dec as appendices. They are part of the
24 studies that are -- they are not part of the staff
25 report.

1 MAYOR DELGADO: Right. I just want to mention
2 one example. The March 19th memorandum from ESA PWA, it
3 has substantial evidence regarding erosion studies that
4 were done for this MND. And I think that's the kind of
5 evidence you are talking about --

6 KATHY JENSEN: Correct.

7 MAYOR DELGADO: -- we haven't gotten in
8 opposing arguments?

9 MAYOR PRO-TEM O'CONNELL: Mr. Mayor --
10 Mr. Mayor, if I may?

11 MAYOR DELGADO: Yes.

12 MAYOR PRO-TEM O'CONNELL: Again, looking at the
13 bottom of page 3 and the top of 4 of the IS/MND, it
14 says:

15 "If there is disagreement among expert
16 opinion supported by facts over significance
17 of the effect of the environment, the lead
18 agency shall treat the effect as significant
19 and shall prepare the EIR."

20 MAYOR DELGADO: Where is that, Frank? I want
21 to read along with you.

22 MAYOR PRO-TEM O'CONNELL: I'm looking at bottom
23 of page 3, I believe, of the IS/MND.

24 MAYOR DELGADO: Okay. I'm with you.

25 MAYOR PRO-TEM O'CONNELL: And the top of 4. If

1 there is -- are you there?

2 MAYOR DELGADO: Yes. Thank you.

3 MAYOR PRO-TEM O'CONNELL: "If there is a
4 disagreement among expert opinion" -- and obviously
5 Mr. Lee's considered to be an expert and he disagrees
6 with other documentation that's been I provided to us --
7 "supported by facts over significance of the effect on
8 the environment, the lead agency shall treat the effect
9 as significant and shall prepare an EIR."

10 KATHY JENSEN: I think the key language that I
11 would point to is "supported by facts."

12 MAYOR PRO-TEM O'CONNELL: No. I would point
13 out the fact THAT there is a disagreement among expert
14 opinion. If there is a disagreement among the expert
15 opinion, are we now being asked to determine whether or
16 not the facts that are being presented by one expert
17 against the other expert, one's significant and one's
18 not? Why don't we just consider the fact that there's a
19 disagreement between experts? If there is a
20 disagreement between experts, then we just say let's go
21 on with the MND, then what we're possibly opening up
22 ourselves to is not treating this in the proper manner
23 and making a decision and being cautious, especially
24 when we have MCWD which provides the water to us --

25 COUNCILMEMBER MORTON: Right.

1 MAYOR PRO-TEM O'CONNELL: -- being the one
2 that's opposing this being done. So I think we --

3 KATHY JENSEN: Well, it's up to you to
4 determine that.

5 MAYOR PRO-TEM O'CONNELL: I understand that. I
6 appreciate that.

7 KATHY JENSEN: And I come back to what is
8 substantial evidence. It can be expert opinion. But
9 the opinions -- it's not enough for an expert just to
10 say something. You have to have some explanation for
11 it. And if you accept the explanation for it in their
12 letters, that's your decision to make.

13 MAYOR PRO-TEM O'CONNELL: I understand. I
14 didn't mean to argue with you. I'm just pointing out
15 some of the frustration --

16 KATHY JENSEN: It's what I do for a living.

17 MAYOR PRO-TEM O'CONNELL: -- that's been
18 sitting here. Thank you.

19 MAYOR DELGADO: Emily, we'll ask you some more.
20 Gail, did you have something?

21 COUNCILMEMBER MORTON: No. Frank made my point
22 that this is our water provider, the expert of our water
23 provider, and our water provider that does testing, does
24 work in the Salinas Valley Groundwater upon which he is
25 basing an opinion that I think would give weight to the

1 Marina Coast Water District.

2 MAYOR PRO-TEM O'CONNELL: If I may, I will just
3 call for the question, if it's appropriate at this time.

4 MAYOR DELGADO: Okay. I had some more
5 questions and disagreements, but a call for the question
6 requires a vote. All those in favor of calling for the
7 question, please say "aye."

8 (Response.)

9 MAYOR DELGADO: All those opposed, please say
10 "no."

11 (Response.)

12 MAYOR DELGADO: So that call for the question
13 passes with Delgado and Brown dissenting.

14 So we have a motion on the floor, and that is
15 the alternative resolution. Gail, can you repeat the
16 motion, please?

17 COUNCILMEMBER MORTON: I've got to go back to
18 it.

19 The resolution of the City Council is a motion
20 to adopt a resolution of the City Council on the appeal
21 disapproving a Mitigated Negative Declaration and
22 denying the Coastal Development Permit, CDP 2012 --
23 2012-05 for the California-American Water Slant Test
24 Well Project located at CEMEX's Lapis Road property.

25 And, in particular, that the project proposes

1 the construction, temporary operation, and
2 decommissioning of a slant test well, up to four
3 monitoring well clusters and related infrastructure.
4 The purpose of the project is to gather technical data
5 related to potential hydrogeological water quality
6 effects of the proposed MPWSP. In this proposal, it
7 uses the initials MPWSP. I'm going to call it the desal
8 project because it's easier to say and that's what it's
9 referring to.

10 The project is estimated to occur over a period
11 of two to three years. However, the CPUC in October
12 issued a notice of preparation of Environmental Impact
13 Report for the desal project, and based upon the CPUC
14 stated schedule, CPUC plans to release and certify the
15 EIR for the entire project prior to the completion of
16 the testing phase of the project. And even though the
17 project currently proposes decommissioning of the test
18 well after the testing, the project would involve the
19 installation of infrastructure that ultimately would
20 become -- could become part of the desal project if
21 certain future approvals were granted.

22 This is to avoid the potential piecemealing or
23 segmentation of the project. The City required that
24 once constructed and operated for a maximum of 24
25 months, the slant well would be decommissioned in

1 accordance with the regulations of the California
2 Department of Water Resources.

3 And whereas, recently concerns have been raised
4 by members of the public and by other public agencies
5 including Marina Coast Water District, that given the
6 large capital investment associated with the project
7 infrastructure, it is unlikely that the project -- that
8 the facilities associated with the project will be
9 decommissioned and it's likely the applicant will be
10 seeking to utilize the infrastructure for the desal
11 project.

12 Whereas, the City Council finds that the
13 project is very closely related to the desal project,
14 and for the purposes of CEQA the project is part -- this
15 project, the slant wells, is part of the larger desal
16 project.

17 Whereas, the Initial Study and Mitigated
18 Negative Declaration prepared for the project in May
19 2014 focuses solely on the project, the slant test well,
20 and does not and was not intended to assess the impacts
21 of the larger desal project.

22 And whereas, the project may be the first step
23 towards the future development of the desal project, and
24 that project would not have been proposed in the
25 absence -- this project, the slant wells, would not have

1 been proposed in the absence of the larger desal
2 project.

3 And whereas, a 30-day public review period for
4 the negative dec was established --

5 MAYOR DELGADO: Excuse me, Gail. Do you find
6 it necessary to read the whole resolution? Do you want
7 to?

8 COUNCILMEMBER MORTON: I do.

9 MAYOR DELGADO: Okay. Please proceed.

10 COUNCILMEMBER MORTON: I do, because I want to
11 be sure that everybody is understanding why.

12 MAYOR DELGADO: Okay.

13 COUNCILMEMBER MORTON: I think it's imperative
14 that we all understand why.

15 MAYOR DELGADO: Thank you.

16 COUNCILMEMBER MORTON: Sorry. I'm going as
17 fast as I can. I have skipped over portions.

18 MAYOR DELGADO: Take your time. We have all
19 night.

20 COUNCILMEMBER MORTON: A total of eight comment
21 letters were received, seven from regulatory and
22 permitting agencies: Monterey County Environmental
23 Health Bureau, Monterey County Water Resources Agency,
24 California Land Sales Commission, Monterey Bay Unified
25 Air Pollution Control District, Marina Coast Water

1 District. Monterey Regional Water Pollution Control
2 Agency, and the State Mining and Geology Board, and one
3 letter from a non-agency organization, the Ag Land
4 Trust. And there's additional correspondence relating
5 to the project that we have received which are in the
6 totality of the record.

7 Whereas, based upon all of the above
8 considerations -- it does say the Planning Commission
9 declined to approve or declined to disprove.

10 Whereas, based upon all the above
11 considerations, the City Council finds that prior to
12 considering the test slant well project, it needs to
13 have sufficient information regarding the environmental
14 effects of not only the slant well project, but also the
15 desal project. And due to its limited scope, the
16 Mitigated Negative Declaration does not provide the
17 requirement -- the required information.

18 Therefore, be it resolved, the City of Marina
19 rejects and disapproves the Mitigated Negative
20 Declaration and disapproves the Coastal Development
21 Permit for the California -- Cal-Am Water Slant Test
22 Well Project at the CEMEX property.

23 That's the motion. Thank you for letting me
24 read it.

25 MAYOR DELGADO: That's your right.

1 Okay. Can we have a roll call vote, please?

2 THE CLERK: Councilmember Amadeo?

3 COUNCILMEMBER AMADEO: No.

4 THE CLERK: Councilmember Brown?

5 COUNCILMEMBER BROWN: No.

6 THE CLERK: Councilmember Morton?

7 COUNCILMEMBER MORTON: Yes.

8 THE CLERK: Mayor Pro-tem O'Connell?

9 MAYOR PRO-TEM O'CONNELL: Yes.

10 THE CLERK: Mayor Delgado?

11 MAYOR DELGADO: No. Okay. So that motion

12 fails 3 to 2 with Mayor Pro-tem O'Connell and

13 Councilmember Morton in favor.

14 The reason I voted "no" is because I was cut

15 off from further exploration of the facts, and so I'm

16 not going to vote for something where I'm left with

17 questions.

18 So, Council, what is your pleasure? Would

19 someone like to make a motion, or would you like to go

20 back to discussions, which could take us another hour?

21 COUNCILMEMBER AMADEO: I would prefer a motion,

22 but I'm not comfortable making the motion myself. I

23 don't think it's very clear over the phone.

24 MAYOR DELGADO: Councilmember Brown?

25 COUNCILMEMBER BROWN: I would like to make a

1 motion, but I need -- I need a minute to go over this
2 resolution and make the appropriate corrections.

3 MAYOR DELGADO: Okay. I've been informed we no
4 longer have a gag order from the call for the question.
5 So, Dave, do you mind if I --

6 COUNCILMEMBER MORTON: Take a five-minute break
7 while you do that?

8 COUNCILMEMBER BROWN: Could we take a
9 five-minute break?

10 MAYOR DELGADO: Sure. We'll take a five-minute
11 break. We'll start again at quarter till 9:00.

12 UNIDENTIFIED FEMALE: Quarter till 8:00.

13 (Recess.)

14 MAYOR DELGADO: Nancy, are you still with us?

15 COUNCILMEMBER AMADEO: Yes, I am.

16 MAYOR DELGADO: Okay. David, have you had
17 enough time? Or do you mind if I ask more questions
18 while you keep working on it?

19 COUNCILMEMBER BROWN: You can ask more
20 questions.

21 MAYOR DELGADO: So Mayor Pro-tem O'Connell,
22 he's not with us yet. Does anyone know where he went?

23 Nancy, where did Frank go?

24 COUNCILMEMBER AMADEO: Ha-ha.

25 UNIDENTIFIED MALE: Is he there with you?

1 MAYOR DELGADO: All right. I don't see him.
2 So I'll ask our CEQA attorney, Kathy. Mayor
3 Pro-tem O'Connell was reading paragraph G on the bottom
4 of page 3, and it says:

5 "If there is disagreement among expert
6 opinion supported by facts over the
7 significance of an effect on the environment,
8 the lead agency shall basically prepare an
9 EIR."

10 And I wasn't sure that Mayor Pro-tem O'Connell
11 was focused on the "supported by facts" part or just the
12 "disagreement among expert opinion." Because we
13 definitely have disagreement among expert opinion. But
14 where we have disagreement, I'm not sure if it's
15 supported by facts.

16 And so I'd like to ask Brian Lee to come back
17 up and sort of let me know if you think that your
18 assertions in your letter, which is a good letter, if
19 they are supported by facts.

20 BRIAN LEE: I do believe that the assertions in
21 my letter are supported by facts, and I think that the
22 discussion is what is the impact to the groundwater,
23 it's not is there an impact to the groundwater. So I
24 think the whole discussion itself supports my concerns
25 that there will be an impact to the groundwater.

1 MAYOR DELGADO: Okay. So in the staff report
2 on page 82, 83, I think, we had your letter. And on
3 page 82 it says in your letter:

4 "The slant test well pumping could
5 have a significant impact on Salinas
6 Valley Groundwater Basin."

7 So I don't expect you to be superhuman and
8 remember everything that was in that letter. But if we
9 need to take the time, we will, I hope. My question is
10 are there facts to support that, and what are those
11 facts?

12 BRIAN LEE: The facts are the history of the
13 Salinas Valley Groundwater Basin and the amount of
14 studying that's has gone into that basin, I think there
15 are probably volumes in some offices in Salinas
16 regarding the condition of the basin.

17 It is overdrawn. There is significant seawater
18 intrusion occurring. And anymore wells in that basin
19 will impact seawater intrusion. I don't think that's
20 disputed.

21 So the question becomes is it significant. I
22 don't think the MND has adequately addressed is it
23 significant or not.

24 MAYOR DELGADO: Okay. So I hear some of your
25 facts being that there is a long history of analyzing

1 this. There's probably volumes.

2 The fact is there's probably volumes addressing
3 this. The fact is the basin is overdrawn now, and I
4 guess you meant that there is another fact that more
5 wells will further impact the seawater intrusion?

6 BRIAN LEE: Correct.

7 MAYOR DELGADO: Now, Kathy and Emily, I thought
8 I heard Emily say last night that the fact is in the
9 MND's opinion, that seawater intrusion, if there was an
10 impact, it would be a positive one to lessen seawater
11 intrusion, but it's so minuscule of an impact that it's
12 not really disclosed and that you don't believe that
13 there's an impact in the negative. If there was an
14 impact, it would be minusculely in the positive. Is
15 that true?

16 EMILY CREEL: That is true. And our evidence
17 was studies conducted by the Hydrogeologic Working Group
18 and also the State Water Board's report.

19 MAYOR DELGADO: Okay. So when Brian Lee, an
20 expert, espouses a fact being that the more wells that
21 are drilled, any well that's drilled, basically, will
22 exacerbate the overdrawn seawater intrusion, or the
23 overdrawn draft, the overdrafting of our groundwater
24 aquifers.

25 So you heard the facts that he mentioned. What

1 do you think, do those qualify as facts by CEQA process?

2 KATHY JENSEN: It's really hard to dissect all
3 this and say does it? Is it? My own personal view is
4 that's a conclusion. To say that any additional wells
5 will, you know, injure, significantly injure, that's a
6 broad statement. And the fact that there's -- it's been
7 studied, to me it doesn't add up.

8 Whether a court would find that it's -- you
9 know, that it's -- again, you know we have a low
10 threshold for MNDs, but that's the reality.

11 MAYOR DELGADO: You mean low threshold, you
12 mean we should be very conservative?

13 KATHY JENSEN: No. It is a low threshold of
14 when you can do them.

15 MAYOR DELGADO: I don't understand. I don't
16 understand in which direction you mean to say low
17 threshold.

18 KATHY JENSEN: There's a low threshold to
19 challenge them. The fair argument test is the --

20 MAYOR DELGADO: So it's easy to challenge.

21 KATHY JENSEN: The easiest of all the
22 challenges to make.

23 MAYOR DELGADO: Okay.

24 KATHY JENSEN: And the question of whether the
25 statements just made is substantial evidence, I don't

1 know the reports that he's relying upon. Maybe there's
2 a report that says that any additional wells will create
3 an impact. You know, without having that documentation,
4 it's not -- those aren't in the record. To me, it
5 doesn't really stack up to substantial evidence. Not
6 what we're used to seeing.

7 MAYOR DELGADO: Okay. Thanks. Brian, did you
8 have anything more you wanted to say? And especially,
9 Brian, those facts that you just mentioned when I asked
10 you, were those facts included in your letter?

11 BRIAN LEE: The facts were behind the letter.
12 They weren't necessarily included in the letter.

13 MAYOR DELGADO: Okay.

14 BRIAN LEE: And it's important to note that,
15 you know, the test well is proposing to extract 8,000
16 acre feet of water, plus or minus, from the groundwater
17 basin. And I mean the City of Marina right now, central
18 Marina uses approximately less than half of that in a
19 year, so it is substantial.

20 MAYOR DELGADO: But that's potable water that
21 we use, and you're talking about 8,000 acre feet that
22 everyone agrees is non-potable.

23 BRIAN LEE: Oh, I disagree that it's not
24 valuable.

25 MAYOR DELGADO: No. Potable.

1 BRIAN LEE: It's groundwater. I understand.
2 But, I mean, it needs to be established that just
3 because it's not potable or potable doesn't make it
4 invaluable.

5 MAYOR DELGADO: All right. And stay close,
6 please, because Councilmember Brown has some questions.

7 COUNCILMEMBER BROWN: I do.

8 So in coming to the conclusion that you did
9 that it would have -- that this well would have an
10 effect on the groundwater basin, have you spoken to
11 other experts in the field, both within Marina Coast
12 Water District and outside of that agency?

13 BRIAN LEE: I have had numerous conversations
14 regarding this. I have spoken with engineers, with area
15 individuals who work in the industry. I hesitate to
16 qualify anybody as an expert, but I have discussed this
17 with other individuals outside of Marina Coast Water
18 District.

19 COUNCILMEMBER BROWN: Other individuals such as
20 hydrologists or geologists or engineers?

21 BRIAN LEE: I have discussed it with engineers.
22 I may have discussed it with hydrologists or geologists,
23 but I do not recall. And I certainly did not seek
24 hydrologists' or geologists' input in that regard.

25 COUNCILMEMBER BROWN: But you have discussed it

1 with other engineers?

2 BRIAN LEE: Yes.

3 COUNCILMEMBER BROWN: Other engineers as
4 qualified as yourself?

5 BRIAN LEE: I do not know their background
6 necessarily, so I would not be willing to say they are
7 more or less qualified than me.

8 COUNCILMEMBER BROWN: Other engineers within
9 Marina Coast Water District?

10 BRIAN LEE: I've spoken with other engineers at
11 Marina Coast Water District, yes.

12 COUNCILMEMBER BROWN: Okay.

13 MAYOR DELGADO: All right. Thank you, Brian.

14 COUNCILMEMBER BROWN: Thank you.

15 MAYOR DELGADO: Marc Del Piero, you were
16 kind -- I'm sorry. Nancy. Go ahead.

17 COUNCILMEMBER AMADEO: I'd like to ask Brian a
18 question regarding e-mail that he sent us today.

19 MAYOR DELGADO: Okay. Go ahead, please, Nancy.

20 COUNCILMEMBER AMADEO: Mr. Mayor?

21 In the e-mail that you sent today, you talked
22 about the same place, the CEMEX property, and what
23 Marina Coast Water District would need in order to
24 provide waters on the former Fort Ord. And in that you
25 don't speak -- and you talk about 11 wells per MCWD, but

1 you never speak to any issue of seawater intrusion or
2 the impact your own wells would have.

3 Can you explain why in the Mitigated Neg Dec
4 you are concerned about seawater intrusion, but in your
5 letter to us you are concerned about the 11 wells that
6 you would want on the site.

7 BRIAN LEE: The reason I don't discuss the
8 seawater intrusion concerning our 11 wells is because we
9 have groundwater rights within the basin, and we have
10 the ability to extract freshwater from the basin or
11 non-seawater from the basin. So we have the ability,
12 the legal right and the ability to mitigate that versus
13 somebody who does not have rights to extract from the
14 groundwater basin.

15 COUNCILMEMBER AMADEO: So but that doesn't
16 answer my question. That's legal rights to the water.
17 It doesn't answer my question regarding the issue of
18 seawater intrusion. If that is, in fact, an issue, why
19 would MCWD want to put 11 wells on that site?

20 BRIAN LEE: I don't believe I said that MCWD
21 wants to put 11 wells on that site. I basically
22 proposed the hypothesis that should MCWD need to go to
23 desalination to reach the 2030 demand forecast for the
24 Ord community that we might need to put 11 wells on that
25 site, and the seawater intrusion from those 11 wells

1 would be mitigated by our ability to extract freshwater
2 or any water from the groundwater basin for that matter.

3 COUNCILMEMBER AMADEO: Okay. I'm not sure that
4 I understand the science, so I will leave it at that.

5 MAYOR DELGADO: Brian, can you restate that so
6 that I can understand it?

7 BRIAN LEE: I will do my best.

8 MAYOR DELGADO: Basically I want to know how
9 does MCWD's future access to desal water source, how is
10 that harmed by approving what we're talking about
11 tonight?

12 BRIAN LEE: Okay. The groundwater has
13 significant environmental and financial value,
14 regardless of the salinity of it, as long as it is not
15 seawater. Because there are various grades of
16 filtration that you can apply to that to reach potable
17 water. The less salt in the water, the less you have to
18 filter, the cheaper the cost.

19 MCWD will eventually need to move forward with
20 desalination of some sort. I don't think that's in
21 question. The size of the plant is in question. So
22 we're still working through that. We have a site. We
23 have already gone through all of that. At some point in
24 time we will need to size our desalination facility to
25 extract groundwater.

1 If another site is already there extracting
2 groundwater, they are going to be pulling in seawater,
3 raising the salinity, which is going to increase our
4 cost, which that is a significant impact to MCWD and the
5 residents of Marina. So there is an environmental
6 impact --

7 MAYOR DELGADO: Wait, wait. That's a
8 significant impact, but it's not an environmental
9 impact.

10 BRIAN LEE: It damages the groundwater. It
11 increases seawater further in, and it impacts the
12 environment for MCWD.

13 MAYOR DELGADO: Okay. By decreasing the
14 quality of the groundwater that you may need to be
15 pumping?

16 BRIAN LEE: Increasing the quality of the
17 groundwater that we have a right to.

18 MAYOR DELGADO: Okay. Kathy, does that sound
19 like -- or, Emily, does that sound like a significant
20 impact? Thank you, Brian.

21 EMILY CREEL: I would just add that what he is
22 referring to is the larger project in operation. So
23 what we're talking about here is the short-term pumping
24 project.

25 MAYOR DELGADO: So, Brian, that's a good

1 question. I'm sorry to keep -- you need to say "Mother
2 may I" next time.

3 But, Brian, do you think that what you just
4 said as a significant impact, do you think that that
5 occurs with the two years of proposed test slant well
6 testing?

7 BRIAN LEE: The proposed test well extracts,
8 again, almost twice as much as water as the central
9 Marina residents are using right now and the Ord
10 community. So, yeah, I think it does have a substantial
11 impact in the short term, considering the fact that we
12 are in the worst drought in the state's history.

13 MAYOR DELGADO: Okay.

14 BRIAN LEE: And Sacramento is giving a real big
15 stink-eye to groundwater and groundwater rights right
16 now, so we need to be very careful to protect our
17 rights.

18 MAYOR DELGADO: Okay. Don't go away, because
19 David Brown might have something.

20 COUNCILMEMBER BROWN: Actually, I would like to
21 make a motion.

22 MAYOR DELGADO: Okay. Thank you, Brian.

23 COUNCILMEMBER BROWN: All right. Well,
24 Mr. Lombardo is standing up, do you want to recognize
25 him?

1 (Audience response.)

2 MAYOR DELGADO: If anybody -- I would like to
3 hear -- just because of that, I would like to hear,
4 Tony. What do you have that's burning?

5 COUNCILMEMBER BROWN: Yeah.

6 MAYOR DELGADO: We have to be respectful and
7 civil to everyone in this room, please.

8 ANTHONY LOMBARDO: Thank you, Mr. Mayor.

9 MAYOR PRO-TEM O'CONNELL: Mr. Mayor, if I may?
10 Is there a question pending or something? Are we
11 opening public comment? Because if we're going to give
12 this gentleman comments, then we certainly should give
13 someone from the other side comments. I don't think
14 it's appropriate at all for Mr. Lombardo to speak.

15 MAYOR DELGADO: So I have a question.

16 Mr. Lombardo, do you see that facts have been
17 presented by expert opinions here that would trigger an
18 EIR as in this page 3 of our CEQA -- of our MND.

19 ANTHONY LOMBARDO: Thank you, Mr. Mayor.
20 Anthony Lombardo on behalf of the applicant. I do not,
21 because the code section we've been reading regarding a
22 disagreement among experts requires that opinion be
23 supported by facts. Mr. Lee's statements have not.

24 MAYOR DELGADO: Excuse me, Tony.

25 COUNCILMEMBER AMADEO: Mr. Mayor. I'm sorry, I

1 don't know what's being rattled, but I can't hear
2 anything.

3 MAYOR DELGADO: Okay. You fell down, and now
4 you are back up. Can you hear okay?

5 COUNCILMEMBER AMADEO: I can hear you. I
6 couldn't hear Mr. Lombardo at all.

7 MAYOR DELGADO: Okay. Tony, can you start with
8 the content after you introduced yourself.

9 ANTHONY LOMBARDO: Thank you, Mr. Mayor. The
10 CEQA guideline section we've been debating requires that
11 if someone provides expert opinion, it must be
12 substantiated by facts. There's no facts. There have
13 been no facts presented. There is nothing but, under
14 the guideline description of substantial evidence,
15 unsubstantiated opinion or narrative. Saying "I think
16 groundwater will be harmed" not only is unsubstantiated
17 by any facts whatsoever that you must have in order to
18 determine whether this expert's opinion is valid. If he
19 gives you an opinion, "I think the moon is going to fall
20 onto on the earth," where are your facts?

21 Finally, it also ignores the mitigation
22 measures contained in your negative declaration which
23 preclude this from happening. Even if it's possible
24 pumping 8,000 acre foot or 80 acre foot would create an
25 impact on the groundwater, mitigation measure number one

1 requires that if water levels drop one foot, pumping is
2 curtailed. So it's an impossibility. His opinion is
3 not substantiated by facts. Thank you.

4 MAYOR DELGADO: All right. Thank you,
5 Mr. Lombardo.

6 Mayor Pro-tem O'Connell?

7 MAYOR PRO-TEM O'CONNELL: Mr. Mayor, I'd like
8 to give Mr. Del Piero the opportunity to respond to the
9 same question.

10 MAYOR DELGADO: So, Marc, what facts do you
11 think have been presented by experts?

12 MARC DEL PIERO: Mr. Mayor, before I begin to
13 answer that question, let's just get on the record what
14 my background is, okay? In 1978 I got appointed to the
15 County Planning Commission. I graduated from law school
16 at Santa Clara University, passed the bar exam. I was
17 the primary author of the North Monterey County Local
18 Coastal Plan that remains in full force and effect, and
19 that Land Use Plan actually applies to the Ag Land Trust
20 property that we've been subject -- that has been the
21 subject of your discussion.

22 From 1981 until 1992, besides being a member of
23 the Monterey County Board of Supervisors and also a
24 supervisor for the City of Marina for the first four
25 years of that term, I served on the board of directors

1 of the Central Valley Project Improvement Act San Felipe
2 Division, which is the agency that is responsible for
3 distribution of all federal waters through the San
4 Felipe Division for Northern California, including the
5 counties of Santa Clara, San Francisco and the Bay Area,
6 San Benito as well. Monterey County and Santa Cruz
7 County at the time were members during the entirety of
8 the term of my membership on that committee, and that
9 membership ended in '92 when I was appointed to be the
10 attorney member of the State Water Resources Control
11 Board from 1992 until -- pardon me, from 1992 until 1999
12 I served as the vice chair of the board.

13 Last night was sort of an interesting
14 situation, because also from 1992 until 1999, I served
15 as the chair of the statewide task force on desalination
16 projects. And I'm the only guy who ever served in that
17 capacity who actually has built other water projects as
18 opposed to just serving as a chair of that board.

19 MAYOR DELGADO: Okay. Marc, are you done with
20 your qualifications?

21 MARC DEL PIERO: Not yet.

22 MAYOR DELGADO: Okay. Please continue.

23 MARC DEL PIERO: I'm not. And, Mr. Chairman, I
24 apologize, but your counsel has made a big point about
25 whether or not someone is fit to testify here, and so I

1 need to make sure that you understand that from the
2 standpoint of many people, including the State Water
3 Resources Control Board, the Department of Water
4 Resources, the Mendocino County Russian River Flood
5 Control Water Conservation District, I've been qualified
6 as an expert witness on many occasions.

7 From 1999 until last summer, I was the chief
8 counsel for the Mendocino County Russian River Flood
9 Control Water Conservation District. They administer
10 all water rights on the Russian River as well as all
11 environmental restoration programs within Mendocino
12 County and the Ukiah valley.

13 I have served as the chief counsel for a number
14 of water agencies here in Monterey County all the way
15 from the Big Sur coast to Pajaro.

16 So -- oh, one last thing. From '92 until 2011,
17 I taught water rights law and water quality policy at
18 Santa Clara University School of Law.

19 MAYOR DELGADO: Marc, would you --

20 MARC DEL PIERO: Now ask your question.

21 MAYOR DELGADO: -- would you consider yourself
22 a policy expert and a legal expert and an engineering or
23 technical expert?

24 MARC DEL PIERO: I will tell you, I am a legal
25 expert. Okay. I am not a civil engineer; however, I

1 have been responsible for ensuring the proper
2 engineering and administration of multitudinous capital
3 development projects. And I'll be happy to give you a
4 list of all of those if you have got another 20 minutes.

5 Additionally, I've been responsible for the
6 development of the desalination and wastewater
7 reclamation criteria that were subsequently adopted both
8 by the State Water Resources Control Board and by the
9 then California Department of Health Services, and most
10 of those policies remain in full force and effect.

11 MAYOR DELGADO: All right. Thank you very
12 much, Marc. And do you remember the question?

13 MARC DEL PIERO: No.

14 MAYOR DELGADO: What are some of the facts that
15 you think were supporting this disagreement among
16 experts?

17 MARC DEL PIERO: And please understand, I am
18 relying on the facts that are embodied in your Mitigated
19 Negative Declaration. Although I have to be candid with
20 you, Mr. Mayor, and members of the Council, I have heard
21 some sort of tortured interpretations of various
22 policies in the CEQA guidelines tonight.

23 First of all, oil and gas law has no
24 applicability to water rights law in the State of
25 California. They are two separate codes. There is no

1 similarity whatsoever. And any CEQA considerations in
2 terms of oil and gas wells may not under any
3 circumstances --

4 MAYOR DELGADO: Excuse me, Marc, I was asking
5 you what facts --

6 MARC DEL PIERO: That's what --

7 MAYOR DELGADO: What facts have been presented
8 by expert disagreement tonight.

9 MARC DEL PIERO: I really am. I'm getting to
10 it.

11 MAYOR DELGADO: You are adding something I
12 hadn't heard before, which is fine, but let's get to
13 that next perhaps.

14 MARC DEL PIERO: Well, actually I have heard it
15 three times from your counsel talking about how you
16 should ignore the mandates.

17 MAYOR DELGADO: No, no. But we haven't heard
18 anyone -- we haven't heard an expert such as yourself --

19 MARC DEL PIERO: Okay.

20 MAYOR DELGADO: -- until now, assert the fact
21 that oil and gas law has no applicability to water law.

22 MARC DEL PIERO: That's correct.

23 MAYOR DELGADO: And my question to you was
24 before you stood up tonight if you had heard facts of
25 disagreement by experts.

1 MARC DEL PIERO: On what issue?

2 MAYOR DELGADO: The MND.

3 MARC DEL PIERO: Okay.

4 MAYOR DELGADO: So before coming to the podium
5 five minutes ago, what are some of the facts that you
6 heard of disagreement between experts.

7 MARC DEL PIERO: The fact that additional wells
8 in a groundwater basin that has been overdrafted
9 since --

10 COUNCILMEMBER BROWN: Mr. Mayor, point of
11 personal privilege.

12 MAYOR DELGADO: Yeah.

13 COUNCILMEMBER BROWN: I would like to
14 interrupt, because I feel I need to respond to this. I
15 feel that when Mr. Del Piero stands there and glares at
16 me and tells -- and lectures me that there's no
17 difference -- I mean that there's a lot of difference
18 between oil and gas law, and that he basically came to
19 the podium earlier during the break and got in my face
20 and said the same thing, I feel it's necessary to
21 respond.

22 MARC DEL PIERO: Sure.

23 COUNCILMEMBER BROWN: I understand that oil and
24 gas law are two separate fields. What you are doing is
25 assuming that I equated them when I asked one question

1 to our counsel, which was whether oil wells and gas
2 wells were analogous as to one tiny sliver of CEQA
3 relating to --

4 COUNCILMEMBER MORTON: Piecemealing.

5 COUNCILMEMBER BROWN: Yeah, piecemealing. So I
6 never said there was a similarity in oil and gas law,
7 and I'm sorry that you take it so personally.

8 MARC DEL PIERO: No, Mr. Brown. I'm not taking
9 it personally. My point is this --

10 MAYOR DELGADO: Okay. Okay. Excuse me, Marc.
11 Excuse me, Marc.

12 MARC DEL PIERO: Sure.

13 MAYOR DELGADO: It was pointed out on a couple
14 of occasions at least by our consultants that because
15 oil and gas allows testing and feasibility studies and
16 drilling, that was something that was -- at least they
17 were suggesting that we keep that in mind.

18 MARC DEL PIERO: Sure.

19 MAYOR DELGADO: But I was asking you now for
20 the facts that were presented in disagreement by other
21 experts.

22 MARC DEL PIERO: The basin has been in
23 overdraft since 1946, '47. Okay. The basin is in
24 overdraft because of the multitudinous number of wells
25 that exist within the basin. Every study that has --

1 MAYOR DELGADO: Okay. That's a fact that Brian
2 Lee pointed out. So you are agreeing with him that's a
3 fact.

4 MARC DEL PIERO: I would -- let me cut this
5 short in regards to Mr. Lee's comments. It is the
6 position of the Ag Land Trust at this point that
7 everything that Mr. Lee said tonight is exactly correct,
8 and we disagree with the recommendations of your
9 consultant and your contract counsel because --

10 MAYOR DELGADO: I'm asking for facts. You are
11 straying from what I asked. I asked you for the facts
12 that have been presented. Do you have any more facts
13 that you recall being disclosed --

14 MARC DEL PIERO: Yes.

15 MAYOR DELGADO: -- by experts?

16 MARC DEL PIERO: Yes.

17 MAYOR DELGADO: What are those?

18 MARC DEL PIERO: First of all, you have a basin
19 that's in overdraft. Adding an additional well that
20 proposes to pump 8,000 acre feet will exacerbate
21 seawater intrusion.

22 Every hydrogeologic study that has been
23 produced in this county since 1976, and I can represent
24 to you --

25 MAYOR DELGADO: That's not a fact that was

1 brought up before you came to the podium.

2 MARC DEL PIERO: But it's incorporated in your
3 negative declaration. The reference to the overdraft in
4 the basin is in your Mitigated Negative Declaration.

5 MAYOR DELGADO: Right. But I'm asking you for
6 additional facts that have been brought up by expert
7 opinion.

8 MARC DEL PIERO: Which expert would you like me
9 to refer to?

10 MAYOR DELGADO: Those who are disagreeing with
11 the MND's record -- recommendation to be adopted.

12 MARC DEL PIERO: If you point out which one --

13 MAYOR PRO-TEM O'CONNELL: Point of order,
14 Mr. Mayor.

15 MAYOR DELGADO: Point of order, Marc. Excuse
16 me.

17 MAYOR PRO-TEM O'CONNELL: I don't think that
18 it's a requirement that we limit the expert as to facts
19 that may be in disagreement with another expert. He has
20 found himself -- he is found to the point of being an
21 expert. Why cannot we allow him to reference documents
22 that are presently in front of us to point out where the
23 facts differ? I know that expands your question a
24 little bit.

25 MAYOR DELGADO: That will be appropriate in a

1 few minutes. But the whole point of getting Brian and
2 Marc up again was to answer that question about what
3 facts have been presented in the record by experts that
4 show disagreement between experts.

5 MAYOR PRO-TEM O'CONNELL: But you are not -

6 MAYOR DELGADO: Then we can ask him other
7 questions like please give us new facts, because that's
8 what he's doing now.

9 MAYOR PRO-TEM O'CONNELL: That will be your
10 next question?

11 MAYOR DELGADO: Right.

12 MAYOR PRO-TEM O'CONNELL: Okay.

13 MARC DEL PIERO: Okay.

14 MAYOR DELGADO: So we'll ask you about new
15 facts in a moment. But for right now do you have any
16 other -- do you have any other facts or disagreement
17 that you are aware have been part of the record?

18 MARC DEL PIERO: Yes.

19 MAYOR DELGADO: Okay.

20 MARC DEL PIERO: Let me start by identifying
21 who I'm talking about, okay? Because, Mr. Mayor, you
22 are the one who asked your contract counsel whether or
23 not Mr. Lee was an expert, and it was predicated upon
24 her opinion that collectively the counsel determined or
25 agreed that he was an expert.

1 MAYOR DELGADO: No. It was predicated upon him
2 coming forward and explaining why he was an expert, and
3 he did a good job and we all agree he's an expert. It
4 wasn't predicated upon anything the consultant said.

5 MARC DEL PIERO: You forgive me, because I
6 heard you ask the question as to whether or not she
7 thought he was an expert.

8 MAYOR DELGADO: Right, but that was subsequent,
9 that was before he spoke for himself, sir.

10 MARC DEL PIERO: So if that's not -- if you
11 don't believe your contract attorney is an expert, which
12 expert would you like me to address, because I have sat
13 through both the hearings yesterday and today, I've
14 listened to every comment made. Which expert would you
15 like me to address in terms of the comments?

16 MAYOR DELGADO: Any facts that you believe any
17 experts made in disagreeing with the MND's
18 recommendation for approval.

19 MARC DEL PIERO: Well, let me -- Martin Feeney
20 got up. I think Martin Feeney qualifies as an expert.
21 Martin Feeney told you he didn't know what the results
22 were going to be. That's not an expert opinion. That's
23 an indication that --

24 MAYOR DELGADO: That's not a fact. He didn't
25 tell us --

1 MARC DEL PIERO: No. It is a fact that he made
2 that statement. He's's made the statement that he
3 didn't know what the consequences were going to be.

4 And I guess my point is this -- let me share
5 with everyone. Yesterday the State Board opinion was
6 presented to you. What was glossed over in the State
7 Board opinion was the statement that the State Board was
8 looking forward to getting a proposal that didn't
9 compromise adjacent property owners' water rights.
10 That's in the State Board opinion.

11 And so the first premise that anyone relying
12 upon that State Board letter should be -- should be
13 concerned about --

14 MAYOR DELGADO: Okay. Marc -- Council, I
15 believe that the -- that the commenter is straying from
16 the question.

17 MARC DEL PIERO: Tell me who you would like me
18 to address and I would be happy to.

19 MAYOR DELGADO: I already mentioned to you
20 after you asked that question last time, any expert that
21 you have heard provide any facts on the record in
22 disagreement with the MND being approved, please let us
23 know what those facts are.

24 MARC DEL PIERO: Mr. Delgado, the only person
25 that got qualified as an expert tonight before me was

1 Mr. Lee. No one -- no one was identified as an expert
2 prior to that in the course of the presentation.

3 MAYOR DELGADO: But I'm asking you if anyone
4 that you think is an expert, and if there's any facts
5 that you heard them provide --

6 MARC DEL PIERO: Yes.

7 MAYOR DELGADO: -- please let me know what
8 those facts are.

9 MARC DEL PIERO: Yes. I will tell you this:
10 The conjecture that a well that is located on the CEMEX
11 property that will extract 8,000 acre feet and won't
12 have an impact on inland groundwater resources is --
13 denies the history and hydrology --

14 MAYOR DELGADO: Okay. I'm not hearing a fact
15 by an expert.

16 MARC DEL PIERO: That is a fact. That was a
17 statement made by your folks. Cal-Am's position is it's
18 not going to have an effect on groundwater. That is a
19 fact that is embodied in your Mitigated Negative
20 Declaration.

21 MAYOR DELGADO: Right, but it is a fact in
22 support. I'm looking for disagreements between experts
23 that are disagreeing with the approval of the MND.

24 MARC DEL PIERO: Give me a name, Mr. Mayor, and
25 I will be happy to tell you what I think of their

1 opinion.

2 MAYOR DELGADO: Okay. I'm satisfied. I'm
3 satisfied with your response. Okay. I'm satisfied with
4 your response to the question.

5 Council, are you satisfied with Marc's response
6 to the question? Does Council have any other questions
7 you would like to ask Marc?

8 MAYOR PRO-TEM O'CONNELL: You were going to
9 follow up with another question asking him in general as
10 an expert what facts he considers to be in dispute or
11 facts that he thinks are significant.

12 MAYOR DELGADO: Okay.

13 MARC DEL PIERO: Is that a question from you,
14 Mr. Mayor, or a question from Mr. --

15 MAYOR DELGADO: It's a question from Mayor
16 Pro-tem.

17 MARC DEL PIERO: From the Mayor Pro-tem. I
18 think the facts --

19 MAYOR DELGADO: Try to be as brief as you can.

20 MARC DEL PIERO: I will -- I will do my very
21 best.

22 The facts that are in contention is that this
23 test well will not have an adverse effect on people with
24 existing overlying groundwater rights in an overdraft
25 basin.

1 The law in regards to overdrafted groundwater
2 basins in the state is very clear. It's been
3 established since 1906. There are multitudinous cases
4 that indicate what the law is.

5 And the assertion by non-engineers that this
6 well is not going to have an adverse effect, not going
7 to create a cone of depression that's going to take
8 water is just factually wrong. It's factually wrong
9 based on all of the historic documents that have been
10 produced not only by the County but also by the Monterey
11 County Water Resources Agency, the State Department of
12 Health Services, the State Water Resources Control
13 Board, and the Army Corps of Engineers.

14 In those letters that we submitted to your
15 Council, Mr. Mayor and Mr. O'Connell, those studies are
16 referenced. They are in the letters that we submitted
17 to you. There are citations of each one of those
18 studies.

19 And we asked in our last correspondence that
20 all of our prior correspondence be incorporated by
21 reference into our comments. So if you are looking for
22 facts that can be used to contest the assertions being
23 made by the Cal-Am proponents of this project, every
24 study, and I say that without limitation, every study
25 done by regulatory agency in regards to the Salinas

1 Valley Groundwater Basin since 1967 says that the more
2 you pump the more seawater intrusion you are going to
3 have and the greater amount of contamination that is
4 going to affect the overlying property -- the overlying
5 landowners' property rights. Okay?

6 MAYOR DELGADO: Okay.

7 MARC DEL PIERO: Marc, that's the first thing.

8 MAYOR DELGADO: Okay. I really want to stop
9 you. Does the Council want to hear --

10 MARC DEL PIERO: I haven't answered --

11 COUNCILMEMBER BROWN: I would like to ask him a
12 question.

13 MAYOR DELGADO: Councilmember Brown.

14 COUNCILMEMBER BROWN: Well, now correct me if I
15 am wrong, I'm paraphrasing, but you just said that every
16 study shows the more groundwater you pump, the more
17 seawater intrusion there is.

18 MARC DEL PIERO: That's correct.

19 COUNCILMEMBER BROWN: But that's inland
20 groundwater pumping, not pumping hundreds of feet out
21 into the ocean, correct?

22 MARC DEL PIERO: No, that is not correct. And
23 the point of fact is there are a number of studies that
24 were prepared by the County starting in 1976 that showed
25 that there was a direct correlation, threat, and

1 compromise of existing potable groundwater supplies in
2 the Salinas Valley based on the proximity of wells and
3 how they were drilled next to the coast.

4 COUNCILMEMBER BROWN: Okay. But my but my
5 point is --

6 MARC DEL PIERO: May I point something out?

7 COUNCILMEMBER BROWN: My point --

8 MAYOR DELGADO: Marc, Marc, please let David
9 Brown speak.

10 COUNCILMEMBER BROWN: All those studies are
11 based on wells, you know, on the ground. I mean, on the
12 earth, not in the sea, correct?

13 MARC DEL PIERO: All of those studies are based
14 on wells that are drilled, in some instances, expressly
15 designed to monitor seawater intrusion into a potable
16 aquifer. The fact that these slant wells have not even
17 been engineered yet -- this one slant well that is
18 proposed is less than a thousand feet off shore. The
19 fact that this slant well proposes to pump, in the next
20 24 months, more water than it takes to go from the well
21 location to Castroville covering the entire area of that
22 valley in a foot deep of water, those issues have all
23 been addressed before. Those issues have all been
24 addressed before.

25 And it is not new that there is a seawater

1 intrusion problem in the Salinas Valley. There are
2 multitudinous studies and a number of major capital
3 facilities projects that people are currently paying for
4 expressly for the purposes of reversing the seawater
5 intrusion.

6 And, Mr. Brown, I know you are familiar with
7 the River Dam, you are familiar with the Seaside
8 project, all of those projects are being paid for not
9 only by farmers, but by the residents of your city
10 expressly to reverse the proposal that Cal-Am wants to
11 do here.

12 One last thing. In the Salinas Valley, potable
13 groundwater supplies -- under the laws of the State of
14 California, potable groundwater supplies are identified
15 by one agency. One agency has responsibility for
16 determining water quality and whether or not a
17 groundwater supply is potable.

18 Under the Porter-Colone Act, 1967, that
19 responsibility falls to the State Water Resources
20 Control Board. The State Water Resources Control Board
21 has delegated that responsibility specifically to the
22 Central Coast Regional Water Quality Control Board. The
23 Central Coast Regional Water Quality Control Board has
24 adopted a basin plan that is in full force and effect.

25 The groundwater that Cal-Am is proposing to

1 eventually contaminate with this project is designated
2 as a potable supply. And so you asked what experts have
3 said here tonight, the only experts whose opinion
4 matters are not here tonight, that's the legal
5 determination by the Central Coast Regional Water
6 Quality Control Board that's a potable water supply.

7 MAYOR DELGADO: That's not true, Marc. There
8 are other experts that matter tonight. If they have
9 commented with facts, for the record --

10 MARC DEL PIERO: Mr. Mayor, that's why you need
11 an EIR, because we are disagreeing.

12 MAYOR DELGADO: Okay. Thank you, Marc.

13 MARC DEL PIERO: Thank you.

14 MAYOR DELGADO: Okay. This kind of got away
15 from me, but we want to make this decision right
16 tonight, and it's an important enough decision to err on
17 letting it get away from us than I believe err on being
18 too short and not hearing everyone out.

19 So in the name of hearing everyone out, I'd
20 like to hear, if there's any, five minutes of rebuttal
21 that Cal-Am would like to speak.

22 And, Chip, we'll let you come up after so that
23 we can exhaust the main points that people want to make.

24 IAN CROOKS: Mr. Mayor, I would rather wait
25 till after Chip's, since we're the applicant.

1 MAYOR DELGADO: Please, Cal-Am, you just heard
2 a lot. If you can provide a rebuttal, if you choose.

3 IAN CROOKS: Yeah, I'm going to make a brief
4 statement, but I'll use our expert that represents the
5 Hydrologic Working Group, Martin Feeney, he can give --
6 he's an expert, and he can give you the opinion.

7 But to counter Marc's point was the State Water
8 Resources Control Board is telling us to go do a test
9 well. So that's part of it.

10 MAYOR DELGADO: Martin, is there anything you
11 wanted to add?

12 MARTIN FEENEY: Well, I guess I am an expert.
13 I am a professional geologist. I'm a certified
14 engineering geologist, and I'm a certified
15 hydrogeologist in the State of California. I've been
16 practicing here for 30 years. Much of my work I've
17 done, I've done for the Marina Coast Water District.

18 I think one of the issues that we've been
19 talking about here is damage to the Marina Coast water
20 supply. We have to realize that Marina hasn't pumped
21 out of the 180 for 40 years. They haven't pumped out of
22 the 400, except on Fort Ord wells, for 30 years. All
23 the well -- all the water for Marina proper comes from
24 the deep zone wells, three of which I engineered and put
25 in.

1 So what we're talking about, a damaged aquifer,
2 yes, it has some value if you wanted to use it as a
3 desal source. But as to the other issue, we're talking
4 about pumping these slant wells. Actually, as you can
5 see in the draw-down that was presented, you pump wells
6 at the coast right under -- under the ocean. You are
7 going to pull seawater back, because you are going to be
8 driving the gradient the reverse way.

9 To get seawater intrusion you need two things,
10 you need a pathway from the ocean and you need a reverse
11 gradient. We have a reverse gradient. Seawater is all
12 the way to the Auto Zone in the 180, and it's past the
13 freeway in the 400.

14 If you reverse the gradient, which they do in a
15 lot of places, they put a line of wells along -- along
16 the coast, and it cuts off seawater intrusion. This is
17 just basically the same thing for that.

18 Now, back to the major point. We're drilling
19 this well because the State Board has asked us to figure
20 out whether this can be done without any harm. The
21 State Board has said that there may be the -- Cal-Am may
22 have the ability to take some water from the basin if
23 they prove they can do it without harm.

24 Because of the settlement agreement, four, five
25 hydrogeologist experts were put together to sort this

1 out. We looked at all the data. We drilled monitoring
2 wells. We did testing. We determined what the water
3 quality is out there. It's almost the same strength as
4 seawater. It's like 35,000 parts out there at the CEMEX
5 site already.

6 We're to the point now where we need to drill
7 the test well and pump it and stress the basin to be
8 able to establish what the impacts are so we can answer
9 all these questions that keep going around and around
10 and around.

11 What is the impact to the basin? You know,
12 what is the impact to existing users? You know, I'm
13 being paid by the farm -- farmers because they are
14 concerned. It's about the impacts to the basin.

15 So we got together, and that's the point is to
16 figure out when you test this well, can it be done
17 without impacts? Can it be done that it only takes
18 seawater? That's the purpose of this. It's a
19 feasibility study.

20 My personal -- my personal opinion is this is a
21 little dicey. It may not work. Other people have a
22 different opinion. They think it's going to work fine.
23 That's fine. We're to the point now where it's just
24 opinion among a bunch of qualified experts. We need to
25 actually drill this thing and stress it. That's the

1 point.

2 So we get the monitoring wells, we get around
3 the pumping well on all sides, we will be able to see
4 what the draw-down effects are, and to be able to build
5 a better groundwater model so that the full-scale
6 project, should it be moved forward, that the modeling
7 that's in the EIR, the full EIR, can accurately model
8 the impacts of the full-scale project. We can't build a
9 model to look at the full-scale project until we know
10 what the aquifer parameters are, the transmissivity, the
11 storativity, and what the boundary condition does to the
12 well draw-down. That's the deal.

13 MAYOR DELGADO: All right. Thank you very
14 much, Martin.

15 Chip and/or Brian, you can have the last word
16 in this back and forth.

17 HOWARD CHIP WILKINS: I'd just like to go
18 really quickly back to what substantial evidence is,
19 because I do think there may be some misconception.

20 If you look at 15384 of the CEQA guidelines, it
21 says:

22 "Substantial evidence as used in these
23 guidelines means that enough relevant
24 information and reasonable inferences from
25 this information that a fair argument can

1 be made to support a conclusion, even though
2 other conclusions may be reached."

3 MAYOR DELGADO: Can you read that again,
4 please?

5 HOWARD CHIP WILKINS: Yes. Again, it's 15384.
6 It's the definition of "substantial evidence" in the
7 CEQA guidelines.

8 And it's:

9 "Substantial evidence as used in these
10 guidelines means enough relevant information
11 and reasonable inferences from this
12 information that a fair argument can be made
13 to support a conclusion, even though other
14 conclusions might also be reached."

15 And so what I hear from people is what studies
16 or big reports have the opposition or --

17 MAYOR DELGADO: The facts. What facts?

18 HOWARD CHIP WILKINS: What facts. What I hear
19 is a lot of facts that are being used to support their
20 opinions. Not a huge particular study or a different
21 modeling exercise that was used to demonstrate that
22 there would be an impact, but opinions based on facts.
23 And those facts are the current condition of the basin.
24 I can let the experts speak, because I'm not suggesting
25 I am. But their opinions are clearly based on facts.

1 And what CEQA says is that once you have an
2 opinion from an expert that's based on facts, you do the
3 EIR. You don't sort out whose facts you think are
4 better, whose models you think are better, who is
5 relying on better studies. That's not what you do with
6 a Mitigated Negative Declaration.

7 And if you take a look at the actual threshold
8 that's in the MND, it isn't deplete -- it's deplete
9 groundwater supplies. It's not potable water supplies,
10 it's groundwater supplies. So we're not limiting this
11 just to the 900 -- and I think that there was some
12 incorrect information about what basins MCWD pumps from,
13 but I'll let Brian address that.

14 And, lastly, I would say even if this Council
15 doesn't agree that this is a piecemeal project, and we
16 think based on the resolution that in itself is a fair
17 argument that it is, you still have to look at the
18 potential cumulative impacts of the Monterey Peninsula
19 Water Supply Project and the potential future use of the
20 slant well in your cumulative impact study. So even if
21 you are not going to say it's part of this project, you
22 do a focused EIR, you don't include it in your project
23 description, you do your cumulative analysis, which is
24 obviously going to not include a detailed analysis of
25 every part of the bigger project, but you are going to

1 do a cumulative analysis and it's going to look at what
2 are these effects. It may be very qualitative depending
3 on what information you have, but you can't ignore it
4 and you can't say we're going to cut this off after two
5 years, because we don't know what's going to happen
6 after two years. CEQA doesn't allow you to do that.

7 With that, I would close.

8 MAYOR DELGADO: Councilmember O'Connell?

9 MAYOR PRO-TEM O'CONNELL: My mistake.

10 MAYOR DELGADO: Brian, did you want to clarify
11 which aquifers MCWD pumps from?

12 BRIAN LEE: Thank you, I would. We do continue
13 to pump from the 400-foot aquifer and we also pump from
14 the deep aquifer. So we are pumping from both aquifers.
15 180, we are not pumping from right now.

16 MAYOR DELGADO: Yeah, I think Martin said that
17 you are not pumping from the 400-foot aquifers in the
18 intruded zone, but you are further east on Fort Ord,
19 Reservation Road, where it's not intruded.

20 BRIAN LEE: Okay. I just wanted clarity.

21 MARTIN FEENEY: That's what I said.

22 BRIAN LEE: Thank you. I just wanted to make
23 sure.

24 MAYOR DELGADO: Martin, Martin, we've got it.
25 Thanks, Martin. You had your time.

1 BRIAN LEE: If I could, if the Council would
2 allow, I would like maybe a 30-second ability option to
3 provide an engineer's answer to Councilmember Brown's
4 question?

5 MAYOR DELGADO: We haven't heard anything in 30
6 seconds, so let's see if you can do it.

7 BRIAN LEE: Any well that is operated creates a
8 cone of depression. So that cone of depression is
9 exactly that, it's a cone. It expands outward at 360
10 degrees. And we saw a map last night that showed that
11 cone of depression extending past Highway 1. So it does
12 impact the groundwater basin. It is not just impacting
13 westward. Thank you.

14 MAYOR DELGADO: Thank you, Brian.

15 Emily and Kathy, do you want to comment on
16 anything that you've just heard?

17 KATHY JENSEN: No.

18 MAYOR DELGADO: Okay. Mayor Pro-tem O'Connell?

19 MAYOR PRO-TEM O'CONNELL: Yes, Mr. Mayor. I
20 have inquired of the City Attorney what steps could be
21 taken, if any, to reconsider the motion that
22 Councilwoman Morton made. I am asking her to research
23 that point, because the mayor did indicate that you were
24 reluctant because you still had more questions, and I
25 think there's been a lot more information given. So if

1 I may?

2 MAYOR DELGADO: Okay. Before you respond,
3 Mayor Pro-tem O'Connell, Councilmember Brown would like
4 to make a motion. Would you like to hear that first?

5 MAYOR PRO-TEM O'CONNELL: No, I don't want to
6 hear his motion.

7 MAYOR DELGADO: Then let's make --

8 MAYOR PRO-TEM O'CONNELL: No, no. It's up to
9 your discretion, Mr. Mayor.

10 MAYOR DELGADO: Okay. Councilmember Brown?

11 COUNCILMEMBER BROWN: Thank you, Mayor.

12 Well, I think I've been convinced that there is
13 substantial evidence. Substantial evidence is relevant
14 information where -- that would lead to a reasonable
15 inference of a particular conclusion, even though other
16 conclusions might be correct. So I think there has been
17 a showing of substantial evidence that would give rise
18 to a fair question as to whether there's a significant
19 environmental effect. And we don't weigh the evidence,
20 we just are required to look to see if there is
21 substantial evidence leading to a fair question.

22 So I'm going to make a motion similar to
23 Councilmember Morton's resolution, except with certain
24 changes so that they do not include the reference to --

25 COUNCILMEMBER MORTON: Piecemealing.

1 COUNCILMEMBER BROWN: -- piecemealing, that's
2 correct.

3 So what I will do is indicate the parts I am
4 removing and then read the entire resolution.

5 So on the first page of the resolution that
6 Councilmember Morton submitted, delete the last three
7 paragraphs. On the second page, delete the first 4
8 paragraphs.

9 MAYOR DELGADO: Can you -- can you slow down a
10 little bit, Dave, so that Deb and Layne and maybe Anita
11 can do their best to follow along?

12 COUNCILMEMBER BROWN: All right. I'll start
13 over. On the first page, delete the bottom three
14 paragraphs, each of which begins with the word
15 "whereas."

16 MAYOR DELGADO: Okay.

17 COUNCILMEMBER BROWN: On the second page,
18 delete the first four paragraphs, each of which begins
19 with "whereas."

20 On the third page, delete the first paragraph
21 that begins with "whereas," and substitute language
22 which will be in the version that I read.

23 So it should read:

24 Whereas, in April of 2012, California-American
25 Water company (Cal-Am) submitted an application to the

1 California Public Utilities Commission (CPUC) for the
2 Monterey Peninsula Water Supply Project (MPWSP); and,

3 Whereas, on August 23, 2012, Cal-Am submitted
4 an application for a slant test well project, referred
5 to as "Project" located at the northwest southern corner
6 of the CEMEX Lapis Road property, Marina, APN
7 203-011-001 and 203-011-019; and,

8 Whereas, on July 10, 2004 [sic], the Marina
9 Planning Commission conducted a public hearing and
10 declined to certify the Mitigated Negative Declaration,
11 and further declined to approve or disapprove the
12 Coastal Development Permit for the Cal-Am water slant
13 test well project located at CEMEX's Lapis Road
14 property; and,

15 Whereas, on July 11, 2014, in accordance with
16 the Zoning Ordinance Section 17.41.270D, Appeal, Cal-Am
17 filed an appeal of the Planning Commission action to the
18 City Council. The City Council was required to render
19 its decision within 60 days; and,

20 Whereas, the project proposes the construction,
21 temporary operation, and decommissioning of a slant test
22 well up to four monitoring well clusters and related
23 infrastructure. The purpose of the proposed project is
24 to gather technical data related to the potential
25 hydrogeologic and water quality effects of the proposed

1 MPWSP. The project is estimated to occur over a period
2 of two to three years. However, the CPUC in October
3 2012 issued a notice of preparation of an Environmental
4 Impact Report (EIR) for the MPWSP, and based on the CPUC
5 stated schedule, CPUC plans to release and certify the
6 EIR prior to the completion of the testing phase of the
7 project; and,

8 Whereas a 30-day public review period of the
9 IS/MND, which is the Initial Study and Mitigated
10 Negative Declaration, was established beginning on May
11 19, 2014, and ending on June 17, 2014, and copies of the
12 IS/MND were transmitted to the state clearinghouse, and
13 a Notice of Intent (NOI) to adopt a Mitigated Negative
14 Declaration was submitted to responsible agencies and
15 local agencies concerned with the project, and any other
16 person, entity or organization requesting notice, and
17 the NOI was also posted with the office of the Monterey
18 County Clerk on May 19, 2014;

19 Whereas, a total of eight comment letters were
20 received, seven from regulatory and permitting agencies
21 including Monterey County Environmental Health Bureau,
22 Monterey County Water Resources Agency, California State
23 Lands Commission, Monterey Bay Unified Air Pollution
24 Control District, Marina Coast Water District, Monterey
25 Regional Water Pollution Control Agency, and the State

1 Mining and Geology Board, and one letter from a
2 non-agency organization, the Ag Land Trust; and,

3 Whereas, additional correspondence relating to
4 the proposed -- there should be a lower case D on the
5 back of "proposed" -- project was received between June
6 17, 2014, and July 10, 2014, for the Planning Commission
7 public hearing and since July 10, 2014, and was included
8 in the City Council staff report; and,

9 Whereas, on September 3, 2014, the City of
10 Marina Council conducted a duly noticed public hearing
11 to consider the appeal of the Planning Commission action
12 of July 10, 2014; and,

13 Whereas, the City Council did not complete the
14 public hearing on September 3, 2014, so the counsel
15 meeting was adjourned to September 4, 2014, and the
16 hearing was concluded on September 4, 2014; and,

17 Whereas, prior to and during the hearing the
18 City of Marina City Council considered the information
19 presented in the staff report for the September 3, 2014
20 meeting, the IS/MND comment letters received during the
21 public comment period and responses to the comments, the
22 proposed staff-initiated amendments and edits to these
23 documents included as errata and amended Monitoring and
24 Reporting Plan (MMRP), and testimony and documents
25 submitted for and during the Planning Commission public

1 hearing, after the Planning Commission public hearing
2 and during the City Council public hearing on September
3 3, 2004 [sic]; and -- I'm going to go over this part
4 slowly because it's new writing.

5 Whereas, based on all the above considerations,
6 comma, the council finds there is disagreement among
7 expert opinion supported by facts over the significance
8 of an effect on the environment, comma, the City of
9 Marina must treat the effect as significant and shall
10 prepare -- and shall require preparation of an
11 Environmental Impact Report.

12 Findings: One, CEQA findings. The first CEQA
13 finding on the resolution Councilmember Morton presented
14 will be deleted, and the remaining three will be
15 submitted without changes.

16 Let me read them.

17 Based upon the substantial evidence in light of
18 the whole record before the City of Marina, the City
19 Council is unable to find that the project will not have
20 a significant effect on the environment.

21 The City Council has read and considered the
22 IS/MND and the comments thereon and has determined that
23 it -- not "is" -- it does not reflect the independent
24 judgment of the City and that it has not been prepared
25 in accordance with CEQA.

1 The documents comprising the record of
2 proceeding can be located at the Planning Services
3 Division of the Community Development Department at 209
4 Cypress Avenue, Marina, California 93933.

5 And as to item two, Coastal Development Permit,
6 based on the above conclusions regarding CEQA, the City
7 is unable to approve the project and therefore denies
8 the project without prejudice to reconsideration at such
9 time as the appropriate CEQA review is completed.

10 MAYOR DELGADO: Councilmember Morton?

11 COUNCILMEMBER MORTON: I just wanted to suggest
12 just a friendly amendment that the record is also
13 created on September 4th in the bottom of page 2.
14 Information presented in the staff report for the
15 September 3 hearing, comment letters received during the
16 public comment period response or comments, proposed
17 staff initiated amendments, it goes on. Public
18 commission -- public hearing, after the Planning
19 Commission and during the City Council public hearing on
20 September 3 and 4.

21 COUNCILMEMBER BROWN: Okay. That's fine.

22 COUNCILMEMBER MORTON: Because that's the
23 totality of the record.

24 COUNCILMEMBER BROWN: That's fine.

25 COUNCILMEMBER MORTON: Thanks.

1 MAYOR DELGADO: Anita and Deb, did you
2 understand Gail's amendment.

3 COUNCILMEMBER MORTON: Yeah, I started reading
4 way too soon in there.

5 MAYOR DELGADO: That's okay. So is there a
6 second for that motion?

7 COUNCILMEMBER MORTON: Second.

8 MAYOR DELGADO: All right. So now we're --
9 discussion? I expect it probably should be brief at
10 this point.

11 Nancy, do you have any comments, questions at
12 this point?

13 COUNCILMEMBER AMADEO: No.

14 MAYOR DELGADO: Okay. All right. I'll be
15 voting "no" because I don't agree that there is
16 substantial evidence that the -- I believe there is
17 substantial evidence the project will not have a
18 significant impact on the environment due to the
19 mitigations for the potential impacts.

20 And I'm very much in favor of making progress
21 on getting more science and more information that these
22 test slant wells would produce for the benefit of MCWD
23 and the benefit of everyone else who is looking at
24 desal. So that's why I'll be voting "no."

25 But could we have a roll-call vote, please?

1 Any other comments? Okay.

2 THE CLERK: Councilmember Amadeo?

3 COUNCILMEMBER AMADEO: No.

4 THE CLERK: Councilmember Morton?

5 COUNCILMEMBER MORTON: Yes.

6 THE CLERK: Councilmember Brown?

7 COUNCILMEMBER BROWN: Yes.

8 THE CLERK: Mayor Pro-tem O'Connell?

9 MAYOR PRO-TEM O'CONNELL: Yes.

10 THE CLERK: Mayor Delgado?

11 MAYOR DELGADO: No.

12 So, thank you, everyone. That motion passes

13 with Councilmember Amadeo and Mayor Delgado dissenting.

14 I want to thank everybody, including the

15 Council. I think we have all done our best. I think

16 everyone was given a fair, a fair shot. So thank,

17 everybody, and let's move forward here.

18 (End of recording.)

19

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I, Kelli A. Rinaudo, a certified shorthand reporter in and for the state of California do hereby certify:

That the foregoing transcript was prepared by me, to the best of my ability, via an audio recording;

That I was not present to ascertain speaker identities, and some misidentified or nonidentified speakers may appear in the transcript;

That I was not present to clarify certain words, and some unintelligible or inaudible phrases may appear in the transcript;

I further certify that I am not related to any party to said action, nor in any way interested in the outcome thereof.

DATED: OCTOBER 24, 2014



KELLI A. RINAUDO, CSR NO. 6411

RMR, CRR, CCRR

NOVEMBER 12, 2014
AGENDA ITEM 14

October 29, 2014

Steve Kinsey, Chair
California Coastal Commission
45 Fremont St. Suite 2000
San Francisco, CA 94105

RECEIVED

NOV 03 2014

CALIFORNIA
COASTAL COMMISSION

Re: Appeal No. A-3-MRA-14-0050 (California-American Water Company, Marina)
Please Deny Appeal and Support City of Marina

Dear Chair Kinsey and Commissioners:

This office represents the Ag Land Trust, an agricultural land conservancy that has protected 25,000 acres in Monterey, Santa Cruz, and San Benito Counties. The Ag Land Trust owns prime farmland protected by the North Monterey County Local Coastal Plan. Ag Land Trust's prime farmland is immediately adjacent to the proposed project site currently owned by CEMEX. The proposal by California-American Water Company (Cal-Am) to pump groundwater at the CEMEX site will have severe impacts on groundwater supply and consequently on surrounding farmland, including productive land owned by the Ag Land Trust.

The Ag Land Trust urges you to not accept the appeal of Cal-Am. As a preliminary matter, the Commission should not assume that because Cal-Am's project is a "test well" that it is minor in nature and will not have significant environmental impacts. The so-called test well will operate for two years and pump more than 8,000 AF. In the future, the test well will be put into service as part of the overall desalination project rather than truly decommissioned. It is not disputed that the universally identified remedy for salt water intrusion is to reduce or stop pumping at the coast. Cal-Am's test well would do exactly the opposite: pump large amounts of water at the coast. Cal-Am's graphics show that the test well would create a large "cone of depression" that would impact Ag Land Trust farmland and water rights.

Cal-Am's appeal stems from a reasonable and correct decision by the Marina City Council to deny *without prejudice* a Coastal Development Permit (CDP) for Cal-Am's proposed test well. The reasons the Commission should deny this appeal are as follows:

1. The appeal is premature. The Marina City Council denied the CDP on the basis that environmental review was inadequate. A Mitigated Negative Declaration was prepared for the project. The City Council was presented with substantial evidence by the public of significant environmental impacts. That being the case, the City had no choice but to deny the CDP and to require an Environmental Impact Report (EIR). The CDP was denied without prejudice, and the City

Coastal Commission

Re: Appeal No. A-3-MRA-14-0050

October 29, 2014

Page 2

Council will reconsider the CDP once an EIR has been completed in compliance with the California Environmental Quality Act (CEQA).

2. The grounds for appeal under Public Resources Code § 30306(b)(2) are not met. The project does not meet the development standards of the Marina LCP. The LCP requires “thorough environmental analysis of the site by qualified professionals” (LCP, p. 23, emphasis added) and “proper environmental assessment by qualified professionals” (LCP, p. 40, emphasis added). The Marina City Council heard eight hours of testimony and carefully reviewed the record and the legal standards. The Council majority – three lawyers – found that the environmental review was not adequate and that an EIR was required
3. Cal-Am's project would violate a 1996 Agreement by Local Agencies to protect the Groundwater Basin from environmental harm. In any event, Cal-Am does not have water rights to pump groundwater from the site and the Coastal Commission does not have authority to grant Cal-Am such water rights.
4. The project would have impacts in the North Monterey County LCP area and the impacts would violate that LCP's policies that protect groundwater from degradation, and that prioritize farmland (for water).

The Appeal is Premature Because the City Council Did Not Have Before it Adequate Environmental Review pursuant to CEQA. If the Commission Were to Take Jurisdiction of this Appeal, it Sends the Wrong Message to Local Agencies that Require Adequate Environmental Review for Projects in the Coastal Zone

The hearings before the Marina City Council were extensive. Expert Testimony before the Council included substantial evidence of impacts associated with the project, including impacts to groundwater supply and quality, impacts to agriculture, and impacts to existing water rights. The environmental review for the CDP was a Mitigated Negative Declaration, instead of an EIR.

CEQA is designed to favor the preparation of an EIR. Specifically, preparation of an EIR rather than a negative declaration is required if there is “substantial evidence” in the record of proceedings that supports a “fair argument” that a project “may” have a significant impact on the environment. *See*, Pub. Resources Code §§ 21082.2(a), 21100, 21151; CEQA Guidelines § 15064(f)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Communities for a Better Environment v. California Resources Agency* (2002)103 Cal.App.4th 98, 111-112.

Coastal Commission
Re: Appeal No. A-3-MRA-14-0050
October 29, 2014
Page 3

Courts have repeatedly affirmed that the fair argument standard is a “low threshold test.” *The Pocket Protectors v. City of Sacramento (Pocket Protectors)* (2004) 124 Cal.App.4th 903, 928. Evidence supporting a fair argument of any single potentially significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence in support of an agency’s decision. See, *League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland* (1997) (*City of Oakland*) 52 Cal.App.4th 896; *Sundstrom v. County of Mendocino* (1988), *supra*, 202 Cal.App.3d at 310. Indeed, an EIR is the preferred vehicle for reviewing environmental impacts of a proposed project.

One major purpose of an EIR is to inform other governmental agencies, and the public generally, of the environmental impact of a proposed project and to demonstrate to an apprehensive public that the agency has, in fact analyzed and considered the ecological implications of its action [in approving a project].

No Oil Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 86.

With certain limited exceptions [not applicable here], a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project will have a significant effect on the environment. Significant effect on the environment means a substantial, or potentially substantial adverse change in the environment.

Laurel Heights Improvement Association v. Regents of the University of California (1993) 6 Cal.4th 1112, 1123-1126.

The California Supreme Court has “repeatedly recognized that the EIR is the ‘heart of CEQA.’ [Citations.]” *Id.* at 1123. As the court observed some three decades ago,

since the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.

No Oil, Inc., supra, 13 Cal.3d at 75. Indeed, all doubt should be resolved in favor of preparing an EIR particularly in close cases. *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703; *City of Oakland, supra*, 52 Cal.App.4th at 905. Evidence supporting a fair argument need not be overwhelming, overpowering or uncontradicted. *Friends of the Old Trees v. Dep’t of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1402. Instead, substantial evidence to support a fair argument simply means “information and reasonable

Coastal Commission

Re: Appeal No. A-3-MRA-14-0050

October 29, 2014

Page 4

inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” 14 CCR § 15384; *Pocket Protectors, supra* 124 Cal.App.4th at 927-928; *City of Oakland, supra*, 52 Cal.App.4th at 905.

The Marina City Council heard hours of public testimony concerning the impacts of the proposed project, considered an opinion from its CEQA attorney that there is a low standard used for preparation of an EIR, and worked diligently to understand applicable laws and the testimony before them. All three lawyers on the City Council then voted to require an EIR for the project.

Based upon the substantial evidence in light of the whole record before the City of Marina, the City Council is unable to find that the project will not have a significant effect on the environment. The City Council has read and considered the IS/MND and the comments thereon and has determined that it does not reflect the independent judgment of the City and that it has not been prepared in accordance with CEQA. (Transcript, p. 307, Ex. D.)

[As to the] Coastal Development Permit, based on the above conclusions regarding CEQA, the City is unable to approve the project and therefore denies the project without prejudice to reconsideration at such time as the appropriate CEQA review is completed. (Transcript, p. 308, Ex. D.)

The final resolution of the Council incorporated these findings.

If the Commission were to assume jurisdiction of this appeal, the Commission would have to perform the analysis that the City of Marina was contemplating when it denied the application without prejudice. The Commission’s process must meet the “functional equivalent” standards regarding CEQA’s substantive requirements. 14 CCR 152519(c). Despite Cal-Am’s assertions to the contrary, groundwater supply and impacts to adjacent wells are required to be examined pursuant to CEQA. The CEQA Environmental Checklist found in the CEQA Guidelines at Appendix G asks whether a project would:

deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of preexisting nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

Coastal Commission
Re: Appeal No. A-3-MRA-14-0050
October 29, 2014
Page 5

Issuance of a CDP to Cal-Am would have severe impacts to the groundwater supply in the area. Transcript, Ex. D, pp. 99-102, 275-293 (Marc del Piero, former vice chair, State Water Resources Control Board); pp. 244-245, 262-266, 271-272, 301 (Brian Lee, engineer, general manager of Marina Coast Water District).

Cal-Am's Project Would Violate a 1996 Agreement by Local Agencies to Protect the Groundwater Basin from Environmental Harm

The CEMEX property, where the project is located, is not permitted to pump more than 500 AFY pursuant to a 1996 Agreement between Monterey County Water Resources Agency, the City of Marina, the Marina Coast Water District, and CEMEX's Predecessor in Interest Lonestar. (Agreement, § 7.2, Ex. A to this letter.) Notwithstanding Cal-Am's assertions to the contrary, the Agreement is binding on successors in interest, including Cal-Am as a successor of CEMEX (Ex. A p.23). The Cal Am well would pump 1600-4000 AFY. This is a radical violation of an Agreement designed to protect the groundwater basin.

Cal-Am's appeal argues that the 1996 Agreement is not effective because annexations pursuant to the Agreement have not been completed. That is completely false. The Agreement states that it is effective upon execution of all the parties. (Agreement, § 2.9, Ex. A to this letter.) It is not dependent on completion of the annexations. The fully executed Agreement has been recorded and is binding on Lonestar and its successor in interest CEMEX, and thus Cal-Am. Any argument that other users of the site can avoid the legally binding requirements of the Agreement is a ruse. Cal-Am's use of the property is subject to the same restrictions as any owner or user of the property. The purpose of the 1996 Agreement was to "help reduce seawater intrusion and protect the groundwater resource and preserve the environment of the Salinas River Groundwater Basin" (Agreement, § 1.1, "Purpose"; Ex. A to this letter). The purpose is reflected in the title of the Agreement: "ANNEXATION AGREEMENT AND GROUNDWATER MITIGATION FRAMEWORK." (Ex. A to this letter.)

Furthermore, the City Council's CEQA determination is consistent with the implementation of the Marina LCP. The LCP provides:

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. . . . 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.

(Marina LCP, p. 40, Ex. B to this letter, emphasis added). The Commission's assumption of jurisdiction does nothing more than usurp Marina's consideration of the CDP on its merits.

The City of Marina's determination was legally correct. Thus, Cal-Am's appeal is only ripe once the City of Marina has had a chance to perform adequate environmental review and decide the application for the CDP on the merits. The Supreme Court has observed, "[t]he Legislature left wide discretion to local governments to formulate land use plans for the coastal zone and it also left wide discretion to local governments to determine how to implement certified LCPs." *Yost v. Thomas* (1984) 36 Cal.3d 561, 574. Thus, after certification of a local coastal program, issuance of coastal development permits is the purview of the local government, not the Coastal Commission. The Commission should let the City of Marina complete its review and consideration of the CDP. Thus, the Commission should refuse to take jurisdiction pursuant to the appeal.

Cal-Am Does Not Have Water Rights to Pump Groundwater from the Site as Proposed; the Coastal Commission Does Not Have Authority to Grant Water Rights; and in Any Event, If the Commission Were to Accept this Appeal for Consideration, it Could Not Act Given the Absence of a Thorough and Detailed Environmental Analysis of the Impact of Granting Cal-Am Such Water Rights.

Cal-Am has no right to pump groundwater in the Salinas Valley as proposed. Pursuant to California groundwater rights law, Cal-Am is prohibited from acquiring such rights in the overdrafted Salinas Valley basin. The Doctrine of Correlative Overlying Water Rights, as created and interpreted by the California Supreme Court in *Katz v. Walkinshaw* (1903) 141 Cal.116, and as re-iterated for the last 110 years (most recently in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224), prohibits any land owner in an over-drafted basin from pumping more than that land owner's correlative share of groundwater from the aquifer as against all other overlying water rights holders and senior appropriators. Even if Cal-Am is successful in acquiring the well site, Cal-Am has produced no evidence that the CEMEX site is entitled to enough groundwater based on the Doctrine of Correlative Overlying Rights to satisfy Cal-Am's pumping demands.

Cal-Am has indicated that it intends to not use, but, instead, to "dump" the water pumped by its test well -- including potable groundwater -- effectively into the ocean. That action would be a prohibited "waste of water" in violation of Article X, section 2 of the Constitution of California and the Doctrine of Reasonable Use. *Peabody v. Vallejo* (1935) 2 Cal.2d 351-371.

The Project Would Impact Resources Protected by the North Monterey County LCP

The North Monterey County LCP protects groundwater supplies. Cal-Am's proposal will have a severe negative effect on the groundwater resources protected by the North Monterey County LCP, including groundwater resources that serve agricultural land protected by the Ag Land Trust. The North Monterey County LCP provides as follows:

2.5.3 Specific Policies

A. Water Supply

1. The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.
2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.
3. The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources.

(North Monterey County LCP, p. 37, Ex. C to this letter.) The North Monterey County aquifers are severely over drafted. The limited remaining groundwater supply should be fully and carefully protected for the priority uses identified in the LCP, and should not be compromised by Cal Am's well. The Commission should not take jurisdiction of this appeal until the City has had the opportunity to consider these impacts in an EIR. If the Commission were to assume jurisdiction, it must also consider the impacts to resources in areas under the jurisdiction of the North Monterey County LCP.

Coastal Commission
Re: Appeal No. A-3-MRA-14-0050
October 29, 2014
Page 8

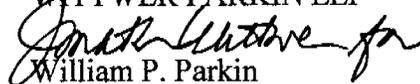
Conclusion

For the foregoing reasons, the Ag Land Trust requests that the Commission not accept the Cal-Am's appeal. If the Commission were to assume jurisdiction of this CDP, it would be sending a message to local agencies that their adherence to the requirements of CEQA can result in them losing jurisdiction to the Commission before they have had an opportunity to consider the environmental ramifications of their actions. Such a result rewards jurisdictions that avoid CEQA compliance by relying on Negative Declarations (or even CEQA exemptions), and penalizes jurisdictions that comply with CEQA by requiring an EIR.

Furthermore, the Ag Land Trust urges the Commission to either continue its consideration of a related application, Application No. 9-14-1735 (California-American Water Company, Marina), for a permit to construct, operate, and decommission test slant well at CEMEX sand mining facility on Monterey Bay shoreline, Marina, Monterey County until the City of Marina has considered Cal-Am's application, or deny the application because of its severe effect on groundwater supplies and the protection of agriculture in the groundwater basin.

Thank you for your consideration of these comments.

Very truly yours,
WITTWER PARKIN LLP


William P. Parkin

Attachments:

- Exhibit A - 1996 Agreement between Monterey County Water Resources Agency, the City of Marina, the Marina Coast Water District, and Lonestar (excerpts)
- Exhibit B - City of Marina LCP (excerpts)
- Exhibit C - North Monterey County LCP (excerpts)
- Exhibit D - Transcripts of Marina City Council Meetings of 9/3 and 4/2014 (excerpts)

cc: California Coastal Commission staff

- **EXHIBIT A**



ANNEXATION AGREEMENT AND GROUNDWATER MITIGATION FRAMEWORK
FOR
MARINA AREA LANDS

SUBJECT: Management and Protection of Salinas River Groundwater Basin; Annexation of Marina Area Lands To Zones 2 and 2A of the Monterey County Water Resources Agency

1. PURPOSE AND AUTHORITY.

1.1. Purpose. The purpose of this Agreement and Framework is to help reduce seawater intrusion and protect the groundwater resource and preserve the environment of the Salinas River Groundwater Basin through voluntary commitments by the Parties to limit, conserve and manage the use of groundwater from the Salinas River groundwater basin, and to provide the terms and conditions for the annexation of certain territory in the Marina area to the Monterey County Water Resources Agency's benefit assessment Zones 2 and 2A as a financing mechanism providing additional revenues to the Monterey County Water Resources Agency to manage and protect the groundwater resource in the Salinas River Groundwater Basin and to reduce seawater intrusion.

1.2. Authority. This Agreement and Framework is entered into under the authority of the Agency Act, the California Water Code, and the California Government Code.

2. DEFINITIONS AND DESIGNATIONS. The following definitions and designations apply to this Agreement and Framework:

2.1. Parties.

2.1.1. Marina Coast Water District ("MCWD"). A political subdivision of the State of California, located in Monterey County, governed by MCWD's Board of Directors.

2.1.2. Monterey County Water Resources Agency ("MCWRA"). A water and flood control agency created by the State of California, with jurisdiction coextensive with Monterey County, governed by the Monterey County Water Resources Agency Board of Supervisors.

2.1.3. J. G. Armstrong Family Members ("Armstrong"). The owners of the Armstrong Ranch in the Marina area of Monterey County.

2.1.4. RMC Lonestar ("Lonestar"). A California general partnership and owner of the Lonestar property in the Marina area of Monterey County.

2.1.5. City of Marina ("City"). An incorporated municipality within Monterey County, organized and operating under the laws of the State of California, governed by its City Council.

2.2. AFY. Acre-feet per year.

2.3. Agency Act. MCWRA's enabling legislation adopted by Chapter 1159 of the Statutes of 1990, and Chapter 1130 of the Statutes of 1991, set forth in full in West's California Water Code Appendix, Chapter 52.

2.4. Armstrong Ranch. About 1850 acres of land in the Marina area, as shown on Exhibit "C," about 322 acres of which is within the City of Marina, plus an additional 150 acres not shown on Exhibit "C" which is already in the Zones.

2.5. Basin. The Salinas River Groundwater Basin.

2.6. BMP. The MCWRA's Basin Management Plan for the Salinas River Groundwater Basin.

2.7. CEQA. The California Environmental Quality Act, Public Resources Code sections 21000 and following.

2.8. CSIP. The Castroville Seawater Intrusion Project, a distribution system project already approved and being implemented by MCWRA to provide reclaimed water for irrigation in the Castroville Area of Monterey County.

2.9. Effective Date. Subject to paragraph 4, this Agreement and Framework shall be fully effective when executed by all the Parties.

2.10. Exhibits.

"A" The general geographic relationship of MCWD, Armstrong and Lonestar to the Basin and to the Zones is shown on the diagram attached to this Agreement and Framework as Exhibit "A."

"B" MCWD service area to be annexed

"C" Armstrong Ranch land to be annexed

"D" Lonestar property to be annexed

"E" Calculation of Incremental Cost for Tertiary Treated Water

"F" Armstrong Areas Reserved For Transfer to MCWD

"G" MRWPCA Addendum

ARMSTRONG

James Louis Anderson J.
Phillip...
Edwin...
Chyle W. Johnson II

MCWD

CITY

MCWRA

6.11. Annexation of portions of Armstrong Ranch used by MCWD. Notwithstanding any other provision of this section 6, portions of the Armstrong Ranch owned and/or used by MCWD may be annexed to the Zones at any time, upon MCWD's written request for such annexation, and after compliance with all then-applicable laws. Any annexation fees or charges by MCWRA for such annexed lands shall be paid by MCWD.

7. TERMS AND CONDITIONS--LONESTAR.

7.1. Compliance with Agency Act Section 22. The MCWRA acknowledges that it may not object to any withdrawal by Lonestar permitted by this section 7, except in compliance with section 22 of the Agency Act. All groundwater withdrawn from the Basin by Lonestar may be used only within the Basin.

7.2. Quantity Limitations. Commencing on the effective date of this Agreement and Framework, Lonestar shall limit withdrawal and use of groundwater from the Basin to Lonestar's historical use of 500 afy of groundwater.

7.3. Annexation of Lonestar Property to the Zones. Approval of this Agreement and Framework by the MCWRA Board of Supervisors shall constitute approval for annexation of the Lonestar Property in accordance with the terms of this Agreement and Framework. The actual annexation will occur as follows: The Lonestar Property annexation to the Zones will not take effect until the Lonestar Property has been approved for prior or concurrent annexation into MCWD. When such approval has been

To City: City Manager
211 Hillcrest Avenue
Marina, CA 93933
Phone No.: (408) 384-3715
Fax No.: (408) 384-0425

To Armstrong: John A. Armstrong
270 River Road
Salinas, CA 93908
Phone No.: (408) 455-1907
Fax No.: (408) 455-2817

To Lonestar: RMC LONESTAR
Attention: Mr. John Rubiales
P.O. Box 5252
Pleasanton, CA 94566
Phone No.: (510) 426-8787
Fax No.: (510) 426-2225

The address or fax number to which any notice or other writing may be given or made or sent to any party may be changed upon written notice given by such party as above provided.

13. SEVERABILITY. If any one or more of the covenants or agreements set forth in this Agreement and Framework on the part of MCWRA, MCWD, City, Armstrong or Lonestar, or any of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in no way affect the validity of this Agreement and Framework; provided, that if voiding of such individual covenants or agreements without voiding the whole agreement would frustrate a material purpose of Lonestar in entering into this Agreement and Framework, then this whole Agreement and Framework shall be null and void ab initio as to Lonestar only.

14. PARAGRAPH HEADINGS. Paragraph headings in this Agreement and Framework are for convenience only and are not to be construed as a part of this Agreement and Framework or in any way limiting or amplifying the provisions hereof.

15. SUCCESSORS AND ASSIGNS. This Agreement and Framework and all the terms, covenants, agreements and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

16. ADMINISTRATORS. MCWD and MCWRA hereby designate their respective General Managers as their Administrators for this Agreement and Framework. City designates its City Manager as City's Agreement and Framework Administrator. Armstrong designates Mr. John A. Armstrong as its Agreement and Framework Administrator. Lonestar designates Mr. John Rubiales as its Agreement and

Framework Administrator. All matters concerning this Agreement and Framework shall be submitted to the Agreement and Framework Administrators or such other representatives as the Agreement and Framework Administrators may designate for their respective agencies. Any party may, in its sole discretion, change its designation of the Agreement and Framework administrator and shall promptly give written notice to the other Parties of any such change.

17. NEGOTIATED AGREEMENT AND FRAMEWORK. This Agreement and Framework has been arrived at through negotiation between the Parties. Neither party is to be deemed the party which prepared this Agreement and Framework within the meaning of Civil Code section 1654.

18. AMENDMENT. This Agreement and Framework may be amended only by a writing signed by the Parties affected by the amendment.

19. COUNTERPARTS. This Agreement and Framework may be executed in counterparts. Each fully executed counterpart shall be deemed a duplicate original, and all counterparts which together contain the signatures of all the Parties shall be deemed, when attached together, one complete and integrated original document.

20. ADDENDUM. A form of Addendum for the MRWPCA is attached hereto as Exhibit "G." When the Addendum is fully executed in its present form or in an amended form, it shall be attached to this Agreement and Framework as an integral part of this Agreement and Framework, and the provisions of the Addendum shall be deemed specifically and fully incorporated into this Agreement and Framework by this reference.

IN WITNESS WHEREOF, the Parties execute this Agreement and Framework as follows:

Dated: March 26, 1996

MONTEREY COUNTY WATER RESOURCES AGENCY

By Edith Johnson

Edith Johnson
Chair, Board of Supervisors

Dated: _____, 1996

MARINA COAST WATER DISTRICT

By _____
Thomas P. Moore
President, Board of Directors

By _____
Malcolm D. Crawford
Secretary, Board of Directors

Dated: _____, 1996

SUSANNE IRVINE ARMSTRONG, JAMES IRVINE ARMSTRONG, JR., and JOHN A. ARMSTRONG II, as Trustees of the Trust for the benefit of MARY JANET ARMSTRONG WEBER as set forth in the Order Settling Report of Trustees due to the death of Lois Armstrong, etc., in the Estate of Irvine Armstrong, also known as James Irvine Armstrong, Deceased, recorded January 4, 1988, in Reel 2191, Official Records of Monterey County at page 643 therein (hereinafter referred to as the "Mary Janet Armstrong Weber Trust")

By _____, Trustee

Dated: _____, 1996

JAMES IRVINE ARMSTRONG, JR.

Dated: _____, 1996

THE 1990 ARMSTRONG FAMILY TRUST established by Declaration dated July 2, 1990

By _____
Walter J. McCullough

By _____
Elizabeth S. Armstrong

Dated: Mar 26, 1996

RMC LONESTAR, a California general partnership

By Ronald Z. Blick

Dated: _____, 1996

CITY OF MARINA

By _____
James L. Vocelka, Mayor

APPROVED AS TO FORM:

REEL 3404 PAGE 796

Dated: _____, 1996

WILLIAM K. RENTZ
Deputy County Counsel, Monterey
County

Dated: _____, 1996

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

By _____
Lloyd W. Lowrey, Jr.
Legal Counsel for MARINA COAST
WATER DISTRICT

Dated: _____, 1996

ROBERT R. WELLINGTON
Legal Counsel for CITY OF MARINA

Dated: _____, 1996

THOMPSON, HUBBARD & OMETER
A Law Corporation

By _____
Donald G. Hubbard
Legal Counsel for J.G. ARMSTRONG
FAMILY MEMBERS

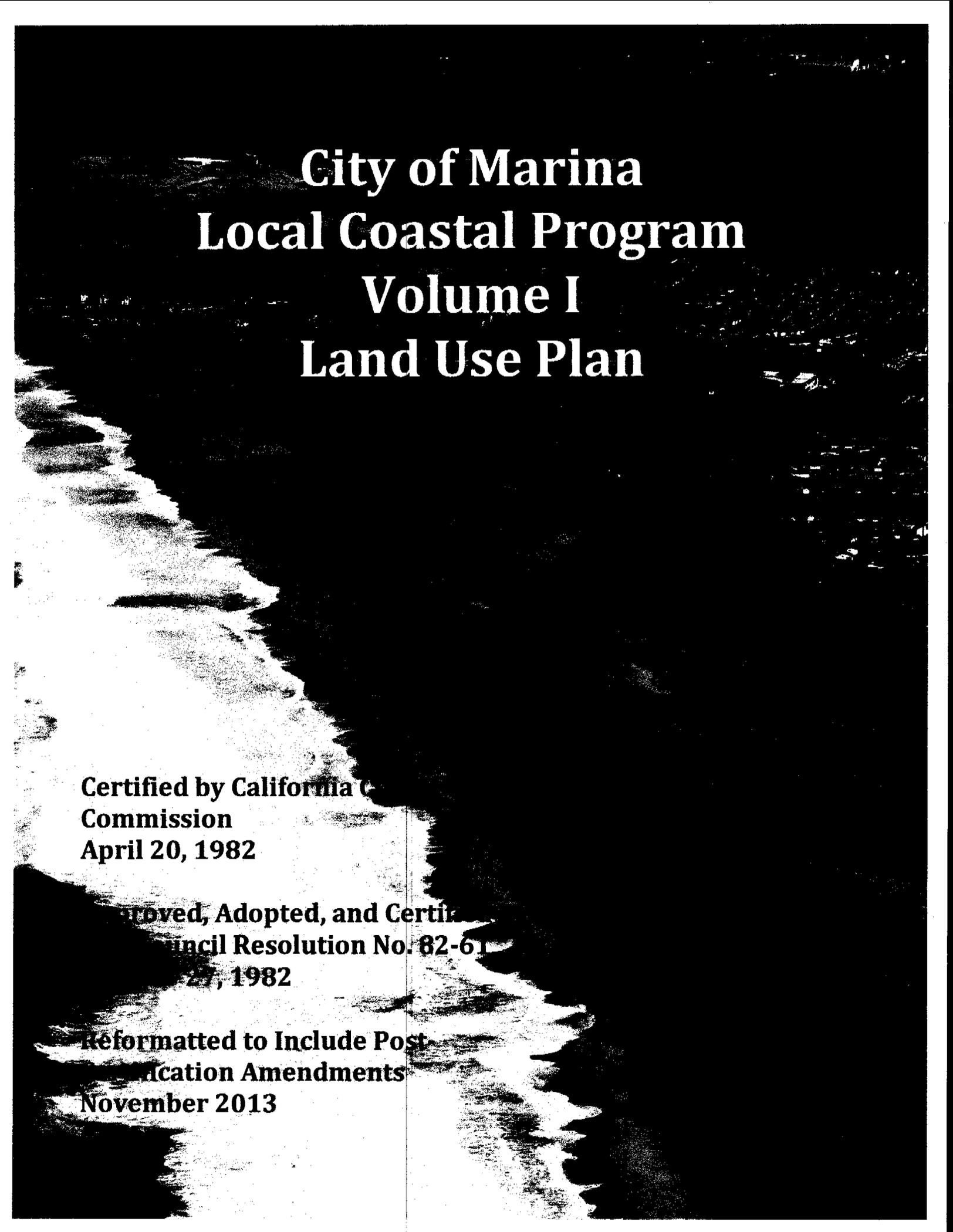
Dated: March 26, 1996

The Genesis Law Group LLP
~~PILLSBURY, MADISON AND SUTRO~~

By 
Thomas P. O'Donnell
Legal Counsel for RMC LONESTAR



- **EXHIBIT B**



**City of Marina
Local Coastal Program
Volume I
Land Use Plan**

**Certified by California Coastal
Commission
April 20, 1982**

**Approved, Adopted, and Certified
by Council Resolution No. 82-61
April 27, 1982**

**Reformatted to Include Post-
Adoption Amendments
November 2013**

- No new development shall be permitted which will require the construction of shoreline protection structures unless such development is in accordance with the provisions of the “Small Boat Harbor” section of this Land Use Plan, or when such structures are necessary to serve coastal dependent uses (as defined in the Coastal Act) or to protect publicly owned beaches from erosion.

Coastal Conservation and Development Uses

Existing coastal-dependent industrial and public works facilities include the surf zone mining operations and the Marina County Water District outfall. Proposed new coastal-dependent uses include a commercial kelp-growing facility west of Dunes Drive. While the surf zone and dredge pond sand mining operations may be coastal-dependent, recent excavations of the Flandrian dunes at Lapis and west of Dunes Drive may not be coastally dependent.

Reclamation should be considered as a part of the coastal dependent use in areas where sand mining occurs in the future. Reclamation should address the combined process of land treatment which minimizes adverse effects of mining operations so that the mined areas are reclaimed to a useable condition which is readily adaptable for alternative land uses consistent with the policies and recommendation of the coastal land use and implementation plans and which create no danger to public health and safety.

Recreational beach use in Marina is extensive with activity focused on beachcombing, fishing, hang-gliding and horseback riding. Swimming is not suitable because of treacherous currents. The weather in Marina is also less conducive to beach activities than elsewhere in the Monterey Bay. Strong on-shore winds and fog are typical of the weather patterns.

- 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. Coastal dependent development in this area will be allowed in already disturbed areas (see Sensitive Habitat section).
- Coastal Conservation and Development uses shall not be allowed without thorough environmental analysis of the site by qualified professionals. Recommended mitigations from this analysis shall be included in any permitted project.
- Existing Coastal Conservation and Development uses shall comply with all State regulations governing operation and use of the site. Revegetation of areas disturbed by development, including sand mining, is a City priority for these uses (see Hazards section).

coastal dependent land use is feasible. In the event of such a conflict, the decision making body shall consider all evidence submitted and make a final decision regarding feasibility based upon the evidence.

Coastal Conservation and Development shall include such uses as are dependent upon salt water, the unique coastal-marine 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 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.

Most of the dune area north of Dunes Drive to the City limits is undeveloped. The Lone Star Lapis Sand Plant is operating near the center of this area. A dwelling, several large structures and dredge ponds are associated with the sand mining operation. Lapis Road provides access to the Sand Plant. Between the north side of the area disturbed by the sand mining operation and the City boundary is a large area of virtually undisturbed dunes. This dune area is the best preserved of the Marina Dune native habitat. Its preservation is due, in part, to its inaccessibility. Between the Lone Star Lapis Sand Plant and the properties fronting on Dunes Drive is another undeveloped stretch of dune. The native environment of this area has been more disturbed by unauthorized use than the northernmost dunes, but still retains much of its original character. The future use of this entire area has environmental significance because of the dwindling amount of the unique, undisturbed Marina Dune plant and animal habitat. In addition there are, at the south end of this property adjacent to the Standard Resource parcel several smaller areas which are virtually undisturbed (see Exhibit "B"). These areas shown on Exhibit "B" shall be surveyed and protected.

Since the current sand mining operation is dependent on access to Coastal sands, it will continue to operate on this site. However, it is important to recognize the relationship of the sand mining operation to its surroundings. In terms of land use, the highest priority is placed on preserving the vegetated dunes to the north of the Lapis Sand Plant by public acquisition. Future development should be focused on this property on the more disturbed area south of the Sand Plant. If use of the southern area is necessary to preserve the area to the north of the sand plant, it should be carefully sited and designed to be as protective as possible of the fragile plant and animal habitats and visual amenities from Highway 1. Designated land use should be Coastal Conservation and Development. Any extension of Dunes Drive to provide access to the area should be limited to local access needs, so that it does not become a frontage road to Highway 1.

A recent coastal permit allowed an outfall line from the regional sewer treatment plant to be extended through the existing disturbed area at the sand plant. This pipe will carry treated effluent for the entire Monterey Bay Area a mile or more off shore. The line will be buried through the sand plant site.

- **EXHIBIT C**





NORTH COUNTY

LAND USE PLAN

LOCAL COASTAL PROGRAM CERTIFIED JUNE 1982
MONTEREY COUNTY, CALIFORNIA



2. RESOURCE MANAGEMENT

2.1 INTRODUCTION

North County has a variety of valuable natural resources which present a need for effective resource management. Elkhorn Slough, one of California's principal remaining estuaries, is the most significant natural feature of the area. Other valuable wetlands such as Bennett Slough, Struve Pond, Old Salinas River Channel, and the Salinas Lagoon also contain biologically important habitats. The broad beaches and dunes which line the coast of Monterey Bay present another valuable resource. The area east of Elkhorn Slough with its oak and chaparral-covered hills and numerous small canyons and valleys is a resource that has been affected by extensive land clearing and erosion. The need for effective management of these areas is important to protect the abundance and diversity of their natural resources, many of which are sensitive to disturbance and have been degraded in the past due to erosion and land use practices.

Effective resource management will be increasingly vital in protecting the coast's natural resources as stressed in the California Coastal Act of 1976. Areas of scenic value, environmentally sensitive habitats, prime agricultural value, unique communities, and areas of high geologic or fire hazard will require special attention in order to protect the public welfare and preserve the delicate natural balance upon which many of the resources depend. Accordingly, any allowed development in or near these resource areas must be properly located and designed.

In past years, some development and land use practices have been insensitive to the resources of this area. The intensity of residential development in areas with no community sewer or water service has in some cases lead to public health hazards and contaminated groundwater. Saltwater intrusion from Monterey Bay into the groundwater due to overdrafting the aquifers has become a major concern. The interaction of tidal waters and surface water in the sloughs has been severely altered in some cases through construction of tidegates, levees, and fills. Some areas have suffered visual degradation due to alteration of attractive natural landforms and, in some cases, poor siting and screening of intensive land uses.

Although there is no urban center in the North County Coastal Zone, development has been fairly steady because the area is attractive to families desiring homes in a rural atmosphere. Development pressures persist. Some areas, those with existing or proposed public services, will be appropriate for intensive development in future years. However, much of North County is not appropriate for such development due to the sensitivity of its natural resources which may not tolerate continued encroachment of residential development. Policies set forth in this plan are intended to protect the vast resources of this area through sensitive and responsive land use, development, and conservation.

2.2 VISUAL RESOURCES

Appreciation of the scenic aspects of North County is growing. Some roads in the area have been designated as scenic highways; scenic easements and scenic lands have been acquired by the state and local governments; design review and scenic conservation and special treatment zoning classifications have been implemented. These actions, and others, demonstrate a concern for the future of the visual qualities of the North County area.

Requirements of the Coastal Act of 1976 focus on the protection of scenic resources, particularly those along the coastline. It stresses that any development permitted in scenic areas should be sited and designed to be visually compatible and subordinate to the natural setting. Alteration of natural landforms and degradation of the special communities which serve as popular recreation areas should be minimized.

long-term operation. Septic systems shall be sited to minimize adverse effects to public health, sensitive habitat areas, and natural resources.

6. The use of appropriate technology on-site wastewater management systems that reduce the risk of failure or groundwater contamination and are approved by the Health Department should be encouraged.

2.5.3 Specific Policies

A. Water Supply

1. The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.
2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.
3. The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources.
4. Water conservation measures should be required in all new development and should also be included in Agricultural Management Plans. These measures should address siting, construction, and landscaping of new development, should emphasize retention of water on site in order to maximize groundwater recharge, and should encourage water reclamation.
5. The moratorium imposed by the County on lot divisions in the Granite Ridge area should be maintained until the water supply issues are resolved.

B. Water Quality

1. All dumping of spoils (dirt, garbage, refuse, etc.) into riparian corridors and other drainage courses should be prohibited.
2. Agricultural runoff should be monitored and techniques established through the proposed North cultural Management Program to reduce pesticide and nitrate contents.
3. In order to minimize cumulative impacts on groundwater and surface water reservoirs, two and one-half acres shall be considered the maximum density for parcels resulting from a subdivision of property that will require septic systems. In areas where there is evidence that groundwater quality is being degraded due to contamination by on-site systems, and sewer service is not available, development shall be allowed only on parcels with adequate area and soil characteristics to treat and absorb the wastewater without causing further degradation of local ground and surface waters.
4. Adequate maintenance and repair of septic systems shall be required to limit pollution of surface waters and protect the public health.

- **EXHIBIT D**



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CITY OF MARINA
CITY COUNTY REGULAR MEETING
COUNCIL CHAMBERS
211 HILLCREST AVENUE
MARINA, CALIFORNIA

WEDNESDAY, SEPTEMBER 3, 2014 - 6:00 P.M.

TRANSCRIPTION OF AUDIO RECORDING

AGENDA ITEM NO. 9:

Consider appeal of Planning Commission action of July 20, 2014, regarding adoption of Resolution No. 2014-__:
(1) certifying a Mitigated Negative Declaration and adopting a Mitigation and Monitoring Program; and, (2) approving Coastal Development Permit CDP 2012-05 for the California-American Water Slant Test Well Project located at CEMEX's Lapis Road property (APNs 203-011-001 & 203-011-019).

CITY COUNCIL:

- MAYOR/CHAIR BRUCE DELGADO
- MAYOR PRO-TEM/VICE CHAIR FRANK O'CONNELL
- COUNCILMEMBER NANCY AMADEO (via teleconference)
- COUNCILMEMBER DAVID BROWN
- COUNCILMEMBER GAIL MORTON

1 political consensus that there is for this Cal-Am
2 project. From the peninsula mayors to four of the five
3 supervisors, Representative Sam Farr, it's really rare
4 that we get to see a coalition of all of the politicians
5 that are in favor of this project.

6 The clock is ticking. The California State
7 Water Resource Board is not just a threat, it's a very
8 strong possibility.

9 This, as others have said tonight, is simply a
10 test. I understand the need for all of your due
11 diligence, but this is a test. So we would urge that on
12 behalf of over 1,100 Marina residents that work in
13 hospitality whose jobs are dependent on a dependable
14 water source, that you please pass this resolution
15 tonight.

16 Thank you.

17 MAYOR DELGADO: Thank you very much, Gary.

18 MARC DEL PIERO: Mr. Mayor, my name is Marc Del
19 Piero. I'm here tonight on behalf of the Ag Land Trust
20 of Monterey County. With me in the audience is Sherwood
21 Derrington, who is our executive director.

22 For the record, both of us have served on the
23 board of directors of the Ag Land Trust since 1984. We
24 currently have, under permanent conservation easement or
25 outright ownership, over 25,000 acres of prime and

1 productive farm land in the County of Monterey.

2 We provided to you this evening a letter that
3 you all have before you. I want to thank Ms. Mall for
4 being kind enough to distribute it.

5 Mr. O'Connell, you asked earlier about letters
6 dated earlier than the last two years. Many of those
7 came from us, because one of the seminal questions that
8 has not been answered as part of this process is where
9 or whose water rights Cal-Am is supposedly relying upon.
10 The reason those letters were provided to you, along
11 with current correspondence, is because since 2006,
12 there is no answer to that question. Okay. We keep
13 asking, but no one -- no one returns our phone call.

14 The water rights issue has been addressed
15 pretty much ad nauseum. We have provided to your
16 Councilmembers and to your staff probably two and a half
17 inches of correspondence addressing a whole variety of
18 environmental issues.

19 We want to point out a couple of things this
20 evening. First of all, there is no identified
21 mitigation for the issue that we have raised
22 consistently, which is the fact that we believe that the
23 pumping of the test well will cause direct contamination
24 of our groundwater supply.

25 Would you mind very much putting that up, the

1 concentric map?

2 Rather than -- rather than rely on me as an
3 expert, even though I have been qualified as an expert
4 on at least six different occasions during the course of
5 my career, I will use your map to point something out.

6 While they are getting the map that shows the
7 concentric circles of the impact of the testing wells,
8 you will see, when the map comes up, that those
9 concentric circles don't just cover the CEMEX property.
10 In fact, they cover over 40 acres of our property and
11 our groundwater and our groundwater rights.

12 And the remedy that's identified in the
13 Mitigated Negative Declaration is not a mitigation. The
14 remedy that's supposedly identified is, well, Cal-Am
15 will just stop pumping if it shows up that our
16 groundwater supply is being contaminated. That's a
17 problem. That doesn't comply with the requirements of
18 CEQA. Okay?

19 Additionally, I wanted to just point out one
20 other thing. It's not reasonable for your Council to
21 conclude that no fair arguments have been made, because
22 our Ag Land Trust, in spite of all the correspondence
23 that has been provided to your consultants and your
24 staff and to you over the course of the last two and a
25 half years has never received a return phone call from

1 the consultants and staff that you employ expressly for
2 the purposes of the evaluation of Cal-Am's application.
3 You can't hear a fair argument if no one listens.

4 Thank you so much.

5 MAYOR DELGADO: Thank you very much, Marc.

6 MELODY KRISLOCK: My name is Melody Krislock;
7 I'm a resident of Carmel.

8 I think you can see that hospitality is very
9 excited about this project, and I think there's a good
10 reason for that. The difference in the commercial rates
11 and the residential rates for us on the Monterey
12 Peninsula are quite substantial.

13 I was at the Monterey City Council meeting
14 where Cal-Am recently presented those comparison of the
15 rates. And before that, I took my bills, my last three
16 summer bills. I'm on an acre with three people using --
17 I'm in tier 4. I figured out their commercial costs,
18 \$1.51 per 100 gallons, flat rate, and this is about 80
19 percent of all the commercial hookups, it's most of the
20 commercial users. \$1.51 per 100 gallons.

21 My last three summer bills, 3.55 to 4.11 per
22 100 gallons. I'm including all the surcharges, because
23 their \$1.51 includes all the surcharges.

24 So I think it's pretty easy to see why
25 hospitality wants this project to go forward. They are

1 I, Kelli A. Rinaudo, a certified shorthand
2 reporter in and for the state of California do hereby
3 certify:

4 That the foregoing transcript was prepared by
5 me, to the best of my ability, via an audio recording;

6 That I was not present to ascertain speaker
7 identities, and some misidentified or nonidentified
8 speakers may appear in the transcript;

9 That I was not present to clarify certain
10 words, and some unintelligible or inaudible phrases may
11 appear in the transcript;

12 I further certify that I am not related to any
13 party to said action, nor in any way interested in the
14 outcome thereof.

15
16 DATED: October 24, 2014

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20 _____
KELLI A. RINAUDO, CSR NO. 6411

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CITY OF MARINA
CITY COUNTY REGULAR MEETING

COUNCIL CHAMBERS
211 HILLCREST AVENUE
MARINA, CALIFORNIA

THURSDAY, SEPTEMBER 4, 2014 - 6:00 P.M.

TRANSCRIPTION OF AUDIO RECORDING

AGENDA ITEM NO. 9:

Consider appeal of Planning Commission action of July 20, 2014, regarding adoption of Resolution No. 2014-___: (1) certifying a Mitigated Negative Declaration and adopting a Mitigation and Monitoring Program; and, (2) approving Coastal Development Permit CDP 2012-05 for the California-American Water Slant Test Well Project located at CEMEX's Lapis Road property (APNs 203-011-001 & 203-011-019).

CITY COUNCIL:

- MAYOR/CHAIR BRUCE DELGADO
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- COUNCILMEMBER NANCY AMADEO (via teleconference)
- COUNCILMEMBER DAVID BROWN
- COUNCILMEMBER GAIL MORTON

1 that decision.

2 I am a civil engineer. I have been practicing
3 for almost 20 years now in the water industry. I have
4 experience with a number of water wells, having been on
5 the design team and the construction team for no less
6 than six. So I have experience in groundwater in the
7 San Lorenzo Valley, which is down in San Diego County,
8 City of Oceanside, looking at aquifer storage and
9 recovery down there. I was on a team that prepared a
10 report for that.

11 And the concerns I have that maybe go into a
12 little bit more layman's terms in that regard is that
13 desalination is not an all-or-nothing prospect.
14 Everybody would rather desalination brackish water away
15 than seawater.

16 MAYOR DELGADO: Brian, I want to interrupt
17 you --

18 BRIAN LEE: No problem.

19 MAYOR DELGADO: -- because we wanted your
20 qualifications to find out if you qualified as an
21 expert.

22 BRIAN LEE: Fair enough.

23 MAYOR DELGADO: And I'm sorry to put you
24 through this.

25 BRIAN LEE: No problem.

1 MAYOR DELGADO: And then we're going to look at
2 these comments. And you can stay standing because we
3 might have more questions.

4 But, Emily, is Brian Lee an expert in his
5 field?

6 KATHY JENSEN: Kathy, you mean?

7 MAYOR DELGADO: I'm sorry, Kathy.

8 KATHY JENSEN: Yes, he is.

9 MAYOR DELGADO: Okay. So in his June 17th
10 letter on page 81 and 82, he argues some points. So do
11 those --

12 KATHY JENSEN: I was looking at the comment
13 that was related to those other pages that you were
14 referring to, which was comment number 4. So on 81 --

15 MAYOR DELGADO: It's also comment number 3 that
16 slant test well pumping itself could have a significant
17 impact on Salinas Valley Groundwater Basin.

18 KATHY JENSEN: I think we've addressed that
19 issue.

20 MAYOR DELGADO: But when experts disagree and
21 they have a fair argument that meets the fair argument
22 standard, I heard last night that we're to take this to
23 a full EIR.

24 KATHY JENSEN: Why don't you -- if you want to
25 respond on number 3?

1 MAYOR DELGADO: All right. I don't see him.
2 So I'll ask our CEQA attorney, Kathy. Mayor
3 Pro-tem O'Connell was reading paragraph G on the bottom
4 of page 3, and it says:

5 "If there is disagreement among expert
6 opinion supported by facts over the
7 significance of an effect on the environment,
8 the lead agency shall basically prepare an
9 EIR."

10 And I wasn't sure that Mayor Pro-tem O'Connell
11 was focused on the "supported by facts" part or just the
12 "disagreement among expert opinion." Because we
13 definitely have disagreement among expert opinion. But
14 where we have disagreement, I'm not sure if it's
15 supported by facts.

16 And so I'd like to ask Brian Lee to come back
17 up and sort of let me know if you think that your
18 assertions in your letter, which is a good letter, if
19 they are supported by facts.

20 BRIAN LEE: I do believe that the assertions in
21 my letter are supported by facts, and I think that the
22 discussion is what is the impact to the groundwater,
23 it's not is there an impact to the groundwater. So I
24 think the whole discussion itself supports my concerns
25 that there will be an impact to the groundwater.

1 MAYOR DELGADO: Okay. So in the staff report
2 on page 82, 83, I think, we had your letter. And on
3 page 82 it says in your letter:

4 "The slant test well pumping could
5 have a significant impact on Salinas
6 Valley Groundwater Basin."

7 So I don't expect you to be superhuman and
8 remember everything that was in that letter. But if we
9 need to take the time, we will, I hope. My question is
10 are there facts to support that, and what are those
11 facts?

12 BRIAN LEE: The facts are the history of the
13 Salinas Valley Groundwater Basin and the amount of
14 studying that's has gone into that basin, I think there
15 are probably volumes in some offices in Salinas
16 regarding the condition of the basin.

17 It is overdrawn. There is significant seawater
18 intrusion occurring. And anymore wells in that basin
19 will impact seawater intrusion. I don't think that's
20 disputed.

21 So the question becomes is it significant. I
22 don't think the MND has adequately addressed is it
23 significant or not.

24 MAYOR DELGADO: Okay. So I hear some of your
25 facts being that there is a long history of analyzing

1 this. There's probably volumes.

2 The fact is there's probably volumes addressing
3 this. The fact is the basin is overdrawn now, and I
4 guess you meant that there is another fact that more
5 wells will further impact the seawater intrusion?

6 BRIAN LEE: Correct.

7 MAYOR DELGADO: Now, Kathy and Emily, I thought
8 I heard Emily say last night that the fact is in the
9 MND's opinion, that seawater intrusion, if there was an
10 impact, it would be a positive one to lessen seawater
11 intrusion, but it's so minuscule of an impact that it's
12 not really disclosed and that you don't believe that
13 there's an impact in the negative. If there was an
14 impact, it would be minusculely in the positive. Is
15 that true?

16 EMILY CREEL: That is true. And our evidence
17 was studies conducted by the Hydrogeologic Working Group
18 and also the State Water Board's report.

19 MAYOR DELGADO: Okay. So when Brian Lee, an
20 expert, espouses a fact being that the more wells that
21 are drilled, any well that's drilled, basically, will
22 exacerbate the overdrawn seawater intrusion, or the
23 overdrawn draft, the overdrafting of our groundwater
24 aquifers.

25 So you heard the facts that he mentioned. What

1 do you think, do those qualify as facts by CEQA process?

2 KATHY JENSEN: It's really hard to dissect all
3 this and say does it? Is it? My own personal view is
4 that's a conclusion. To say that any additional wells
5 will, you know, injure, significantly injure, that's a
6 broad statement. And the fact that there's -- it's been
7 studied, to me it doesn't add up.

8 Whether a court would find that it's -- you
9 know, that it's -- again, you know we have a low
10 threshold for MNDs, but that's the reality.

11 MAYOR DELGADO: You mean low threshold, you
12 mean we should be very conservative?

13 KATHY JENSEN: No. It is a low threshold of
14 when you can do them.

15 MAYOR DELGADO: I don't understand. I don't
16 understand in which direction you mean to say low
17 threshold.

18 KATHY JENSEN: There's a low threshold to
19 challenge them. The fair argument test is the --

20 MAYOR DELGADO: So it's easy to challenge.

21 KATHY JENSEN: The easiest of all the
22 challenges to make.

23 MAYOR DELGADO: Okay.

24 KATHY JENSEN: And the question of whether the
25 statements just made is substantial evidence, I don't

1 know the reports that he's relying upon. Maybe there's
2 a report that says that any additional wells will create
3 an impact. You know, without having that documentation,
4 it's not -- those aren't in the record. To me, it
5 doesn't really stack up to substantial evidence. Not
6 what we're used to seeing.

7 MAYOR DELGADO: Okay. Thanks. Brian, did you
8 have anything more you wanted to say? And especially,
9 Brian, those facts that you just mentioned when I asked
10 you, were those facts included in your letter?

11 BRIAN LEE: The facts were behind the letter.
12 They weren't necessarily included in the letter.

13 MAYOR DELGADO: Okay.

14 BRIAN LEE: And it's important to note that,
15 you know, the test well is proposing to extract 8,000
16 acre feet of water, plus or minus, from the groundwater
17 basin. And I mean the City of Marina right now, central
18 Marina uses approximately less than half of that in a
19 year, so it is substantial.

20 MAYOR DELGADO: But that's potable water that
21 we use, and you're talking about 8,000 acre feet that
22 everyone agrees is non-potable.

23 BRIAN LEE: Oh, I disagree that it's not
24 valuable.

25 MAYOR DELGADO: No. Potable.

1 If another site is already there extracting
2 groundwater, they are going to be pulling in seawater,
3 raising the salinity, which is going to increase our
4 cost, which that is a significant impact to MCWD and the
5 residents of Marina. So there is an environmental
6 impact --

7 MAYOR DELGADO: Wait, wait. That's a
8 significant impact, but it's not an environmental
9 impact.

10 BRIAN LEE: It damages the groundwater. It
11 increases seawater further in, and it impacts the
12 environment for MCWD.

13 MAYOR DELGADO: Okay. By decreasing the
14 quality of the groundwater that you may need to be
15 pumping?

16 BRIAN LEE: Increasing the quality of the
17 groundwater that we have a right to.

18 MAYOR DELGADO: Okay. Kathy, does that sound
19 like -- or, Emily, does that sound like a significant
20 impact? Thank you, Brian.

21 EMILY CREEL: I would just add that what he is
22 referring to is the larger project in operation. So
23 what we're talking about here is the short-term pumping
24 project.

25 MAYOR DELGADO: So, Brian, that's a good

1 question. I'm sorry to keep -- you need to say "Mother
2 may I" next time.

3 But, Brian, do you think that what you just
4 said as a significant impact, do you think that that
5 occurs with the two years of proposed test slant well
6 testing?

7 BRIAN LEE: The proposed test well extracts,
8 again, almost twice as much as water as the central
9 Marina residents are using right now and the Ord
10 community. So, yeah, I think it does have a substantial
11 impact in the short term, considering the fact that we
12 are in the worst drought in the state's history.

13 MAYOR DELGADO: Okay.

14 BRIAN LEE: And Sacramento is giving a real big
15 stink-eye to groundwater and groundwater rights right
16 now, so we need to be very careful to protect our
17 rights.

18 MAYOR DELGADO: Okay. Don't go away, because
19 David Brown might have something.

20 COUNCILMEMBER BROWN: Actually, I would like to
21 make a motion.

22 MAYOR DELGADO: Okay. Thank you, Brian.

23 COUNCILMEMBER BROWN: All right. Well,
24 Mr. Lombardo is standing up, do you want to recognize
25 him?

1 requires that if water levels drop one foot, pumping is
2 curtailed. So it's an impossibility. His opinion is
3 not substantiated by facts. Thank you.

4 MAYOR DELGADO: All right. Thank you,
5 Mr. Lombardo.

6 Mayor Pro-tem O'Connell?

7 MAYOR PRO-TEM O'CONNELL: Mr. Mayor, I'd like
8 to give Mr. Del Piero the opportunity to respond to the
9 same question.

10 MAYOR DELGADO: So, Marc, what facts do you
11 think have been presented by experts?

12 MARC DEL PIERO: Mr. Mayor, before I begin to
13 answer that question, let's just get on the record what
14 my background is, okay? In 1978 I got appointed to the
15 County Planning Commission. I graduated from law school
16 at Santa Clara University, passed the bar exam. I was
17 the primary author of the North Monterey County Local
18 Coastal Plan that remains in full force and effect, and
19 that Land Use Plan actually applies to the Ag Land Trust
20 property that we've been subject -- that has been the
21 subject of your discussion.

22 From 1981 until 1992, besides being a member of
23 the Monterey County Board of Supervisors and also a
24 supervisor for the City of Marina for the first four
25 years of that term, I served on the board of directors

1 of the Central Valley Project Improvement Act San Felipe
2 Division, which is the agency that is responsible for
3 distribution of all federal waters through the San
4 Felipe Division for Northern California, including the
5 counties of Santa Clara, San Francisco and the Bay Area,
6 San Benito as well. Monterey County and Santa Cruz
7 County at the time were members during the entirety of
8 the term of my membership on that committee, and that
9 membership ended in '92 when I was appointed to be the
10 attorney member of the State Water Resources Control
11 Board from 1992 until -- pardon me, from 1992 until 1999
12 I served as the vice chair of the board.

13 Last night was sort of an interesting
14 situation, because also from 1992 until 1999, I served
15 as the chair of the statewide task force on desalination
16 projects. And I'm the only guy who ever served in that
17 capacity who actually has built other water projects as
18 opposed to just serving as a chair of that board.

19 MAYOR DELGADO: Okay. Marc, are you done with
20 your qualifications?

21 MARC DEL PIERO: Not yet.

22 MAYOR DELGADO: Okay. Please continue.

23 MARC DEL PIERO: I'm not. And, Mr. Chairman, I
24 apologize, but your counsel has made a big point about
25 whether or not someone is fit to testify here, and so I

1 need to make sure that you understand that from the
2 standpoint of many people, including the State Water
3 Resources Control Board, the Department of Water
4 Resources, the Mendocino County Russian River Flood
5 Control Water Conservation District, I've been qualified
6 as an expert witness on many occasions.

7 From 1999 until last summer, I was the chief
8 counsel for the Mendocino County Russian River Flood
9 Control Water Conservation District. They administer
10 all water rights on the Russian River as well as all
11 environmental restoration programs within Mendocino
12 County and the Ukiah valley.

13 I have served as the chief counsel for a number
14 of water agencies here in Monterey County all the way
15 from the Big Sur coast to Pajaro.

16 So -- oh, one last thing. From '92 until 2011,
17 I taught water rights law and water quality policy at
18 Santa Clara University School of Law.

19 MAYOR DELGADO: Marc, would you --

20 MARC DEL PIERO: Now ask your question.

21 MAYOR DELGADO: -- would you consider yourself
22 a policy expert and a legal expert and an engineering or
23 technical expert?

24 MARC DEL PIERO: I will tell you, I am a legal
25 expert. Okay. I am not a civil engineer; however, I

1 have been responsible for ensuring the proper
2 engineering and administration of multitudinous capital
3 development projects. And I'll be happy to give you a
4 list of all of those if you have got another 20 minutes.

5 Additionally, I've been responsible for the
6 development of the desalination and wastewater
7 reclamation criteria that were subsequently adopted both
8 by the State Water Resources Control Board and by the
9 then California Department of Health Services, and most
10 of those policies remain in full force and effect.

11 MAYOR DELGADO: All right. Thank you very
12 much, Marc. And do you remember the question?

13 MARC DEL PIERO: No.

14 MAYOR DELGADO: What are some of the facts that
15 you think were supporting this disagreement among
16 experts?

17 MARC DEL PIERO: And please understand, I am
18 relying on the facts that are embodied in your Mitigated
19 Negative Declaration. Although I have to be candid with
20 you, Mr. Mayor, and members of the Council, I have heard
21 some sort of tortured interpretations of various
22 policies in the CEQA guidelines tonight.

23 First of all, oil and gas law has no
24 applicability to water rights law in the State of
25 California. They are two separate codes. There is no

1 similarity whatsoever. And any CEQA considerations in
2 terms of oil and gas wells may not under any
3 circumstances --

4 MAYOR DELGADO: Excuse me, Marc, I was asking
5 you what facts --

6 MARC DEL PIERO: That's what --

7 MAYOR DELGADO: What facts have been presented
8 by expert disagreement tonight.

9 MARC DEL PIERO: I really am. I'm getting to
10 it.

11 MAYOR DELGADO: You are adding something I
12 hadn't heard before, which is fine, but let's get to
13 that next perhaps.

14 MARC DEL PIERO: Well, actually I have heard it
15 three times from your counsel talking about how you
16 should ignore the mandates.

17 MAYOR DELGADO: No, no. But we haven't heard
18 anyone -- we haven't heard an expert such as yourself --

19 MARC DEL PIERO: Okay.

20 MAYOR DELGADO: -- until now, assert the fact
21 that oil and gas law has no applicability to water law.

22 MARC DEL PIERO: That's correct.

23 MAYOR DELGADO: And my question to you was
24 before you stood up tonight if you had heard facts of
25 disagreement by experts.

1 MARC DEL PIERO: On what issue?

2 MAYOR DELGADO: The MND.

3 MARC DEL PIERO: Okay.

4 MAYOR DELGADO: So before coming to the podium
5 five minutes ago, what are some of the facts that you
6 heard of disagreement between experts.

7 MARC DEL PIERO: The fact that additional wells
8 in a groundwater basin that has been overdrafted
9 since --

10 COUNCILMEMBER BROWN: Mr. Mayor, point of
11 personal privilege.

12 MAYOR DELGADO: Yeah.

13 COUNCILMEMBER BROWN: I would like to
14 interrupt, because I feel I need to respond to this. I
15 feel that when Mr. Del Piero stands there and glares at
16 me and tells -- and lectures me that there's no
17 difference -- I mean that there's a lot of difference
18 between oil and gas law, and that he basically came to
19 the podium earlier during the break and got in my face
20 and said the same thing, I feel it's necessary to
21 respond.

22 MARC DEL PIERO: Sure.

23 COUNCILMEMBER BROWN: I understand that oil and
24 gas law are two separate fields. What you are doing is
25 assuming that I equated them when I asked one question

1 to our counsel, which was whether oil wells and gas
2 wells were analogous as to one tiny sliver of CEQA
3 relating to --

4 COUNCILMEMBER MORTON: Piecemealing.

5 COUNCILMEMBER BROWN: Yeah, piecemealing. So I
6 never said there was a similarity in oil and gas law,
7 and I'm sorry that you take it so personally.

8 MARC DEL PIERO: No, Mr. Brown. I'm not taking
9 it personally. My point is this --

10 MAYOR DELGADO: Okay. Okay. Excuse me, Marc.
11 Excuse me, Marc.

12 MARC DEL PIERO: Sure.

13 MAYOR DELGADO: It was pointed out on a couple
14 of occasions at least by our consultants that because
15 oil and gas allows testing and feasibility studies and
16 drilling, that was something that was -- at least they
17 were suggesting that we keep that in mind.

18 MARC DEL PIERO: Sure.

19 MAYOR DELGADO: But I was asking you now for
20 the facts that were presented in disagreement by other
21 experts.

22 MARC DEL PIERO: The basin has been in
23 overdraft since 1946, '47. Okay. The basin is in
24 overdraft because of the multitudinous number of wells
25 that exist within the basin. Every study that has --

1 MAYOR DELGADO: Okay. That's a fact that Brian
2 Lee pointed out. So you are agreeing with him that's a
3 fact.

4 MARC DEL PIERO: I would -- let me cut this
5 short in regards to Mr. Lee's comments. It is the
6 position of the Ag Land Trust at this point that
7 everything that Mr. Lee said tonight is exactly correct,
8 and we disagree with the recommendations of your
9 consultant and your contract counsel because --

10 MAYOR DELGADO: I'm asking for facts. You are
11 straying from what I asked. I asked you for the facts
12 that have been presented. Do you have any more facts
13 that you recall being disclosed --

14 MARC DEL PIERO: Yes.

15 MAYOR DELGADO: -- by experts?

16 MARC DEL PIERO: Yes.

17 MAYOR DELGADO: What are those?

18 MARC DEL PIERO: First of all, you have a basin
19 that's in overdraft. Adding an additional well that
20 proposes to pump 8,000 acre feet will exacerbate
21 seawater intrusion.

22 Every hydrogeologic study that has been
23 produced in this county since 1976, and I can represent
24 to you --

25 MAYOR DELGADO: That's not a fact that was

1 brought up before you came to the podium.

2 MARC DEL PIERO: But it's incorporated in your
3 negative declaration. The reference to the overdraft in
4 the basin is in your Mitigated Negative Declaration.

5 MAYOR DELGADO: Right. But I'm asking you for
6 additional facts that have been brought up by expert
7 opinion.

8 MARC DEL PIERO: Which expert would you like me
9 to refer to?

10 MAYOR DELGADO: Those who are disagreeing with
11 the MND's record -- recommendation to be adopted.

12 MARC DEL PIERO: If you point out which one --

13 MAYOR PRO-TEM O'CONNELL: Point of order,
14 Mr. Mayor.

15 MAYOR DELGADO: Point of order, Marc. Excuse
16 me.

17 MAYOR PRO-TEM O'CONNELL: I don't think that
18 it's a requirement that we limit the expert as to facts
19 that may be in disagreement with another expert. He has
20 found himself -- he is found to the point of being an
21 expert. Why cannot we allow him to reference documents
22 that are presently in front of us to point out where the
23 facts differ? I know that expands your question a
24 little bit.

25 MAYOR DELGADO: That will be appropriate in a

1 few minutes. But the whole point of getting Brian and
2 Marc up again was to answer that question about what
3 facts have been presented in the record by experts that
4 show disagreement between experts.

5 MAYOR PRO-TEM O'CONNELL: But you are not -

6 MAYOR DELGADO: Then we can ask him other
7 questions like please give us new facts, because that's
8 what he's doing now.

9 MAYOR PRO-TEM O'CONNELL: That will be your
10 next question?

11 MAYOR DELGADO: Right.

12 MAYOR PRO-TEM O'CONNELL: Okay.

13 MARC DEL PIERO: Okay.

14 MAYOR DELGADO: So we'll ask you about new
15 facts in a moment. But for right now do you have any
16 other -- do you have any other facts or disagreement
17 that you are aware have been part of the record?

18 MARC DEL PIERO: Yes.

19 MAYOR DELGADO: Okay.

20 MARC DEL PIERO: Let me start by identifying
21 who I'm talking about, okay? Because, Mr. Mayor, you
22 are the one who asked your contract counsel whether or
23 not Mr. Lee was an expert, and it was predicated upon
24 her opinion that collectively the counsel determined or
25 agreed that he was an expert.

1 MAYOR DELGADO: No. It was predicated upon him
2 coming forward and explaining why he was an expert, and
3 he did a good job and we all agree he's an expert. It
4 wasn't predicated upon anything the consultant said.

5 MARC DEL PIERO: You forgive me, because I
6 heard you ask the question as to whether or not she
7 thought he was an expert.

8 MAYOR DELGADO: Right, but that was subsequent,
9 that was before he spoke for himself, sir.

10 MARC DEL PIERO: So if that's not -- if you
11 don't believe your contract attorney is an expert, which
12 expert would you like me to address, because I have sat
13 through both the hearings yesterday and today, I've
14 listened to every comment made. Which expert would you
15 like me to address in terms of the comments?

16 MAYOR DELGADO: Any facts that you believe any
17 experts made in disagreeing with the MND's
18 recommendation for approval.

19 MARC DEL PIERO: Well, let me -- Martin Feeney
20 got up. I think Martin Feeney qualifies as an expert.
21 Martin Feeney told you he didn't know what the results
22 were going to be. That's not an expert opinion. That's
23 an indication that --

24 MAYOR DELGADO: That's not a fact. He didn't
25 tell us --

1 MARC DEL PIERO: No. It is a fact that he made
2 that statement. He's's made the statement that he
3 didn't know what the consequences were going to be.

4 And I guess my point is this -- let me share
5 with everyone. Yesterday the State Board opinion was
6 presented to you. What was glossed over in the State
7 Board opinion was the statement that the State Board was
8 looking forward to getting a proposal that didn't
9 compromise adjacent property owners' water rights.
10 That's in the State Board opinion.

11 And so the first premise that anyone relying
12 upon that State Board letter should be -- should be
13 concerned about --

14 MAYOR DELGADO: Okay. Marc -- Council, I
15 believe that the -- that the commenter is straying from
16 the question.

17 MARC DEL PIERO: Tell me who you would like me
18 to address and I would be happy to.

19 MAYOR DELGADO: I already mentioned to you
20 after you asked that question last time, any expert that
21 you have heard provide any facts on the record in
22 disagreement with the MND being approved, please let us
23 know what those facts are.

24 MARC DEL PIERO: Mr. Delgado, the only person
25 that got qualified as an expert tonight before me was

1 Mr. Lee. No one -- no one was identified as an expert
2 prior to that in the course of the presentation.

3 MAYOR DELGADO: But I'm asking you if anyone
4 that you think is an expert, and if there's any facts
5 that you heard them provide --

6 MARC DEL PIERO: Yes.

7 MAYOR DELGADO: -- please let me know what
8 those facts are.

9 MARC DEL PIERO: Yes. I will tell you this:
10 The conjecture that a well that is located on the CEMEX
11 property that will extract 8,000 acre feet and won't
12 have an impact on inland groundwater resources is --
13 denies the history and hydrology --

14 MAYOR DELGADO: Okay. I'm not hearing a fact
15 by an expert.

16 MARC DEL PIERO: That is a fact. That was a
17 statement made by your folks. Cal-Am's position is it's
18 not going to have an effect on groundwater. That is a
19 fact that is embodied in your Mitigated Negative
20 Declaration.

21 MAYOR DELGADO: Right, but it is a fact in
22 support. I'm looking for disagreements between experts
23 that are disagreeing with the approval of the MND.

24 MARC DEL PIERO: Give me a name, Mr. Mayor, and
25 I will be happy to tell you what I think of their

1 opinion.

2 MAYOR DELGADO: Okay. I'm satisfied. I'm
3 satisfied with your response. Okay. I'm satisfied with
4 your response to the question.

5 Council, are you satisfied with Marc's response
6 to the question? Does Council have any other questions
7 you would like to ask Marc?

8 MAYOR PRO-TEM O'CONNELL: You were going to
9 follow up with another question asking him in general as
10 an expert what facts he considers to be in dispute or
11 facts that he thinks are significant.

12 MAYOR DELGADO: Okay.

13 MARC DEL PIERO: Is that a question from you,
14 Mr. Mayor, or a question from Mr. --

15 MAYOR DELGADO: It's a question from Mayor
16 Pro-tem.

17 MARC DEL PIERO: From the Mayor Pro-tem. I
18 think the facts --

19 MAYOR DELGADO: Try to be as brief as you can.

20 MARC DEL PIERO: I will -- I will do my very
21 best.

22 The facts that are in contention is that this
23 test well will not have an adverse effect on people with
24 existing overlying groundwater rights in an overdraft
25 basin.

1 The law in regards to overdrafted groundwater
2 basins in the state is very clear. It's been
3 established since 1906. There are multitudinous cases
4 that indicate what the law is.

5 And the assertion by non-engineers that this
6 well is not going to have an adverse effect, not going
7 to create a cone of depression that's going to take
8 water is just factually wrong. It's factually wrong
9 based on all of the historic documents that have been
10 produced not only by the County but also by the Monterey
11 County Water Resources Agency, the State Department of
12 Health Services, the State Water Resources Control
13 Board, and the Army Corps of Engineers.

14 In those letters that we submitted to your
15 Council, Mr. Mayor and Mr. O'Connell, those studies are
16 referenced. They are in the letters that we submitted
17 to you. There are citations of each one of those
18 studies.

19 And we asked in our last correspondence that
20 all of our prior correspondence be incorporated by
21 reference into our comments. So if you are looking for
22 facts that can be used to contest the assertions being
23 made by the Cal-Am proponents of this project, every
24 study, and I say that without limitation, every study
25 done by regulatory agency in regards to the Salinas

1 Valley Groundwater Basin since 1967 says that the more
2 you pump the more seawater intrusion you are going to
3 have and the greater amount of contamination that is
4 going to affect the overlying property -- the overlying
5 landowners' property rights. Okay?

6 MAYOR DELGADO: Okay.

7 MARC DEL PIERO: Marc, that's the first thing.

8 MAYOR DELGADO: Okay. I really want to stop
9 you. Does the Council want to hear --

10 MARC DEL PIERO: I haven't answered --

11 COUNCILMEMBER BROWN: I would like to ask him a
12 question.

13 MAYOR DELGADO: Councilmember Brown.

14 COUNCILMEMBER BROWN: Well, now correct me if I
15 am wrong, I'm paraphrasing, but you just said that every
16 study shows the more groundwater you pump, the more
17 seawater intrusion there is.

18 MARC DEL PIERO: That's correct.

19 COUNCILMEMBER BROWN: But that's inland
20 groundwater pumping, not pumping hundreds of feet out
21 into the ocean, correct?

22 MARC DEL PIERO: No, that is not correct. And
23 the point of fact is there are a number of studies that
24 were prepared by the County starting in 1976 that showed
25 that there was a direct correlation, threat, and

1 compromise of existing potable groundwater supplies in
2 the Salinas Valley based on the proximity of wells and
3 how they were drilled next to the coast.

4 COUNCILMEMBER BROWN: Okay. But my but my
5 point is --

6 MARC DEL PIERO: May I point something out?

7 COUNCILMEMBER BROWN: My point --

8 MAYOR DELGADO: Marc, Marc, please let David
9 Brown speak.

10 COUNCILMEMBER BROWN: All those studies are
11 based on wells, you know, on the ground. I mean, on the
12 earth, not in the sea, correct?

13 MARC DEL PIERO: All of those studies are based
14 on wells that are drilled, in some instances, expressly
15 designed to monitor seawater intrusion into a potable
16 aquifer. The fact that these slant wells have not even
17 been engineered yet -- this one slant well that is
18 proposed is less than a thousand feet off shore. The
19 fact that this slant well proposes to pump, in the next
20 24 months, more water than it takes to go from the well
21 location to Castroville covering the entire area of that
22 valley in a foot deep of water, those issues have all
23 been addressed before. Those issues have all been
24 addressed before.

25 And it is not new that there is a seawater

1 intrusion problem in the Salinas Valley. There are
2 multitudinous studies and a number of major capital
3 facilities projects that people are currently paying for
4 expressly for the purposes of reversing the seawater
5 intrusion.

6 And, Mr. Brown, I know you are familiar with
7 the River Dam, you are familiar with the Seaside
8 project, all of those projects are being paid for not
9 only by farmers, but by the residents of your city
10 expressly to reverse the proposal that Cal-Am wants to
11 do here.

12 One last thing. In the Salinas Valley, potable
13 groundwater supplies -- under the laws of the State of
14 California, potable groundwater supplies are identified
15 by one agency. One agency has responsibility for
16 determining water quality and whether or not a
17 groundwater supply is potable.

18 Under the Porter-Colone Act, 1967, that
19 responsibility falls to the State Water Resources
20 Control Board. The State Water Resources Control Board
21 has delegated that responsibility specifically to the
22 Central Coast Regional Water Quality Control Board. The
23 Central Coast Regional Water Quality Control Board has
24 adopted a basin plan that is in full force and effect.

25 The groundwater that Cal-Am is proposing to

1 eventually contaminate with this project is designated
2 as a potable supply. And so you asked what experts have
3 said here tonight, the only experts whose opinion
4 matters are not here tonight, that's the legal
5 determination by the Central Coast Regional Water
6 Quality Control Board that's a potable water supply.

7 MAYOR DELGADO: That's not true, Marc. There
8 are other experts that matter tonight. If they have
9 commented with facts, for the record --

10 MARC DEL PIERO: Mr. Mayor, that's why you need
11 an EIR, because we are disagreeing.

12 MAYOR DELGADO: Okay. Thank you, Marc.

13 MARC DEL PIERO: Thank you.

14 MAYOR DELGADO: Okay. This kind of got away
15 from me, but we want to make this decision right
16 tonight, and it's an important enough decision to err on
17 letting it get away from us than I believe err on being
18 too short and not hearing everyone out.

19 So in the name of hearing everyone out, I'd
20 like to hear, if there's any, five minutes of rebuttal
21 that Cal-Am would like to speak.

22 And, Chip, we'll let you come up after so that
23 we can exhaust the main points that people want to make.

24 IAN CROOKS: Mr. Mayor, I would rather wait
25 till after Chip's, since we're the applicant.

1 BRIAN LEE: If I could, if the Council would
2 allow, I would like maybe a 30-second ability option to
3 provide an engineer's answer to Councilmember Brown's
4 question?

5 MAYOR DELGADO: We haven't heard anything in 30
6 seconds, so let's see if you can do it.

7 BRIAN LEE: Any well that is operated creates a
8 cone of depression. So that cone of depression is
9 exactly that, it's a cone. It expands outward at 360
10 degrees. And we saw a map last night that showed that
11 cone of depression extending past Highway 1. So it does
12 impact the groundwater basin. It is not just impacting
13 westward. Thank you.

14 MAYOR DELGADO: Thank you, Brian.

15 Emily and Kathy, do you want to comment on
16 anything that you've just heard?

17 KATHY JENSEN: No.

18 MAYOR DELGADO: Okay. Mayor Pro-tem O'Connell?

19 MAYOR PRO-TEM O'CONNELL: Yes, Mr. Mayor. I
20 have inquired of the City Attorney what steps could be
21 taken, if any, to reconsider the motion that
22 Councilwoman Morton made. I am asking her to research
23 that point, because the mayor did indicate that you were
24 reluctant because you still had more questions, and I
25 think there's been a lot more information given. So if

1 hearing, after the Planning Commission public hearing
2 and during the City Council public hearing on September
3 3, 2004 [sic]; and -- I'm going to go over this part
4 slowly because it's new writing.

5 Whereas, based on all the above considerations,
6 comma, the council finds there is disagreement among
7 expert opinion supported by facts over the significance
8 of an effect on the environment, comma, the City of
9 Marina must treat the effect as significant and shall
10 prepare -- and shall require preparation of an
11 Environmental Impact Report.

12 Findings: One, CEQA findings. The first CEQA
13 finding on the resolution Councilmember Morton presented
14 will be deleted, and the remaining three will be
15 submitted without changes.

16 Let me read them.

17 Based upon the substantial evidence in light of
18 the whole record before the City of Marina, the City
19 Council is unable to find that the project will not have
20 a significant effect on the environment.

21 The City Council has read and considered the
22 IS/MND and the comments thereon and has determined that
23 it -- not "is" -- it does not reflect the independent
24 judgment of the City and that it has not been prepared
25 in accordance with CEQA.

1 The documents comprising the record of
2 proceeding can be located at the Planning Services
3 Division of the Community Development Department at 209
4 Cypress Avenue, Marina, California 93933.

5 And as to item two, Coastal Development Permit,
6 based on the above conclusions regarding CEQA, the City
7 is unable to approve the project and therefore denies
8 the project without prejudice to reconsideration at such
9 time as the appropriate CEQA review is completed.

10 MAYOR DELGADO: Councilmember Morton?

11 COUNCILMEMBER MORTON: I just wanted to suggest
12 just a friendly amendment that the record is also
13 created on September 4th in the bottom of page 2.
14 Information presented in the staff report for the
15 September 3 hearing, comment letters received during the
16 public comment period response or comments, proposed
17 staff initiated amendments, it goes on. Public
18 commission -- public hearing, after the Planning
19 Commission and during the City Council public hearing on
20 September 3 and 4.

21 COUNCILMEMBER BROWN: Okay. That's fine.

22 COUNCILMEMBER MORTON: Because that's the
23 totality of the record.

24 COUNCILMEMBER BROWN: That's fine.

25 COUNCILMEMBER MORTON: Thanks.

1 I, Kelli A. Rinaudo, a certified shorthand
2 reporter in and for the state of California do hereby
3 certify:

4 That the foregoing transcript was prepared by
5 me, to the best of my ability, via an audio recording;

6 That I was not present to ascertain speaker
7 identities, and some misidentified or nonidentified
8 speakers may appear in the transcript;

9 That I was not present to clarify certain
10 words, and some unintelligible or inaudible phrases may
11 appear in the transcript;

12 I further certify that I am not related to any
13 party to said action, nor in any way interested in the
14 outcome thereof.

15
16 DATED: OCTOBER 24, 2014

17
18 

19
20 _____
21 KELLI A. RINAUDO, CSR NO. 6411

22 RMR, CRR, CCRR
23
24
25



Ron Weitzman, President • Harvey Billig, Vice President • George Schroeder, Secretary-Treasurer

November 12, 2014

California Coastal Commission

Dear Commissioners:

Being 84 years old, I am unable to appear in person at your meeting today. I have asked local Commission staff to give you two short documents that I presented to the Marina City Council in opposition to Cal Am's request for testing a slant well at the Cemex site. Your staff has concentrated on local-coastal-plan issues in making its recommendation for your action on this request. Other issues transcend this limited scope of concern, however, and my two documents present some of these as succinctly and as clearly as I am able to do. Please consider them as well as concerns of others along with your staff recommendation when making your decision. Thank you.

Very respectfully,

A handwritten signature in black ink, appearing to read "Ron Weitzman", with a long, sweeping horizontal line extending to the right.

Ron Weitzman

President, WaterPlus

Why Monterey Peninsula Ratepayers Should Not Pay for a Cal Am Test Well in Marina: Two Sufficient Reasons

- 1. Absence of an Aquitard below the Dune Sand Aquifer.** A 2009 study by hydrogeologist Martin Feeney commissioned by the Monterey Peninsula Water Management District but **not** included as a reference in the 2014 Cal Am borehole report indicated that absence of an aquitard (relatively impervious clay layer) beneath the Dune Sand Aquifer was a “**fatal flaw**” for a desalination well site there: *“In summary, the data do not support the feasibility of developing a source of subsurface feedwater on coastal Fort Ord. The development of a well-field to extract seawater from the shallow aquifer would cause migration of seawater inland. Due to the lack of an areally extensive low-permeability layer in the project area, this seawater could migrate down contaminating the underlying fresh water aquifer system. This is considered a fatal flaw from an environmental and permitting perspective.”*

Martin Feeney is also one of the authors of the 2014 Cal Am borehole report, which indicated, *“A significant clay layer is **not** present beneath the Dune Sand Aquifer at the CEMEX site ... The water quality data suggests groundwater in the Dune Sand Aquifer may be in hydraulic continuity with the underlying aquifer units ... Based on the data collected in this study, [these] terrace deposits are interpreted to be stratigraphically equivalent to the 180-Foot Aquifer of the Salinas Valley, and may likely be in hydraulic continuity with the 180-Foot Aquifer.”*

Conclusion: The CEMEX site is as fatally flawed as the Fort Ord site immediately to its south.

- 2. Slant Wells Another Nail in the Coffin at the CEMEX Site.** According to Martin Feeney in his 2009 report, slant wells having wellheads sited at a setback distance from the shoreline suggested by the Coastal Commission would necessarily tap into the 180-foot aquifer, whether at the CEMEX or Potrero Road (Moss Landing) locations:

“Slant wells are essentially conventional (vertical) wells that have been drilled at some angle less than 90 degrees to ground surface. Currently, the shallowest angle that can be achieved is 22.5 degrees from horizontal. ... At 22.5 degrees, for every foot in depth the well path moves 2.6 feet away from the point of entry. ... [A]t 22.5 degrees and a suggested Coastal Commission setback from the ocean of 300 feet, the well bore is at a depth of 125 feet lower in elevation than the entry point when reaching the coastline. Depending on the ground surface elevation at the point of entry, this can be significantly below the shallow deposits in communication with the ocean and into the underlying aquifer system. ... [A]t approximately \$1M per well, slant wells cost ten times that of vertical wells.”

“The Dune Sand Aquifer is present to a depth of approximately 90 ft. bgs [below ground surface],” according to the 2014 Cal Am borehole report.

That means that any likely-permittable slant well at the CEMEX site will necessarily tap into the 180-foot aquifer, forbidden by the Agency Act and a no-no for Salinas Valley farmers.

Although the Perched “A” Aquifer at Potrero Road overlies the Salinas Valley Aquitard and so has no hydrological connection with the 180-foot aquifer below, a Cal Am intake there would still suffer the fatal flaw of slant wells having wellheads 300 feet inland and tapping into the 180-foot aquifer beneath the ocean.

At ten times the cost of vertical wells, slant wells are also prohibitively expensive, and vertical wells would seem to be out of the question. According to calculations by Martin Feeney in his 2009 report (pp. 18-19), to obtain the almost 10,000 acre-feet of desalinated water Cal Am seeks per year solely from a Dune Sand Aquifer perched over an aquitard could require as many as 60 vertical wells set back 300 feet from shore and spaced 400 feet apart. **In the midst of a drought and facing a state deadline at the end of 2016, the time is long overdue to get back to the drawing board. A slant well requiring two to three years of testing is simply a risk we cannot afford.**

--Ron Weitzman, for WaterPlus

To: Marina City Council

4 September 2014

Re: Your decision on Cal Am's test-well request

1. The state Water Resources Control Board has authority over surface water, not groundwater, except under an active river.
2. The board provided guidelines for the Cal Am desal project at the request of the PUC without in-house expertise on groundwater.
3. The board's report failed even to mention the Agency Act except for a single footnote.
4. The Agency Act prohibits the exportation of groundwater from the Salinas River Groundwater Basin, but the board's report erroneously referred to groundwater as simply water.
5. The guidelines provided by the board considered only possible harm to users of groundwater in the basin as a basis of a go-no-go decision for a desal project's feed-water plan.
6. The guidelines failed to include the Agency Act, which is the only legal authority on the exportation of groundwater from the Salinas River Groundwater Basin.
7. Cal Am is following these guidelines because they were requested by its PUC overseer.
8. Cal Am originally intended to withdraw its feed-water from the 180-foot aquifer.
9. Objections by grower representatives based on the Agency Act forced it to switch to the Dune Sand Aquifer.
10. The borehole study showed no aquitard separating the two aquifers.
11. So, without public explanation, Cal Am is now seeking to explore deeper aquifers.
12. Even though beneath the ocean, all these aquifers are in the Salinas River Groundwater Basin.
13. The Agency Act applies to all of them regardless of the demonstration of harm done from their use as desal feed-water.
14. The claim that the test well would cause no harm because it would draw more water from the sea than from any aquifer is an assertion of convenience, based on neither fact nor logic.
15. In fact, because water flows downhill and aquifers slant downward toward the sea, gravity would cause the slant well to draw more water from the landward than from the seaward side.
16. The test well would fund hydrogeologists and other consultants, but its only usefulness for Cal Am would be to show the state board due diligence so it would relax its CDO deadline.
17. The test well would be useful for growers because they would have to sue Cal Am if it proceeded with its project without it.
18. The growers do not wish to waste money on a suit if a test well could show they are right.
19. If you should approve the test well, the Marina Coast Water District may have to sue you because the test well could be one of a series of moves by Cal Am to acquire it.
20. The suit could delay Cal Am's project and restoration of the Carmel River much longer than your denial of the test-well permit.
21. If Cal Am proceeds with its project in Marina, it will need to acquire CEMEX.
22. CEMEX is not for sale, and so its acquisition would require the use of eminent domain.
23. Because that court action could require years that Cal Am does not have, it would have to settle out of court at whatever price CEMEX chose to charge, all at ratepayer, not Cal Am, expense.
24. Ratepayers have paid for numerous previous Cal Am missteps.
25. Please do not put us in a position of having to pay for yet another.

PLEASE DENY CAL AM'S REQUEST.

--Ron Weitzman, for WaterPlus

Luster, Tom@Coastal

From: David Beech <dbeech@comcast.net>
Sent: Wednesday, November 05, 2014 5:08 AM
To: Luster, Tom@Coastal
Subject: Submission for Half Moon Bay meeting, item 15a)
Attachments: CCCComments20141112.pptx

Dear Mr. Luster,

I attach my brief submission.

Please confirm that this is the appropriate way to make my comments available to Commissioners ahead of the meeting, and that facilities will be available for me to speak to these PowerPoint slides during public comment on 15a).

Many thanks,

David Beech

Brief Comments on Californian Water Company Appeal

California Coastal Commission
November 12, 2014
Agenda Item 15A

David Beech
Monterey



1. Environmental factors

- Monterey Peninsula residents owe much to Coastal Commission for care for their environment
- Ecologically friendly slant wells may have potential, but also problems - cf. languishing Dana Point test
- Test project under CDO pressure , and without any fallback plan, is wrong project at wrong place at wrong time
- Cal Am slant well motivation is not environmental – it is due to now having no water rights for vertical wells at Marina

2. Cal Am competence

- Cal Am planning and execution compare poorly with successful publicly-traded corporations that have to compete
- Cal Am close to “third strike and out” on building new water source
- Purchase of Cemex site could be very expensive (if even successful)
- CDO allows Cal Am to purchase desalinated water from others, sooner and cheaper, for themselves and for ratepayers

CALIFORNIA COASTAL COMMISSION

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W14a & 15a

Appeal Filed:	September 24, 2014
49 th Day:	November 12, 2014
Permit Filed:	October 3, 2014
180 th Day:	April 1, 2015
Staff:	T. Luster-SF
Staff Report:	October 31, 2014
Hearing Date:	November 12, 2014

**STAFF REPORT: RECOMMENDATION ON APPEAL
SUBSTANTIAL ISSUE & DE NOVO HEARING
and
COASTAL DEVELOPMENT PERMIT**

Appeal No:	A-3-MRA-14-0050
Local Government:	City of Marina
Decision:	Denial
Application No.:	9-14-1735
Applicant/Appellant:	California American Water Company
Project Location:	At the site of the CEMEX, Incorporated sand mining facility, Lapis Road, City of Marina, Monterey County. (APN #203-011-001 and #203-011-019)
Project Description:	Construct and operate a test slant well and associated monitoring wells to develop data necessary to assess the feasibility of the project site as a potential long-term water source for a desalination facility.
Staff Recommendation:	Substantial Issue Exists ; Approval of De Novo Permit with Conditions; Approval of Regular Permit with Conditions

PROCEDURAL NOTE: The Commission will NOT take public testimony during the substantial issue phase of the appeal hearing unless at least three Commissioners request it. Unless the Commission finds that the appeal raises “no substantial issue,” it will then hear the *de novo* phase of the appeal hearing, during which it will take public testimony. Written comments may be submitted to the Commission regarding either phase of the appeal hearing.

SUMMARY OF STAFF RECOMMENDATION

Project Description

California-American Water Company (“Cal-Am”) proposes to construct, operate, and decommission a temporary test slant well, including up to four monitoring well clusters and related infrastructure, at the CEMEX sand mining facility along Monterey Bay within an extensive coastal dune complex in the City of Marina. The project would be completed during a twenty-four to twenty-eight month period. The test wellhead would be located approximately 450 feet inland of mean sea level at an elevation of about 25 feet. No development would occur directly on the beach or seafloor or in ocean waters. The main project activities include staging and site preparation, well drilling and placement of monitoring wells and electrical cables, ongoing monitoring during the test period, and well decommissioning.

Project Purpose

The project would allow Cal-Am to gather technical data related to the potential hydrogeologic and water quality effects that would result from using similar wells at or near this site to provide water for the proposed Monterey Peninsula Water Supply Project. If the data collected from this proposed test well demonstrates that this well design and location would provide the necessary amount of water and not cause unacceptable adverse effects, Cal-Am may choose to apply for additional coastal development permits to convert the test well to a production well and/or construct additional similar wells, subject to certification of an Environmental Impact Report (“EIR”) by the California Public Utilities Commission, which is preparing the document for the above-referenced water supply project.

The Commission’s approval of this proposed test well would not authorize any additional activities that may be associated with a larger or more permanent facility. Any such proposal will require additional review for conformity to the Coastal Act, which review and analysis will be conducted independently of the current decision, with the current decision exerting no influence over or causing any prejudice to the outcome of that separate decision.

Jurisdiction

The proposed project would be partially within the coastal development permit jurisdiction of the City of Marina and partially within the Commission’s retained permit jurisdiction. Development within the City’s jurisdiction includes all the project’s land-based activities, which represent almost all of the project-related development. The only part of the project within the Commission’s permit jurisdiction is the portion of the slant well that is below grade and extends beneath the beach and seafloor.

On September 4, 2014, the City denied Cal-Am’s CDP application for development of the subject temporary test slant well. Cal-Am then filed a timely appeal of the City’s decision.

Recommendation

Staff's recommended Findings include several key procedural and substantive issues:

Appeal: The City's action is appealable to the Commission pursuant to Coastal Act Section 30603(a)(5), which allows appeals of any development that constitutes a major public works facility. Staff recommends the Commission determine that the appeal **raises** a substantial issue with the consistency of the local government's action with the certified Local Coastal Program ("LCP") and that the Commission hold a *de novo* hearing.

De Novo Review and CEQA: Staff recommends the Commission **conditionally approve** coastal development permits A-3-MRA-14-0050 and 9-14-0050 for the proposed project. The key concern here is the project's unavoidable effects on environmentally sensitive habitat areas ("ESHA").

The project would be built on the site of a sand mining facility located within an extensive area of coastal dune habitat. Although the project footprint would be within dune habitat that has been extensively disturbed by mining activities, the area retains sufficient habitat characteristics to be considered sensitive habitat. Project activities would further disturb the sensitive habitat areas in a manner not consistent with provisions of the LCP. However, because the project is a coastal-dependent industrial facility and the LCP allows such facilities in this location, consistent with Coastal Act Section 30260, the Commission may approve a permit for this project if 1) alternative locations are infeasible or more environmentally damaging; 2) denial of the permit would not be in the public interest; and, 3) the project is mitigated to the maximum extent feasible.

- 1) **Alternative locations are infeasible or more environmentally damaging:** In recognition of the state's preference for subsurface intakes, Cal-Am has focused its efforts on identifying sites where those types of intakes are feasible. Several sites previously considered for water supply projects are either no longer available or have been subject to regulatory or legal changes that limit their feasibility. Several others are more distant from Cal-Am's service area and would result in greater environmental impacts due to an overall larger area of disturbance. Regarding on-site alternatives, the proposed test well is sited within an already disturbed area of the dune habitat that has been affected by mining activities for the past several decades. The current on-site location was selected after consultation by resource agency representatives showed that previously proposed locations on the north end of the CEMEX site would have greater adverse effects on sensitive species and coastal resources.
- 2) **To deny the project would not be in the public interest:** Since 1995, Cal-Am and other entities in the Monterey Peninsula area have been seeking a water supply to replace that obtained from the Carmel River. Cal-Am is under an Order from the State Water Resources Control Board to significantly reduce its withdrawals from the Carmel River within the next two years. Although significant public effort has gone into previous proposed water supply options, such as a proposed dam, desalination facilities, and others, those projects have either not been completed or are no longer under consideration. The currently proposed test well is meant to provide data for a possible

desalination facility that is the subject of extensive environmental and public interest review by the California Public Utilities Commission and is the subject of a Settlement Agreement among more than a dozen local governments and public interest groups. Other potential water supply projects under consideration are not as far along in design, environmental review, or permitting, so are not likely to provide the necessary replacement water supply as quickly as Cal-Am's currently proposed facility, should the test well be successful.

- 3) **The project is mitigated to the maximum extent feasible:** Staff's recommended Findings include several Special Conditions meant to avoid and minimize effects to ESHA. Mitigation measures required by **Special Conditions 12 through 16** include biological survey requirements, training of project personnel, avoidance measures to be implemented, and restoration requirements. Additionally, **Special Condition 17** requires Cal-Am to post a bond that will provide for removal of project structures and for restoration should Cal-Am not implement those requirements. Other **Special Conditions** require Cal-Am to implement Best Management Practices during construction, prepare a spill prevention plan, avoid coastal hazard areas, and others, all of which will result in further avoidance and minimization of potential project impacts.

Based on the analysis of these three tests in the Findings below, staff recommends that the Commission find that the project may be approved, despite its inconsistency with the LCP's habitat protection policy.

TABLE OF CONTENTS

I. MOTIONS & RESOLUTIONS	6
A. SUBSTANTIAL ISSUE DETERMINATION ON APPEAL NO. A-3-MRA-14-0050	6
B. CDP DETERMINATION FOR A-3-MRA-14-0817	6
C. CDP DETERMINATION FOR CDP 9-14-1735	7
II. STANDARD CONDITIONS	8
III. SPECIAL CONDITIONS	8
IV. FINDINGS & DECLARATIONS	16
A. PROJECT LOCATION, DESCRIPTION, AND OBJECTIVES	16
B. PROJECT BACKGROUND	19
D. JURISDICTION	21
E. SUBSTANTIAL ISSUE	23
F. COASTAL DEVELOPMENT PERMIT DETERMINATION	26
G. PUBLIC ACCESS AND RECREATION	27
H. PROTECTION OF SENSITIVE HABITAT AREAS	29
I. PROTECTION OF COASTAL WATERS AND MARINE RESOURCES	38
J. COASTAL AND GEOLOGIC HAZARDS	41
K. ARCHAEOLOGICAL AND PALEONTOLOGICAL RESOURCES	45
L. VISUAL RESOURCES	48
M. COASTAL AGRICULTURE	50
N. ASSESSMENT OF ALTERNATIVES	52
P. COASTAL-DEPENDENT FACILITY	55
O. CUMULATIVE IMPACTS	60
V. CALIFORNIA ENVIRONMENTAL QUALITY ACT	63

EXHIBITS

- Exhibit 1** – Project Location
- Exhibit 2** – Site Plan
- Exhibit 3** – Slant Test Well, Representative Illustration
- Exhibit 4** – Proposed Water Quality Analytical Suite
- Exhibit 5** – Cal-Am Project Mitigation Measures
- Exhibit 6** – Historic Aerial Photographs of Project Site
- Exhibit 7** – LUP Least Disturbed Dune Habitat Map
- Exhibit 8** – Technical Memorandum, LCP Primary and Secondary Habitat Delineation
- Exhibit 9** – Expected Erosion and Future Beach Profiles
- Exhibit 10** – City of Marina Municipal Code Section 17.41.100, Requirements for Habitat Restoration
- Exhibit 11** – Cal-Am Appeal Statement

APPENDICES

- Appendix A** – Substantive File Documents
- Appendix B** – Correspondence Received

I. MOTIONS & RESOLUTIONS

A. SUBSTANTIAL ISSUE DETERMINATION ON APPEAL NO. A-3-MRA-14-0050

Staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal was filed. A finding of substantial issue would bring the CDP application for the proposed project under the jurisdiction of the Commission for a *de novo* hearing and action. To implement this recommendation, staff recommends a NO vote on the following motion. Failure of this motion will result in a *de novo* hearing on the CDP application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion

*I move that the Commission determine that Appeal Number A-3-MRA-14-0050 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603. I recommend a **no** vote.*

Resolution to Find Substantial Issue

The Commission finds that Appeal Number A-3-MRA-14-0050 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

B. CDP DETERMINATION FOR A-3-MRA-14-0817

Staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development. To implement this recommendation, staff recommends a **YES** vote on the following motion. Passage of this motion will result in approval of the CDP as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Motion

*I move that the Commission approve Coastal Development Permit Number A-3-MRA-14-0817 pursuant to the staff recommendation, and I recommend a **yes** vote.*

Resolution to Approve CDP

The Commission hereby approves Coastal Development Permit Number A-3-MRA-014-0817 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the City of Marina Local Coastal Program policies and Coastal Act access and recreation policies. 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.

C. CDP DETERMINATION FOR CDP 9-14-1735

Motion

*I move that the Commission **approve** Coastal Development Permit Application No. 9-14-1735 subject to the conditions set forth in the staff recommendation.*

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

Resolution

The Commission hereby approves Coastal Development Permit 9-14-1735 and adopts the findings set forth below on grounds that the development as conditioned 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.

II. 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 Permittee 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 Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Proof of Legal Interest and Other Approvals.** The Permittee shall provide to the Executive Director a copy of each of the following approvals or documentation from the relevant agency that such approval is not required:
 - a. PRIOR TO PERMIT ISSUANCE, proof of legal interest in the project site.
 - b. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the negotiated agreement or memorandum of understanding between the applicant and the Monterey Regional Water Pollution Control Agency (“MRWPCA”) regarding connection and use of the ocean outfall for discharge of water produced from the test well.
 - c. PRIOR TO COMMENCEMENT OF CONSTRUCTION BENEATH STATE TIDELANDS, a lease from the State Lands Commission.

The Permittee shall inform the Executive Director of any changes to the project required by, or resulting from, these permits or approvals. Such changes shall not be incorporated into the project until the Permittee obtains a Commission amendment to this permit, unless the Executive Director determines that no amendment is legally required.

2. **Liability for Costs and Attorneys Fees.** The Permittee shall reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees – including (a) those charged by the Office of the Attorney General; and (b) 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 Permittee 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.

3. **Project Construction.** The Permittee shall conduct project construction as described and conditioned herein, including the following measures:
 - a. Project-related construction shall occur only in areas as described in the permit application.
 - b. Project-related construction, including site preparation, equipment staging, and installation or removal of equipment or wells, shall not occur between February 28 and October 1 of any year.
 - c. Construction equipment and materials, including project-related debris, shall be placed or stored where it cannot enter a storm drain or coastal waters. The Permittee shall ensure that all construction personnel keep all food-related trash items in sealed containers and remove them daily to discourage the concentration of potential predators in snowy plover habitat. All trash and construction debris shall be removed from work areas and properly disposed of at the end of each work day at an approved upland location. All vegetation removed from the construction site shall be taken to a certified landfill to prevent the spread of invasive species.
 - d. To reduce construction noise, noise attenuation devices (e.g., noise blankets, sound baffles, etc.) shall be installed around all stationary construction equipment, including drill rigs.
 - e. All project vehicles shall maintain speeds of 10 miles per hour or less when at the project site. Prior to moving any vehicle, project personnel shall visually inspect for special-status species under and around the vehicle, and shall notify the on-site biologist should any be detected.
 - f. To avoid predation of special-status species, wire excluders or similar anti-perching devices shall be installed and maintained on the top of all aboveground structures (e.g., electrical panel) to deter perching by avian predators.

No changes to these requirements shall occur without a Commission amendment to this permit unless the Executive Director determines that no amendment is legally required.

4. **Protection of Water Quality.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit an erosion control plan for Executive Director review and approval. The Plan shall include a schedule for the completion of erosion- and sediment-control structures, which ensures that all such erosion-control structures are in place by mid-November of the year that construction begins and maintained thereafter. The plan shall identify standard Best Management Practices to be implemented to address both

temporary and permanent measures to control erosion and reduce sedimentation. Site monitoring by the applicant's erosion-control specialist shall be undertaken and a follow-up report shall be prepared that documents the progress and/or completion of required erosion-control measures both during and after construction and decommissioning activities. No synthetic plastic mesh products shall be used in any erosion control materials. All plans shall show that sedimentation and erosion control measures are installed prior to any other ground disturbing work.

5. Hazardous Material Spill Prevention and Response.

(a) PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall submit for Executive Director review and approval a project-specific Hazardous Materials Spill Prevention and Response Plan that includes:

- an estimate of a reasonable worst case release of fuel or other hazardous materials onto the project site or into adjacent sensitive habitat areas or coastal waters resulting from project operations;
- all identified locations within the project footprint of known or suspected buried hazardous materials, including current or former underground storage tanks, septic systems, refuse disposal areas, and the like;
- specific protocols for monitoring and minimizing the use of fuel and hazardous materials during project operations, including Best Management Practices that will be implemented to ensure minimal impacts to the environment;
- a detailed response and clean-up plan in the event of a spill or accidental discharge or release of fuel or hazardous materials;
- a list of all spill prevention and response equipment that will be maintained on-site;
- the designation of the onsite person who will have responsibility for implementing the plan;
- 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,
- 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.

The Permittee shall implement the Plan as approved by the Executive Director. The Permittee shall also ensure that all onsite project personnel participate in a training program that describes the above-referenced Plan, identifies the Plan's requirements for implementing Best Management Practices to prevent spills or releases, specifies the location of all clean-up materials and equipment available on site, and specifies the measures that are to be taken should a spill or release occur.

(b) 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 Permittee shall implement spill response measures of the

approved Plan, including notification of Commission staff. Project construction and/or operation shall not start again until authorized by Commission staff.

- (c) 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 Permittee shall submit an application to amend this 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.

The Permittee shall implement the Plan as approved by the Executive Director.

6. **Monitoring and Removal of Temporary Structures, Well Head Burial & Well Closure/Destruction.** The Permittee shall monitor beach erosion at least once per week over the duration of the project to ensure the slant well and monitoring wells remain covered. If the wellheads, linings, casings, or other project components become exposed due to erosion, shifting sand or other factors, the Permittee shall immediately take action to reduce any danger to the public or to marine life and shall submit within one week of detecting the exposed components a complete application for a new or amended permit to remedy the exposure.

Upon project completion, and no later than February 28, 2018, the Permittee shall cut off, cap, and bury the slant well head at least 40 feet below the ground surface, and shall completely remove all other temporary facilities approved by this coastal development permit. To ensure timely removal, the Permittee shall post the bond or other surety device as required by **Special Condition 17** to ensure future removal measures would be appropriately supported and timed to prevent any future resurfacing of the well casing or other project components.

7. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the Permittee acknowledges and agrees:
- a. that the site may be subject to hazards from coastal erosion, storm conditions, wave uprush, and tsunami runup;
 - b. to assume the risks to the Permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development;
 - c. 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
 - d. 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.

8. **No Future Shoreline Protective Device.** By acceptance of this permit, the Permittee agrees, on behalf of itself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to this 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 Permittee hereby waives, on behalf of itself 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 Permittee further agrees, on behalf of itself and all successors and assigns, that the Permittee 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 7**. In the event that portions of the development fall to the beach before they are removed, the Permittee 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.

9. **Geology/Hazards.** The project shall be designed to meet or exceed all applicable requirements of the California Building Code. Project design and construction shall meet or exceed all applicable feasible conclusions and recommendations in the *Geotechnical Investigation for the California American Water Temporary Slant Test Well Project, Marina, Monterey County, California*, dated April 3, 2014 (GeoSoils 2014). Project components shall be sited to avoid areas identified in the coastal erosion memorandum prepared by ESA-PWA (March 2014) as subject to coastal erosion during the duration of the project.
10. **Visual Resources.** PRIOR TO PERMIT ISSUANCE, the Permittee shall submit for Executive Director review and approval a Lighting Plan prepared by a qualified engineer that includes the following:
 - a. Identifies all lighting and associated infrastructure proposed for use during the test well project, such as towers, poles, electrical lines, etc. The Lighting Plan shall identify the locations, heights, dimensions, and intensity of the lighting and associated lighting infrastructure.
 - b. Evaluates the effects of project lighting and associated infrastructure on wildlife in the project area and describes proposed measures to avoid or minimize any adverse effects. These measures may include shielding project lighting from off-site locations, directing lighting downward, using the minimum amount of lighting necessary to ensure project safety, and other similar measures.
 - c. Affirms that all lighting structures and fixtures installed for use during the project and visible from public areas, including shoreline areas of Monterey Bay, will be painted or finished in neutral tones that minimize their visibility from those public areas.

The Permittee shall implement the Lighting Plan as approved by the Executive Director.

11. Protection of Nearby Wells. PRIOR TO STARTING PROJECT-RELATED PUMP TESTS, the Permittee shall install monitoring devices at one or more offsite wells within 5,000 feet of the project site to record water and salinity levels within the wells. During the project pump tests, the Permittee shall, at least once per day, monitor water and salinity levels within those wells. If water levels drop more than one foot, or if salinity levels increase more than two parts per thousand from pre-pump test conditions, the Permittee shall immediately stop the pump test and inform the Executive Director. The Permittee shall not re-start the pump test until receiving an amendment to this permit, unless the Executive Director determines no amendment is legally necessary.

12. Protection of Biological Resources – Biological Monitor(s). PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall retain one or more qualified biologists approved by the Executive Director to ensure compliance with all relevant mitigation measures and Special Conditions. The approved biologist(s) shall conduct the required preconstruction surveys, implement ongoing monitoring and inspections, keep required records, and notify Commission staff and staff of other agencies as necessary regarding project conformity to these measures and Special Conditions.

The approved biologist(s) shall be present during all project construction and decommissioning activities and on a periodic basis when the biologist determines operational activities may affect areas previously undisturbed by project activities. The biologist(s) shall monitor construction equipment access and shall have authority to halt work activities, if the potential for impacts to special-status species or habitat is identified, until the issue can be resolved. The qualified biologist(s) shall immediately report any observations of significant adverse effects on special-status species to the Executive Director.

13. Protection of Biological Resources – Training of On-site Personnel. Prior to starting construction and decommissioning activities, the approved biologist(s) shall conduct an environmental awareness training for all construction personnel that are on-site during activities. The training shall include, at a minimum, the following:

- Descriptions of the special-status species with potential to occur in the project area;
- Habitat requirements and life histories of those species as they relate to the project;
- Avoidance, minimization, and mitigation measures that will be implemented to avoid impacts to the species and their habitats;
- Identification of the regulatory agencies and regulations that manage their protection; and,
- Consequences that may result from unauthorized impacts or take of special-status species and their habitats.

The training shall include distribution of an environmental training brochure, and collection of signatures from all attendees acknowledging their participation in the training. Subsequent trainings shall be provided by the qualified biologist as needed for additional construction or operations workers through the life of the project.

14. Protection of Biological Resources – Pre-Construction and Pre-Disturbance

Surveys. The approved biologist(s) shall conduct pre-construction surveys for special-status species as described below:

- a. No more than 14 days before the start of onsite activities or any activities planned for areas previously undisturbed by project activities, the biologist(s) shall conduct a field evaluation of the nature and extent of wintering Western snowy plover activity in the project area and shall identify measures needed to ensure construction activities minimize potential effects to the species. Those measures shall be submitted for Executive Director review and approval at least five days before the start of construction activities. The Permittee shall implement the measures as approved by the Executive Director.
- b. Prior to construction or activities planned for areas previously undisturbed by project activities, the approved biologist(s) shall coordinate with construction crews to identify and mark the boundaries of project disturbance, locations of special-status species and suitable habitat, avoidance areas, and access routes. GPS data collected during preconstruction surveys completed in 2012, 2013, and 2014 shall be used to flag the known locations of Monterey spineflower and buckwheat for avoidance during construction. Avoidance buffers shall be established and flagged or fenced as necessary to avoid surface disturbance or vegetation removal. The monitoring biologist shall fit the placement of flags and fencing to minimize impacts to any sensitive resources. At a minimum, the biologist shall direct the placement of highly visible exclusion fencing (snow fence or similar) at the following locations:
 - around sensitive snowy plover habitat areas that do not require regular access;
 - areas along the northern edge of the CEMEX accessway in the vicinity of the settling ponds; and
 - between the work area and any identified occurrence of Monterey spineflower or buckwheat within 10 feet of the existing accessway or work area.

All delineated areas of temporary fencing shall be shown on grading plans and shall remain in place and functional throughout the duration of construction and decommissioning activities.

- c. The approved biologist(s) shall conduct surveys for Monterey spineflower and buckwheat (host plant for Smith's blue butterfly) within all project disturbance areas and within 20 feet of project boundaries during the blooming period for the spineflower (April-June) to identify and record the most current known locations of these species in the project vicinity. Surveys shall be conducted by a qualified botanist, and shall include collection of Global Positioning System (GPS) data points for use during flagging of sensitive plant species locations and avoidance buffers prior to construction.
- d. At least once per week during the project operational phase between March 1 and October 1 of any year, the approved biologist(s) shall monitor plover nesting within 500 feet of project activities. If active plover nests are located within 250 feet of the project or access routes, avoidance buffers shall be established to minimize potential disturbance of nesting activity, and the biologist shall coordinate with and accompany the Permittee's operational staff as necessary during the nesting season to guide access and activities to avoid impacts to nesting plovers. The biologist shall contact

the USFWS and CDFW immediately if a nest is found in areas near the wellhead that could be affected by project operations. Operations shall be immediately suspended until the Permittee submits to the Executive Director written authorization to proceed from the USFWS.

- 15. Project Area Restoration.** PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall prepare a Restoration Plan for review and approval by the Executive Director that is consistent with the City of Marina restoration requirements as codified in Municipal Code Section 17.41.100. The Plan shall include, at a minimum:
- a. a description of the habitat characteristics and extent of the area to be restored, which shall include, at a minimum, all areas of temporary disturbance in the project footprint other than those areas actively in use by CEMEX for mining purposes;
 - b. performance standards and success criteria to be used;
 - c. a minimum 3:1 ratio of native plants to be replaced within the affected area;
 - d. an invasive species control program to be implemented for the duration of the project;
 - e. the timing of proposed restoration activities;
 - f. proposed methods to monitor restoration performance and success for at least five years following initiation of the Plan; and
 - g. identification of all relevant conditions, requirements, and approvals by regulatory agencies needed to implement the Plan.

The Permittee shall implement the Plan: (1) during and immediately following construction and prior to operation of the test well, and (2) during and immediately following decommissioning activities.

Success criteria will include plant cover and species composition/diversity, which shall meet or exceed adjacent undisturbed dune habitat on the CEMEX parcel as determined by the biological monitor. Success criteria shall, at a minimum, be consistent with the requirements of the existing Lapis Revegetation Plan prepared for the RMC Lonestar Lapis Sand Plant (25 percent average vegetative cover and species diversity of all species listed in Group A of the Plan present and providing at least 1 percent cover).

- 16. Invasive Species Control.** The Permittee shall remove and properly dispose of at a certified landfill all invasive or exotic plants disturbed or removed during project activities. The Permittee shall use existing on-site soils for fill material to the extent feasible. If the use of imported fill material is necessary, the imported material must be obtained from a source that is known to be free of invasive plant species, or the material must consist of purchased clean material.

- 17. Posting of Bond.** To ensure timely removal, PRIOR TO COMMENCEMENT OF CONSTRUCTION, the Permittee shall provide to the Commission a surety bond or similar security device acceptable to the Executive Director for \$1,000,000 (one million dollars), and naming the Coastal Commission as the assured, to guarantee the Permittee's compliance with Special Conditions 6 and 15. The surety bond or other security device shall be maintained in full force and effect at all times until Special Conditions 6 and 15 have been met.

IV. FINDINGS & DECLARATIONS

A. PROJECT LOCATION, DESCRIPTION, AND OBJECTIVES

The project site is within the CEMEX sand mining facility, which is located in an extensive area of coastal dunes along the shoreline of Monterey Bay in the northern portion of the City of Marina (see Exhibit 1 – Project Location). Parts of the site have been used for sand mining since 1906, though the site continues to provide significant areas of sensitive habitat along with areas disturbed due to mining activities.

The project applicant and appellant, California American Water (“Cal-Am”) proposes to construct and operate a test slant well and associated monitoring wells at a previously disturbed area within the CEMEX site (see Exhibit 2 – Site Plan). Cal-Am would use the test slant well to conduct a pumping and testing program over an approximately 24-month period to obtain data regarding the geologic, hydrogeologic, and water quality characteristics in aquifers underlying the project area. Cal-Am would use the data to help determine whether a subsurface intake system at or near this location could provide source water for a potential seawater desalination facility. Cal-Am has proposed such a facility as part of its Monterey Peninsula Water Supply Project (“MPWSP”), which is the subject of an application before the California Public Utilities Commission (“CPUC”), and is described below in Section IV.B of these Findings.¹ Information derived from the well tests is necessary to assess the feasibility and the preferred design and location of the proposed full-scale project. The data produced from the tests will be analyzed as part of the CPUC’s review for the MPWSP and will help inform the CPUC’s decision as to whether to approve the MPWSP as part of Cal-Am’s water supply system.

The proposed project evaluated herein is for construction and operation of a test slant well only. 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 MPWSP. Any such proposal will require additional review and analysis for conformity to relevant Local Coastal Programs and 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 those separate future decisions.

Project components

All development associated with this test slant well would occur within an approximately 0.75-acre portion of a previously-disturbed area within the approximately 400-acre CEMEX site. The primary components of this proposed test slant well include:

Slant well: The test wellhead would be located about 450 feet from the current shoreline at an elevation of about 25 feet above mean sea level. The wellhead would be set within a concrete wellhead vault that would extend to about five feet below grade and would be covered with steel plates. The slant well would extend downward at about a 20 degree angle below horizontal to a

¹ The proposed project, including Cal-Am’s CPUC Application A.12-04-019, is more fully described on the project website at: <http://www.cpuc.ca.gov/Environment/info/esa/mpwsp/index.html>

length of up to about 1000 feet and a point about 290 feet below the Monterey Bay seafloor (see Exhibit 3 – Slant Test Well, Representative Illustration). The wellhead would include a radio telemetry alarm system that would communicate any malfunctions – e.g., power or pump failure, excess pressure within the system, unexpected drops in water levels, etc. – and would also allow for automatic shutdown.

Disposal piping: To discharge water pumped from the well during the tests, Cal-Am would construct an approximately 12-inch diameter disposal pipeline that would connect to an existing subsurface manhole located about 250 feet seaward from the wellhead and about three feet below grade. The manhole is part of an existing ocean outfall used by the Monterey Regional Water Pollution Control Agency (“MRWPCA”) as a discharge from its wastewater treatment facility to about two miles offshore into Monterey Bay. The outfall is buried along the southern portion of the CEMEX site. The connection would require a total of about 150 cubic yards of excavation along the disposal pipeline and in the area of the manhole.

Electrical supply: Power would be provided to the well pumps through a buried 4-inch conduit that would extend eastward from the wellhead to a new transformer located on an existing power pole about 2000 feet east of the well.

Monitoring wells: Cal-Am would also construct up to four monitoring well clusters consisting of 2-inch diameter vertical wells that would extend to about 300 feet below the ground surface and would be used to measure changes in groundwater levels and water quality during the pump tests. Exhibit 4 provides the suite of water quality parameters that Cal-Am would monitor during the project’s testing phase. One monitoring well would be adjacent to the slant wellhead and the other would be about 1,350 feet east adjacent to the CEMEX service road.

Other associated infrastructure: Cal-Am would also install temporary sedimentation tanks, a portable restroom and hand washing station, and a re-fueling area.

Project activities, timing, and work effort

Project activities would occur in phases over an approximately 28-month period. The project’s first phase involves constructing the wells and associated infrastructure; the second phase involves pumping and testing the wells; and the final phase involves well decommissioning.

The construction phase includes:

- Site preparations, including mobilizing a drill rig and drilling the monitoring wells;
- Excavating and placing the pre-cast concrete wellhead vault structure;
- Installing water discharge piping, metering and sampling facilities;
- Connecting to the existing outfall and installing temporary sedimentation tanks;
- Mobilizing the drill rig and drilling the slant well through the vault;
- Developing the slant well and conducting initial pumping and aquifer tests;
- Installing electrical conduit, cable, electrical panel, and telemetry system;
- Completing the slant well by removing above-grade casing, installing submersible pump, and making final electrical and piping connections;
- Demobilizing all construction equipment; and,
- Re-grading the CEMEX accessway as needed.

These activities would occur primarily during daylight hours between Monday and Friday, although development of the test slant well will require continuous drilling operations for up to 72 hours. Construction will occur outside the Western snowy plover nesting season, which runs from February 28 to October 1 each year.

The second phase of the project includes continuous well operations for up to 24 months at volumes ranging from about 1,000 gallons per minute (“gpm”) to 2,500 gpm. Operators will visit the site on a weekly basis to collect water samples and to check pumping operations. At one point during the 24 months of testing, operators will reposition the packer device within the well that isolates one aquifer from the other. This involves removing and replacing the pump and packer device, which would occur over about a three-day period.

At the end of testing, Cal-Am would decommission and remove the test well and related infrastructure. The wells would be sealed pursuant to requirements of the California Well Standards Bulletin 74-81 and the Monterey County Environmental Health Bureau. Monitoring well components would be removed to at least five feet below ground surface (“bgs”) and the slant well components would be removed to at least 40 feet bgs. Decommissioning is expected to take about four weeks and would occur outside the Western snowy plover nesting season.

Project Objectives

The main project purpose is to develop the data needed to determine the overall feasibility, available yield, and hydrogeologic effects of extracting water from this site that might be used by Cal-Am’s separately proposed desalination facility. The CEMEX site is at the western edge of the currently mapped extent of the Dune Sand Aquifer and the 180-Foot Aquifer, and the test well would intercept what is believed to be the seaward extension of two aquifers.

The aquifers extend some distance eastward and have been subject to seawater intrusion that has reduced the volume and quality of water from wells further inland. The known area of seawater intrusion extends along about ten miles of the Bay shoreline and up to about five miles inland, with all known existing wells within two miles of this test well site having already experienced seawater intrusion.² The rate of seawater intrusion in this area has been estimated at about 14,000 acre-feet per year.³ The test well would be centrally located along this shoreline area and, at its maximum pumping rate of 2,500 gallons per minute, would pump about 4,000 acre-feet per year.

Water quality data collected from nearby areas over the past several years show that both aquifers exhibit relatively high salinity levels and that there is not an aquitard separating the two. More recently, Cal-Am drilled test boreholes at several locations between Marina and Moss Landing earlier this year, including six at the CEMEX site. Testing and modeling using data

² See Monterey Bay National Marine Sanctuary, *Environmental Assessment for the California American Water Slant Test Well Project*, Section 6.1.2 – Water Supply and Quality, June 2014.

³ See Monterey County Water Resources Agency, *Monterey County Groundwater Management Plan*, Chapter 3 – Basin Description, pages 3.14 & 3.15, May 2006.

from those boreholes suggest that using wells at this location would be a feasible method to use the two aquifers as conduits to extract water through the seafloor beneath Monterey Bay.⁴ Data from the proposed slant well tests will be used to confirm or correct this modeling and analysis.

Cal-Am plans to construct the well with screening that will allow it to pump from each aquifer separately, which will help identify the degree of connectivity between the aquifers, the available yield, and the potential effects on the aquifers. Without such tests, the hydrogeology near the site and in the area will not be adequately characterized for purposes of determining the feasibility of potential full-scale wells and the potential benefits and impacts that would result from operating those wells.

Site History: As noted above, the proposed project site has been used for sand mining for over a century, most recently by its current owner, CEMEX. The site includes sedimentation ponds, sand mining equipment and related infrastructure, accessways, and stockpile areas, some of which have remained in relatively the same location for several decades and some of which have moved within the site due to changing production levels, shifts in the surrounding dunes, changes in sand delivery to the site from the Bay, and other factors. The Commission’s enforcement staff is investigating a potential violation regarding mining activities at the site. At this time, the investigation does not include activities within the proposed Cal-Am project footprint or involve matters pertaining to Cal-Am or the proposed Cal-Am project.

In the mid-1980s, the Monterey Peninsula Water Pollution Control Agency (“MRWPCA”) constructed an outfall that is buried along the southern portion of the site in an area that had been occupied by sedimentation ponds used in the mining operation. The outfall discharges wastewater from the MRWPCA’s treatment facility further inland to about two miles offshore.

Cal-Am’s project footprint is largely within the accessway used for sand mining and outfall construction that appears to have been at or near the same location since at least the early 1980s. Much of the footprint consists of disturbed dune habitat, though some continues to provide habitat value (see Section IV. H – Sensitive Habitat below).

B. PROJECT BACKGROUND

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, a number of water supply projects have been proposed but for various reasons have not reached fruition.

Cal-Am has provided water to the Monterey Peninsula area since 1966. Its primary source of water has been a series of wells along the Carmel River that draw water from the aquifer underlying the river. Cal-Am also shares a network of wells in the Seaside Groundwater Basin with other water users.

⁴ From Geoscience Support Services, Inc., *Monterey Peninsula Water Supply Project Hydrogeologic Investigation: Technical Memorandum (TM1) Summary of Results – Exploratory Boreholes*, prepared for California-American Water and RBF Consulting, July 8, 2014.

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 year⁵ 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 other entities that have the 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.

Around the same time, the Monterey Peninsula Water Management District (MPWMD) proposed constructing a new dam on the Carmel River; however, local voters rejected the dam's financing plan and the dam was not built. Shortly thereafter, 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, which severely limited any future consideration of dams on the river.

In 1998, state legislation directed the California Public Utilities Commission ("CPUC") to develop a water supply plan for the Monterey Peninsula that did not include a dam.⁶ In 2002, the CPUC completed its plan, known as "Plan B", which included a 9,400 AFY desalination facility at 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. Plan B then served as the basis for Cal-Am's 2004 application to the CPUC for the proposed Coastal Water Project ("CWP"), which included a desalination facility at the Moss Landing Power Plant, transmission pipelines from Moss Landing to the Monterey Peninsula, a reservoir, pump stations, and ASR facilities. During the CPUC's review, the State Water Board's Division of Water Rights in 2009 issued a Cease-and-Desist Order to Cal-Am that required Cal-Am to significantly reduce its Carmel River withdrawals by 2016, thereby increasing the urgency of selecting and constructing a water supply project.⁷ Nonetheless, several concerns were raised about the desalination facility's proposed use of a power plant open water intake and the resulting significant adverse effects on marine life, the distance of the facility from the service area and the associated increased transmission costs, and others. These concerns led to the development of alternative water supply proposals, including one developed by regional stakeholders known as the "Regional Water Project, Phase I." This alternative proposed moving the desalination facility closer to the Monterey Peninsula and using vertical and slant wells instead of an open water intake.

⁵ An acre-foot is equal to approximately 326,000 gallons of water. In the Monterey Peninsula, which has a relatively per capita water use rate compared to most of California, this would provide water for about two to four households for a year.

⁶ AB 1182 required the CPUC to consult with Cal-Am and a number of affected parties to prepare a contingency water supply plan that did not rely on a new dam.

⁷ The Order established a schedule for Cal-Am to reduce its Carmel River well water withdrawals from its 2009 volume of 10,730 acre-feet per year to no more than 3,376 acre-feet per year by 2016.

In December 2010, the CPUC certified an Environmental Impact Report for this Regional Water Project and approved several agreements among stakeholders that established project partner responsibilities regarding construction, ownership, operations, maintenance, and payments. In 2012, however, the CPUC voted to end its review of the project due to several problems and disputes.

The Monterey Peninsula Water Supply Project (“MPWSP”)

In 2013, Cal-Am and other stakeholders proposed the Monterey Peninsula Water Supply Project (“MPWSP”) as a replacement for the defunct Regional Water Project. In April 2013, Cal-Am filed an application with the CPUC for the MPWSP, which includes slant wells that would be located at the CEMEX site, a desalination facility to be located about two miles inland of the test well site adjacent to a regional wastewater treatment facility, pipelines, and the other related facilities needed to produce and deliver water to the Monterey Peninsula. The CPUC is preparing an EIR for the project, which is expected to be published in 2015.

Associated with the MPWSP is a Settlement Agreement among a number of stakeholders that establishes technical, financial, governance, and other conditions applicable to the project.⁸ Included in those conditions is agreement of the need for one or more test wells, a statement that slant wells are the preferred intake method, “subject to confirmation of the feasibility of this option by the test well results and hydrogeologic studies,” and a stated preference to locate the wells within the actively mined area of the CEMEX site.

The test slant well described in these findings is the product of Cal-Am’s MPWSP application and the Settlement Agreement. It is a necessary precursor to determining whether slant wells are feasible at this site and determining whether the MPWSP will be constructed and operated as currently proposed. Should the slant well testing be successful, Cal-Am is expected to continue with its current proposal; however, failure or difficulties with the slant well could either preclude the MPWSP from being built or require substantial changes to its current design, location, or intake method.

D. JURISDICTION

The project site is entirely within the coastal zone. Portions of the site landward of the mean high tide line are within the City of Marina’s certified LCP permit jurisdiction. The standard of review for development in that part of the site is the City’s certified LCP. Portions of the site seaward of the high tide line are within the Commission’s retained jurisdiction where the standard of review is Chapter 3 of the Coastal Act. All project components within the Commission’s retained jurisdiction would be located beneath the seafloor.

⁸ The parties to the Settlement Agreement include Citizens for Public Water, City of Pacific Grove, Coalition of Peninsula Businesses, County of Monterey, CPUC Division of Ratepayer Advocates, Landwatch Monterey County, Monterey County Farm Bureau, Monterey County Water Resources Agency, Monterey Peninsula Regional Water Authority, Monterey Peninsula Water Management District, Monterey Regional Water Pollution Control Agency, Planning and Conservation League Foundation, Salinas Valley Water Coalition, Sierra Club, and the Surfrider Foundation.

The City's certified LCP consists of its Local Coastal Land Use Plan (LCLUP) and its Local Coastal Program Implementation Plan (LCPIP). The relevant policies and measures of these documents are codified in the Chapter 17.41 of the City's Municipal Code under "Coastal Zoning" and are implemented through requirements and development standards identified in the Ordinance.

Other Agency Approvals & Consultations

The project is additionally subject to the following discretionary permits and approvals:

- **Monterey Regional Water Pollution Control Agency (MRWPCA):** authorization for connection and use of MRWPCA's ocean outfall.
- **State Lands Commission:** lease of state tidelands.
- **Central Coast Regional Water Quality Control Board:** a new or modified National Pollution Discharge Elimination System ("NPDES") Permit.
- **Monterey Bay National Marine Sanctuary:** authorization to allow discharge into Sanctuary waters and drilling and disturbance of submerged lands within the Sanctuary.⁹

Landowner approval: The project will be subject to landowner approval from two entities – CEMEX for the land-based portion of the project, and the State Lands Commission, for the portion of the slant well that would extend beneath state tidelands.

Regarding CEMEX, Cal-Am has been negotiating terms of a lease of CEMEX lands for the past several months. The lease terms have not yet been agreed to; however, Cal-Am, as a regulated utility under State law, has the power of eminent domain. In September 2014, Cal-Am filed an eminent domain suit with the intent of acquiring timely access to the site.¹⁰ The initial hearing for that suit is scheduled for October 31, 2014. To ensure Cal-Am has the property interest necessary for its proposed test slant well project, **Special Condition 1** requires it to provide proof of legal interest prior to starting construction. In addition, and as authorized by Coastal Act Section 30620(c)(1),¹¹ **Special Condition 2** requires Cal-Am to reimburse the Commission for any costs or attorneys fees the Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee challenging the approval or issuance of this permit.

⁹ The Sanctuary is serving as lead agency under the National Environmental Policy Act ("NEPA") and has prepared a June 2014 Draft Environmental Assessment as part of its NEPA obligations.

¹⁰ Cal-Am's suit, in Monterey County Superior Court, involves two actions – an *Ex Parte* Application for Prejudgment Possession and a Petition for Entry.

¹¹ Coastal Act section 30620(c)(1) states:

The commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of an application for a coastal development permit under this division and, except for local coastal program submittals, for any other filing, including, but not limited to, a request for revocation, categorical exclusion, or boundary adjustment, that is submitted for review by the commission.

See also 14 C.C.R. Section 13055(e).

Regarding the lease from the State Lands Commission, Cal-Am is expecting its lease application to be heard at the State Lands Commission December 2014 hearing. Although Cal-Am has not yet obtained the approval needed to conduct the project beneath state tidelands, its test slant well drilling activities would not occur within State Lands jurisdiction for the first several weeks of the project – that is, it will take several weeks of site preparation, staging, and drilling before the well would reach areas beneath state tidelands. **Special Condition 1** therefore requires Cal-Am to provide proof of that approval before the slant well extends past the mean high tide line at the site and into State Lands jurisdiction. Cal-Am has acknowledged the risk of starting the project before obtaining this approval and recognizes that the approval might not be granted. However, should approval be granted, this approach will allow Cal-Am to start work and complete the well, presuming State Lands Commission approval, before the work closure imposed due to the Western snowy plover nesting season, which runs from February 28 to October 1 of each year. These Findings discuss this issue in more detail below in Section IV. H – Protection of Sensitive Habitat Areas.

E. SUBSTANTIAL ISSUE

Appeal Jurisdiction and Procedures

Coastal Act Section 30603 provides for the appeal to the Coastal Commission of certain CDP decisions in jurisdictions with certified LCPs. Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue is raised with respect to the grounds on which the appeal has been filed. The staff is recommending substantial issue, and unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to the *de novo* portion of the appeal hearing at the same or subsequent meeting, without taking public testimony regarding the substantial issue question. However, if three Commissioners object to the substantial issue recommendation, the Commission will hear arguments and vote on the substantial issue question. The only persons qualified to testify before the Commission on the substantial issue question are the applicant, local government, and persons (or their representatives) who opposed the application before the local government. Testimony from other persons regarding the substantial issue question must be submitted in writing. It takes a majority of Commissioners present to find that no substantial issue is raised.

Unless the Commission determines that the project raises no substantial issue, the Commission will conduct a full *de novo* public hearing on the merits of the project at the same or subsequent hearing. If the Commission conducts a *de novo* hearing on the appeal, the applicable test under Coastal Act Section 30604 is whether the development is in conformance with the certified Local Coastal Program. In addition, for projects located between the sea and the first public road paralleling the sea, Coastal Act Section 30604(c) requires that a finding that the development conforms to the public access and public recreation policies of Chapter 3.

Denial of a major public works facility: Coastal Act Section 30603(a)(5) provides that appeals may be filed for local government decisions to approve or deny proposed major public works projects. Coastal Act Section 30114(a) defines “public works” as including: “All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities.” The Commission’s regulations, at

14 CCR Section 13012(a) define “major public works” as those facilities that cost more than \$100,000, adjusted yearly based on the Construction Cost Index. As of 2012, a public works project must cost slightly less than \$240,000 to be considered a “major public works.”

Cal-Am is subject to the jurisdiction of the Public Utilities Commission, its proposed test slant well project involves the production, transmission, and recovery of water, and its stated project costs are greater than five million dollars. Pursuant to the above-reference provisions of the Coastal Act and the Commission’s regulations, the City’s action was therefore a denial of a major public works project and Cal-Am may appeal the City’s decision to the Commission.

Section 30603(b)(2) provides that the grounds for appealing the denial of a permit for a major public works project are limited to an allegation that the proposed development conforms to the standards set forth in the certified LCP and the public access policies set forth in this division. Cal-Am’s contentions regarding the grounds of its appeal are described below.

Local Action

On July 10, 2014, the City of Marina (“City”) Planning Department declined to approve or disapprove a Coastal Development Permit (“CDP”) for the proposed Cal-Am test well project, and declined to certify a Mitigated Negative Declaration prepared by the City for compliance with the California Environmental Quality Act (“CEQA”). Cal-Am appealed that decision to the City Council. On September 4, 2014, the City denied the CDP and declined to certify the Mitigated Negative Declaration. The City’s Final Local Action Notice (“FLAN”) is provided in Exhibit 5.

On Friday, September 12, 2014, the Commission received the Final Local Action Notice (“FLAN”) from the City. The Commission’s appeal period started on September 15, 2014, the first working day following the date of receipt of that FLAN. In accordance with Section 13110 of the Commission’s regulations, the 10-working day appeal period ran from September 15, 2014 to September 26, 2014. On September 24, within the 10-working day appeal period, Cal-Am filed a valid appeal of the City’s denial. In accordance with Section 13112 of Title 14 of the California Code of Regulations, staff requested that the City provide all relevant documents and materials regarding the local coastal development permit action. The documents and materials relating to the City’s approval of the local coastal development permit are necessary to analyze whether a substantial issue exists with respect to conformity of the City’s approval with the relevant policies of the certified LCP. Pursuant to Coastal Act Section 30261, the appeal must be heard within 49 days from the date that the appeal is filed unless the appellant waives that 49-day period. This appeal period runs until November 12, 2014.

Substantial Issue Standard of Review

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulations simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission has been guided by factors that include the following:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the certified LCP and with public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretation of its LCP; and,
5. Whether the appeal raises only local issues or those of regional or statewide significance.

If the Commission chooses not to hear an appeal, the appellant nevertheless may obtain judicial review of the local government’s coastal permit decision by filing a petition for a writ of mandate pursuant to California Code of Civil Procedure Section 1094.5.

Substantial Issue Determination

Summary of Appellant’s Contentions: In its appeal, Cal-Am asserts that its proposed project is consistent with relevant provisions of the City’s certified LCP. It contends both that the City made no findings showing that the proposed project would be inconsistent with applicable LCP policies or would interfere with coastal access, and that its proposed project is fully consistent with the applicable policies. These contentions, and the Commission analysis of each, are described in more detail below.

1. **Cal-Am contends the City did not make findings of LCP inconsistency:** As noted above, the City held two hearings – one on July 10, 2014 with the City’s Planning Department and one on September 3 and 4, 2014 with the City Council. In both, the City considered certifying the City’s Initial Study/Mitigated Negative Declaration, which it had prepared pursuant to its lead CEQA agency requirements for the proposed project, and considered issuance of a CDP. At the Planning Department hearing, the City declined to certify the IS/MND, but it neither approved nor denied the CDP application. Cal-Am then appealed the Planning Commission’s action to the City Council. At the City Council hearing, the City Council adopted a resolution to reject the IS/MND and to deny the CDP application (see Exhibit 7).

At the two hearings, neither the Planning Department nor the City Council adopted findings regarding the proposed project’s conformity or non-conformity to the LCP or the Coastal Act’s public access policies. The City’s CEQA findings stated that it was unable to determine that the project would not have a significant adverse environmental effect and that the draft IS/MND did not reflect the independent decision of the City. The City’s CDP findings stated that “based upon the above conclusions regarding CEQA, the City is unable to approve the Project...” In reviewing the City’s record, the Commission determines that the City did not make findings that support its denial of the CDP due to any inconsistency of the project with relevant LCP and Coastal Act policies.

2. **Cal-Am contends that its project is fully consistent with relevant LCP and Coastal Act policies:** In its appeal, Cal-Am notes that the City's staff and outside expert consultants determined that, with conditions, the proposed project would meet relevant LCP requirements. The recommended conditions addressed a number of issue areas, including coastal erosion, sensitive habitat, visual impacts, and others (see Exhibit 8 – Cal-Am Mitigation Measures). In its staff report, City staff identified those conditions as allowing the proposed project to conform to relevant provisions of the LCP and recommended that the City conditionally approve the CDP. As noted above, however, the City did not adopt any of the conditions, nor did it make any determination that the project was in any way inconsistent with relevant LCP provisions or the Coastal Act's public access policies.

Substantial Issue Conclusion: With the lack of City findings showing that the project does not conform to relevant LCP and Coastal Act public access provisions, the Commission finds that there is insufficient factual and legal support for the City's denial of the proposed test well. The appeal raises significant regional concerns, as the data that will be produced by the test well are needed to assess the feasibility, location and design of a desalination facility that is intended to address regional water shortages. It is also a poor precedent for the City to deny a CDP without making any findings as to why the proposed project does not conform to the City's LCP. In addition, while the project is not expected to impact a significant portion of the CEMEX site, it will be constructed in areas that are within primary habitat, so significant coastal resources will be affected by the proposed project. Thus, these four factors all weigh strongly in favor of a finding of substantial issue. Conversely, the extent and scope of this project are fairly minor, as project construction is expected to adversely affect less than one acre and the test well is proposed to operate for only two years, so this one factor weighs more towards a finding of no substantial issue. However, four of the five substantial issue factors weigh heavily in favor of a finding of substantial issue, so when all five factors are taken together, the Commission finds that the appeal raises substantial issue regarding conformity to the LCP and to the Coastal Act's public access policies.

F. COASTAL DEVELOPMENT PERMIT DETERMINATION

The proposed test slant well would be located both within the City of Marina's LCP jurisdiction and within the Commission's original jurisdiction, as portions of the project would extend seaward of the Monterey Bay mean high tide line. Because the Commission found that the City's denial of the portion of the project within the City's jurisdiction raises a substantial issue, the Commission reviews that portion of the project *de novo*. In addition, Cal-Am has applied for a CDP for the portion of its project within the Commission's retained jurisdiction. The findings below address both portions of the project, using the Coastal Act as the standard of review for those parts of the project within the Commission's retained jurisdiction and using the City's LCP and Coastal Act public access and recreation policies as the standard of review for the portions within the City's LCP jurisdiction.

G. PUBLIC ACCESS AND RECREATION

LCLUP Policy 1 is:

To insure access to and along the beach, consistent with the recreational needs and environmental sensitivity of Marina's Coastal area.

LCLUP Policy 2 is:

To provide beach access and recreational opportunities consistent with public safety and with the protection of the rights of the general public and of private property owners.

LCLUP Policy 3 is:

To provide beach access in conjunction with the new development where it is compatible with public safety, military security and natural resources protection; and does not duplicate similar access nearby.

The LCLUP's "North of Reservation Road Planning Area" requires that proposed development consider:

Retention of uninterrupted lateral access along the sandy beach frontage.

Protect and continue to provide public access from the nearest public roadway to the ocean.

Structures necessary for the functioning of any Coastal Conservation and Development use (e.g., dredgelines, sewer outfall lines) may cross the sandy beach designated Park and Open Space provided lateral beach access is not significantly blocked.

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.

Coastal Act Section 30214 states, in relevant part:

- (a) *The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:*
- (1) *Topographic and geologic site characteristics.*
 - (2) *The capacity of the site to sustain use and at what level of intensity.*
 - (3) *The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
 - (4) *The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

Coastal Act Section 30221 states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

LCP and Coastal Act policies require generally that development located adjacent to the shoreline in areas with public use not interfere with that use and provide access to the shoreline. The project site consists of an industrial facility with restricted access; however, it is adjacent to shoreline areas that provide lateral public access to the shoreline and recreational opportunities.

All project work will occur at some distance from the shoreline and is not expected to affect lateral beach access. The well drilling and support activities will be set back approximately 450 feet from the mean high tide line, with no activities or structures on the beach itself. Activities to connect the well discharge pipe to the existing outfall will be about 250 feet from the shoreline. Drilling beneath the beach will occur several dozen feet below the ground surface and is not expected to affect or limit ongoing beach access. Therefore, the project activities are expected to be consistent with, and not conflict with the above policies, as they will not require structures across the beach that would inhibit public access and will not impede beach users.¹² Additionally, the bulk of project-related activities will occur during non-peak recreational use in the area, which will further reduce any potential access effects. Further, the project need not provide additional access, as it will be temporary, it is not expected to cause adverse effects to access, it is located within an existing industrial area with restricted access, and it is in an area where suitable access exists, particularly given the highly valued nearby habitat where increased access may not be appropriate.

Conclusion

Based on the above, the Commission finds that the project, as conditioned, conforms to the relevant public access and recreation policies of the LCP and the Coastal Act.

¹² As described below in Section IV.J – Coastal and Geologic Hazards, an extreme erosion event during the slant test well's expected operating life could expose some of the subsurface well casing. **Special Condition 6**, which is meant to address this potential coastal hazard, would also alleviate any effects on public access.

H. PROTECTION OF SENSITIVE HABITAT AREAS

Relevant LCP Provisions

LCLUP Policy 19:

Promote reclamation and protection of native dune habitat and vegetation.

LCLUP Policy 25:

Protect the habitat of recognized rare and endangered species found in the Coastal dune area.

LCLUP Policy 26:

Regulate development in areas adjacent to recognized rare and endangered species or their habitats so that they will not threaten continuation of the species or its habitat.

LCLUP Policy 41:

Give priority to coastal-dependent development on or near the shoreline and to ensure environmental effects are mitigated to the greatest extent possible.

LCLUP Exhibit A states:

Primary habitat. *This term includes all of the environmentally sensitive habitat areas in Marina. These are as follows:*

- 1. Habitat for all identified plant and animal species which are rare, endangered, threatened, or are necessary for the survival of an endangered species. These species will be collectively referred to as “rare and endangered.”*
- 2. Vernal ponds and their associated wetland vegetation. The Statewide Interpretive Guideline for Wetlands and Other Wet Environmentally Sensitive Habitat Areas (California Coastal Commission, February 14, 1981) contains technical criteria for establishing the inland boundary of wetland vegetation.*
- 3. All native dune vegetation, where such vegetation is extensive enough to perform the special role of stabilizing Marina’s natural sand dune formations.*
- 4. 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. [Resolution No. 2001-118 (October 16, 2001); approved by CCC November 14, 2001]*

Secondary habitat. *This term refers to areas adjacent to primary habitat areas within which development must be sited and designed to prevent impacts which would significantly degrade the primary habitat. The secondary habitat area will be presumed to include the following, subject to more precise determination upon individual site investigation:*

1. *The potential/known localities of rare and endangered plant species as shown on LUP p. 71 (“Disturbed Vegetation” map).*
2. *The potential wildlife habitats as shown on LUP p. 75 (“Potential Wildlife” map).*
3. *Any area within 100 feet of the landward boundary of a wetland primary habitat area.*

Rare and endangered species. *This term will apply to those plant and animal species which are rare, endangered, threatened or are necessary for the survival of such species. The Environmental Analysis Report prepared for the Marina Local Coastal Program identified such species in the dune habitat areas. While future scientific studies may result in addition or deletion of species, the list presently includes:*

1. *Smith’s Blue Butterfly (Shijimiaeooides enoptes smithi)*
 2. *Globose Dune Beetle (Coelus globosus)*
 3. *Black Legless Lizard (Anniella pulchra nigra)*
 4. *Salinas Kangaroo Rat (Dipodomys Heermanni Goldmani)*
 5. *Seaside Painted Cup (Castilleja latifolia ssp. Latifolia)*
 6. *Monterey Spine Flower (Chorizanthe pungens var. pungens)*
 7. *Eastwood’s Ericameria (Ericameria fasciculata)*
 8. *Coast Wallflower (Erysimum ammophilum)*
 9. *Menzies’ Wallflower (Erysimum menziesii)*
 10. *Coastal Dunes Milk Vetch (Astragalus tener var. titi)*
 11. *Dune Gilia (Gilia tenuiflora var. arenaria)*
 12. *Wild Buckwheat (Eriogonum latifolium)**
 13. *Wild Buckwheat (Eriogonum parvifolium)**
 14. *Bush Lupine (Lupinus ssp.)+*
- * only within the range of Smith’s Blue Butterfly.*
+ only within the range of the Black Legless Lizard.

LCLUP Habitat Protection Policies include:

- *Before any use or change in use, areas identified as potential habitat for rare and endangered plant or animal species shall be investigated by a qualified biologist to determine the physical extent of the primary habitat areas for the specific rare and endangered plants and animals on that site.*
- *Primary habitat areas shall be protected and preserved against any significant disruption of habitat values and only uses dependent on those resources shall be allowed within those areas. 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 fully 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.*
- *Potential secondary or support habitat areas to the primary habitats identified on the site should also be defined. Secondary habitat investigation should include identification of the role and importance of the secondary area to the primary habitat area and should stress the impact of use or development in the secondary area on the*

primary habitat. All development in this area must be designed to prevent significant adverse impacts on the primary habitat areas. In concert with State law, City ordinances shall require environmental review and appropriate mitigation of identified impacts for all development in the Coastal Zone, 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.

- *Available evidence indicates that dune vegetation is more resilient than previously thought, and areas damaged by illegal use or negligence shall be considered restorable and eligible for restoration.*
- *Where habitats of rare and endangered species are located on any parcel, owners and/or operators shall, at such time that development is proposed, develop and execute a Management Plan which will protect identified rare and endangered plant and animal communities. Each plan shall be drawn up by a qualified biologist in cooperation with the property owner/developer.*

LCLIP Regulations for Coastal Conservation and Development District Policy (b)(2)

Regulations for coastal conservation and development uses shall be specified in the Coastal Development Permit. The permit-issuing body may approve Permit applications if the following factors, where relevant, are found to apply: ...

- b. Development is limited to already-disturbed areas.*
- c. Rare and endangered plant and animal habitats are adequately protected*
- d. Grading and roadway construction and are the minimum necessary for the development. ...*
- g. All significant adverse environmental effects are either avoided or adequately mitigated.*

Analysis

City of Marina Sand Dunes: Coastal sand dunes constitute one of the most geographically constrained habitats in California. They only form in certain conditions of sand supply in tandem with wind energy and direction. Dunes are a dynamic habitat subject to extremes of physical disturbance, drying, and salt spray, and support a unique suite of plant and animal species adapted to such harsh conditions. Many characteristic dune species are becoming increasingly uncommon. Even where degraded, the Coastal Commission has typically found this important and vulnerable habitat to be ESHA due to the rarity of the physical habitat and its important ecosystem functions, including that of supporting sensitive species.

The sand dunes within the City of Marina include a number of plant and animal species of special concern that have evolved and adapted to the desiccating, salt-laden winds and nutrient poor soils of this area. The best known of these native dune plants are the Menzie's wallflower and the Monterey spineflower, both of which have been reduced to very low population levels through habitat loss. The native dune vegetation in the vicinity of the project also includes other dune species that play a special role in the ecosystem; for example, the coast buckwheat, which hosts the Federally-endangered Smith's blue butterfly.

Site Specific Resources: Consultants for the applicant have conducted several biological studies of the site. Biological investigations conducted in 2013 identified several special-status species present within or near the proposed project area.¹³ These include:

- **Monterey spineflower** (*Chorizanthe pungens* var. *pungens*), an annual herb listed as federally threatened under the Endangered Species Act (ESA). At the time of the 2013 survey, individual plants were identified within the overall proposed project boundary, but not within the area expected to be disturbed during the project.
- **Smith's blue butterfly** (*Euphilotes enoptes smithi*), a federally endangered species dependent on two vegetation species – coast buckwheat (*Eriogonum latifolium*) and seacliff buckwheat (*E. parvifolium*) – that grow in these coastal dunes. The butterfly is active from mid-June to early September each year. The most recent surveys documenting the presence of the butterfly were done in the mid-1990s; however, the project area is still considered to support the butterfly as the more recent 2013 biological survey identified numerous coast buckwheat plants along the proposed project's general alignment, but not within the project's anticipated area of disturbance.
- **Western snowy plover** (*Charadrius nivosus*), listed as threatened under the federal ESA and is considered a Species of Special Concern by the CDFW. The shoreline along the project site is within designated critical habitat for the species. The CEMEX site provides nesting habitat for the plover, with recent evidence of successful nesting. Most nests have been located between the shoreline and the base of the foredunes, though some have been adjacent to the project area. Cal-Am's proposed project construction activities would occur outside of the breeding and nesting period, which runs from February 15 to September 1 of each year.
- **California legless lizard** (*Anniella pulchra*), considered a Species of Special Concern by the CDFW. The species lives beneath the dune surface in the project area and forages beneath leaf litter and sand for insects and other invertebrates. No lizards were identified in the biological surveys, but this species is active in the overall dune complex, primarily in areas with some vegetative cover which provides a means for temperature regulation as well as insects for foraging. The relatively unvegetated project area is thus less likely to attract this species, and adverse impacts appear unlikely.

Other special-status species are known to occupy nearby areas, though were not identified within the project footprint during these most recent surveys. As noted in the LCP, these include the Globose Dune Beetle (*Coelus globosus*), Salinas Kangaroo Rat (*Dipodomys Heermanni Goldmani*), Seaside Painted Cup (*Castilleja latifolia* ssp. *Latifolia*), Eastwood's Ericameria (*Ericameria fasciculata*), Coast Wallflower (*Erysimum ammphilum*), Coastal Dunes Milk Vetch (*Astragalus tener* var. *titi*), Dune Gilia (*Gilia tenuiflora* var. *arenaria*), Wild Buckwheat (*Eriogonum latifolium*), and Bush Lupine (*Lupinus* ssp.).

¹³ See, for example, Zander Associates, *Technical Memorandum, Biological Resources Assessment MPWSP Temporary Slant Test Well Project*, 2013, and Zander Associates, *Biological Assessment for the MPWSP Temporary Slant Test Well Project, Marina, California*, 2013.

Location of the Proposed Project: The project would be located in an area of coastal dunes that are part of the southern Monterey Dune complex that extends roughly unbroken some 20 miles from Monterey Harbor to the Pajaro River. The project area itself is located on the approximately 400-acre CEMEX dune property that is located about a mile north of the roughly 1,000 acre Fort Ord Dunes State Park. A portion of the CEMEX property has been the site of sand mining operations since 1906, with ongoing sand mining taking place in the area generally seaward of the proposed project site. The dune areas at this location are continually subject to naturally-occurring changes due to winds, shifting sands, changes in vegetation types and locations, and other similar events. These natural modifications help determine the presence or absence of particular species or habitat value at a particular location on a relatively short, and often shifting, timescale. There may be relatively higher resource values in any one area at any one time (e.g., certain plants and animals are found in a particular area), but natural processes and shifts can move such values around in the dune areas, so dune resource values tend to be best understood in terms of the overall complex of dunes of which they are a part.¹⁴

Approximately 104 acres of the CEMEX property have experienced some level of disturbance due to past sand mining activities, although current activities are now confined to a much smaller area. The test well project would involve about 0.75 acres of ground disturbance within the footprint of a compacted sand dune area that CEMEX intermittently uses to access its active mining area near the beach. The proposed test well area is also adjacent to the outfall from the Monterey Regional Water Pollution Control Agency's ("MRWPCA's") wastewater treatment facility, which is located several miles inland. The outfall, built in the mid-1980s pursuant to CDP #80-80, is buried along the southern boundary of CEMEX's remaining sand processing and operations area. That CDP required the outfall to be built in a previously disturbed portion of the dunes on the CEMEX site, and to avoid dune vegetation and more stabilized dune areas. Both that CDP and an associated easement anticipate that the dune area where the outfall line is located will be subject to disturbance should the outfall need to be repaired – for example, the easement states that entry will be allowed for "necessary repair, maintenance and replacement" of the outfall.

The location and intensity of some of CEMEX's activities have changed over the past several decades, though some areas appear to have been in relatively constant use during that period. This is illustrated in Exhibit 6, which provides aerial photographs of the site taken in 1972 and 2013. The disturbed and compacted sand dune area within the proposed test well footprint has remained relatively unvegetated, at least in part due to CEMEX using the area for access to and from its dredge pond area near the beach. CEMEX (and previous mine operators), have used a number of different access routes across the dunes in response to shifting dunes, and/or due to the use or disuse of nearby areas for mining or stockpiling materials, but the bare sand access route in which the proposed project would be located can be seen in air photos extending back several decades. Ongoing sand mining and processing operations appear to have also contributed to invasive vegetative species dominating many parts of the CEMEX site, particularly iceplant (*Carpobrotus* spp.). In some areas, the thick cover of iceplant has helped prevent establishment or re-establishment of native species.

¹⁴ See, for example, the Commission's approach to dune protection in the Asilomar Dunes area of Monterey County in downcoast Pacific Grove and the Del Monte Forest.

Definition and Designation of Habitat as Primary or Secondary: The LCP describes the levels of habitat protection expected in the City’s coastal zone and the allowable uses within those areas. The LCP establishes two categories of sensitive habitat areas – primary habitat and secondary habitat. The LCLUP definition of primary habitat includes four types of habitat, and if the habitat meets any of these four descriptions it is classified as primary. As relevant to this project, habitat is primary if it provides habitat for rare, endangered or threatened plant and animal species or if such habitat is necessary for the survival of an endangered species.¹⁵

Secondary habitat is defined as areas adjacent to primary habitat within which development must be sited and designed to prevent impacts that would significantly degrade primary habitat. The LCP includes maps of areas presumed to be secondary habitat, subject to a more precise determination when a site-specific biological study is undertaken (see Exhibit 7 – LUP Least Disturbed Dune Habitat Map).¹⁶ Although difficult to read, the LCP mapped potential secondary habitat areas appear to include a large area of dune within the City of Marina, including much of the CEMEX site and many of the areas identified therein as subject to past sand mining activities.

It is important to note that all of the cited LCP policies, as well as all that are included within the City of Marina’s LCP, derive from the authority of the Coastal Act. The Coastal Act definition of Environmentally Sensitive Habitat (ESHA) is similar to the first description of primary habitat included in the LCLUP. Coastal Act Section 30107.5 defines environmentally sensitive habitat as: “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.” The LCP definition of primary habitat must be read to be consistent with that in the Coastal Act.¹⁷

The majority of the grading and other disturbance proposed as part of this project will take place in an area that has historically been used as an access route for equipment accessing the CEMEX dredge pond area near the immediate shoreline. As noted above, this area consists of compacted and unvegetated sand dunes that have been disturbed by CEMEX’s (and predecessor’s) activities for many years. Adjacent dune areas support more vegetation, including the Monterey

¹⁵ Because the area of the proposed project essentially lacks dune vegetation, the primary habitat criteria linked to the presence of dune vegetation does not apply in this instance.

¹⁶ The LCLUP policies regarding Rare and Endangered Species: Habitat Protection begin with the following statement: “In Marina’s Coastal Zone, the foredune, dune and grassy inland areas all contain potential habitat for rare and endangered plants and animals. The precise range for each plant and animal is not known because intensive site-specific study throughout the area was not financially possible. However, the potential for various rare and endangered habitats has been identified and mapped (see Environmental Capability section) to provide a guide to the locations where more intensive study is required. Because site-specific study is needed in many areas before any development can take place the following policies apply to all of the areas indicated on the map or meeting the definitions of Exhibit “A” as being potential habitats for rare and endangered plants and animals.”

¹⁷ The LCP derives its statutory authority from the Coastal Act, and all of its provisions, including the policies above, must be read consistent with and understood to conform to the Coastal Act as a matter of law (*McAllister v. California Coastal Commission*, (2009) 169 Cal.App.4th 912, 931).

spineflower, a federally-threatened species, and other native species, as well as considerable areas dominated by non-native iceplant.

The most recent biological survey of the site was undertaken by the applicant's consultant in September of this year. The applicant's biologist mapped the subject site and nearby areas, including locations of then identified rare, threatened or endangered species and the proposed project footprint (See Exhibit 10 – LCP Primary and Secondary Habitat Delineation). The applicant's biologist determined that the area in which the project is proposed is adjacent to primary habitat that currently supports native vegetation, including the Monterey spineflower, a federally-endangered species. It concludes, however, that the area within the project footprint should be categorized as secondary, not primary, habitat. This conclusion was based on the applicant's biologist's determination that the project would lie within areas used by CEMEX in support of its mining activities, so the biologist determined the area was so disturbed as to no longer qualify as primary habitat.¹⁸

The Commission's senior staff ecologist, Dr. John Dixon, disagrees with this determination. While Dr. Dixon has not had an opportunity to visit this site himself, given the short 49-day period between the filing of this appeal and the required hearing on the appeal, he has reviewed the relevant reports and photos of the site and, in particular, photos of the compacted sand access area in which much of the development would take place.

Dr. Dixon based his opinion on the following considerations. While the degraded dune habitat that will be adversely impacted by this project is not currently supporting the growth of native dune plants, as with other degraded dune habitat in California, it is an extremely rare physical habitat type. The substrate is comprised of the same type of sand that makes up the adjacent dunes, is contiguous with more undisturbed dune fields, and is subject to the same physical forces. If left undisturbed the degraded habitat would soon begin to develop more typical dune morphology and would be colonized by dune biota, including as even bare dune areas are known to include native dune species seed stock that is buried and just waiting for the right combination of physical forces to germinate and express aboveground. That Monterey spineflowers and snowy plover nests have been identified within and adjacent to the proposed project area is also testimony to the fact that this degraded and historically manipulated habitat is still a sand dune; and it could support other rare or threatened species if not continuously disturbed.

The City's LCP acknowledges that dune habitat is more resilient than was once thought, and it has been the Commission's experience that this statement has been borne out in other circumstances that show that even degraded dunes can provide habitat for rare and threatened dune species.¹⁹ The LCP also requires that the reclamation and protection of native dune habitat be promoted, and that habitat for rare and endangered species, such as this dune habitat, must be protected (LCP Policies 19 and 25). As noted above, dune habitat is a particularly rare and valuable type of habitat in California's coastal zone. The Commission has in many past cases

¹⁸ See Michael Baker International, *LCP Primary and Secondary Habitat Delineation*, received in Coastal Commission offices via email on October 10, 2014.

¹⁹ See the fourth paragraph of the LCLUP Habitat Protection Policies.

found degraded dune habitat to constitute ESHA.²⁰ Thus, interpreting the definition of primary habitat consistent with the Coastal Act, the Commission finds that the area in which the proposed project would be located constitutes ESHA and meets the first description of primary habitat under the LCP.

This interpretation of the LCP and the definition of primary habitat is further supported by the structure of the LCP and Coastal Act habitat policies. The Coastal Act ESHA protection policies in Section 30240 state:

(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.

The LCP limits development in primary habitat to uses dependent on the resource, just as the Coastal Act limits development in ESHA to such uses.²¹ The LCP definition of primary habitat must therefore be read consistent with the Coastal Act definition of ESHA, as the Commission had to certify the LCP to be consistent with the Coastal Act so that the habitat in which only resource dependent uses are allowed would be at least as restrictive in the City's LCP as it is in the Coastal Act.

This interpretation is also consistent with the LCP's definition of secondary habitat and uses allowed in secondary habitat, as development of secondary habitat includes protections that are similar to those required in Coastal Act Section 30240(b) for areas adjacent to ESHA. For example, LCLUP Habitat Protection Policy 3 requires that all development in secondary habitat must be designed to prevent significant adverse impacts on primary habitat, just as 30240(b) requires development adjacent to ESHA to be sited and designed to prevent impacts which would significantly degrade ESHA.

As noted above, the LCP limits uses within primary habitat to those dependent on the resources. Any development within those areas is limited to that which is sited and designed to not interfere with the natural functions of the habitat. The LCP also requires that all adverse effects in primary habitat be fully mitigated. Although the project is proposed to be located in portions of the CEMEX site that have been subject to disturbance, the entire area in which the project would be located is primary habitat and ESHA under the LCP. The proposed project is not a resource-dependent use, so it cannot be approved consistent with the LCP's habitat protection policies.

²⁰ See, for example, Commission actions in the Asilomar Dunes system (including Youssef (CDP 3-11-068) and Goins (CDP 3-11-020)), City of Grover Beach LCP Amendment 1-12, Part 1 (Grover Beach Lodge), Koligian (Commission denial of CDP application A-3-PSB-10-062), and California Department of Parks and Recreation (CDP 3-11-003)

²¹ LCLUP Habitat Protection Policy Paragraph 2.

Conclusion

Based on the discussion above, the Commission finds that the project, as proposed, does not conform to the Habitat Protection policies in the City's LCLUP. However, because the proposed project is considered a "coastal-dependent" industrial facility and the LCP designates coastal-dependent industrial uses as appropriate uses on this site, consistent with Coastal Act Section 30260, such uses may be approved despite inconsistencies with other LCP policies. The analysis and findings related to Section 30260 are provided below in Section IV. O of these Findings.

I. PROTECTION OF COASTAL WATERS AND MARINE RESOURCES

LCLUP Policy 16:

To insure the protection of marine resources for long-term commercial, recreational, scientific and educational purposes.

LCLUP Policy 17:

To insure protection and restoration of the ocean's water quality and biological productivity.

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.

These LCP policies require generally that development protect marine resources, ocean water quality and biological productivity.

Effects on Coastal Water Quality

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. Cal-Am specifically selected a subsurface slant well instead of an open ocean water intake to avoid the adverse entrainment and impingement effects on marine life caused by open water intakes.²² Where feasible, the use of wells rather than open water intakes is the preferred method for obtaining desalination source water, as it eliminates these types of adverse effects on marine life. Any

²² Entrainment occurs when small organisms, such as plankton, fish eggs, larvae, etc., are pulled into an open-water intake. It 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.

seawater pumped from the well will have been very slowly introduced into the underlying aquifer through the seafloor, thus harmlessly filtering out any marine life. Given the depth of the well intake screen and the area from which the well will draw in water, any effects that may occur to the overlying ocean water column or benthic habitat are expected to be imperceptible. Cal-Am's modeling of the site shows that the expected area of drawdown during its pump test could extend up to about 2,500 feet from the well. With a relatively large area within which drawdown would occur and a maximum pumping rate of 2,500 gallons per minute, the infiltration rate through the seafloor would be essentially undetectable, even if all the water came from the overlying ocean water column rather than from within the aquifer.

Effects of Construction Activities

Most construction activities would occur about 450 feet from the beach at the location of the slant wellhead where the drilling rig would operate. The closest land-based activities to the shoreline would be the work needed to connect the test well discharge pipeline to the existing outfall, which would occur about 250 feet from the shoreline. As described in the previous section of these Findings, the project footprint would occur within a relatively limited area in previously disturbed portions of the site, which will reduce potential construction-related effects. Additionally, the drilling technique Cal-Am will use for the slant well does not require the use of drilling fluids, which represents a significant reduction in potential effects – for example, there are no concerns related to the unexpected release of these fluids, known as “frac-outs.”

Drilling activity would also occur beneath the shoreline and ocean bottom, which could cause noise or vibration to propagate to the water column; however, noise and vibration levels are expected to be very low because of the intervening dozens to hundreds of feet of substrate between the drilling equipment and the water column. The potential for these levels to affect marine life is low, due in part to the relatively low sound levels resulting from drilling as compared to other sources known to cause marine life effects, such as those resulting from high-impact activities such as pile driving. Any project sounds within the water column are also expected to be at or below the levels of other ambient sounds caused by wave action, boat traffic, and other ongoing nearby sources.²³

To help ensure that project construction activities will not cause adverse effects to coastal waters, **Special Condition 3** requires Cal-Am to implement a number of Best Management Practices meant to reduce the potential that project effects will reach any nearby waters. These include requirements to remove trash and debris on a regular basis, use noise attenuation devices to limit the levels of project-related noise at nearby beaches, and others. **Special Condition 4** requires Cal-Am to prepare and submit an erosion control plan that identifies measures it will implement to reduce the potential for project-related runoff from reaching coastal waters.

Spill Prevention and Response

The project involves use of heavy construction equipment near sensitive dune habitat and coastal waters that could be adversely affected by spills of fuel or other hazardous materials. Cal-Am has included several measures in its project to reduce the potential for spills. It has incorporated

²³ See Monterey Bay National Marine Sanctuary, *Environmental Assessment for the California American Water Slant Test Well Project, Section 6.3 – Marine Biological Environment*, June 2014.

several spill prevention/response conditions developed by City staff into its project description, such as siting staging areas away from locations that have the potential to experience significant runoff during rains, maintaining cleanup materials at the project site should any spills occur, and providing training to on-site personnel regarding spill prevention and cleanup.

To further ensure the potential for spills is reduced and effective measures are implemented for any spills that do occur, **Special Condition 5** requires Cal-Am to produce a Hazardous Material Spill Prevention and Response Plan. That Plan is to identify the maximum potential spill that could occur during project activities and describe all measures that Cal-Am will implement to prevent spills and to respond to spills should they occur.

Discharge of produced well water: After testing, Cal-Am would discharge the pumped water into an outfall owned by the Monterey Regional Water Pollution Control Agency (“MRWPCA”). The outfall conveys treated wastewater from the MRWPCA’s regional wastewater treatment facility in northern Monterey County. The rate of discharge through the outfall varies significantly over the year, as the MWRPCA produces recycled water for irrigation during the agricultural growing season from February through December. The outfall’s flow rates vary from up to about 38 MGD to near zero during parts of the season. The pump test flow rates would vary between about 1,000 and 2,500 gallons per minute (gpm), or about 1.4 to 3.6 MGD. Discharge volumes from Cal-Am’s testing would therefore represent anywhere from about four percent to nearly 100% of the wastewater volumes conveyed through the outfall.

The test water discharge would be subject to requirements of the MRWPCA’s NPDES permit for the outfall. The well water is expected to be about 95-100% seawater and therefore similar to the receiving waters; however, concentrations of some constituents in subsurface seawater may be different than those contained in surface water – for example, subsurface water sometimes has higher concentrations of naturally-occurring iron or manganese. To ensure NPDES permit requirements are met, Cal-Am would install temporary sedimentation tanks at the test well site to allow solids to settle out and would test the water for several dozen constituents, such as pH, dissolved oxygen, metals, and others. The discharged water is expected to be in compliance with the NPDES permit requirements and is not expected to need further treatment to meet Ocean Plan standards. The project’s discharge is therefore not expected to cause impacts to ocean water quality. To confirm the project’s expected lack of impacts, **Special Condition 1** requires Cal-Am to submit proof of consistency with the NPDES permit and Ocean Plan from MRWPCA or the Regional Water Quality Control Board.

Conclusion

Based on the discussion above, the Commission finds that the project, as conditioned, will conform to the marine resources, water quality, and spill prevention provisions of the LCP and the Coastal Act.

J. COASTAL AND GEOLOGIC HAZARDS

The LCLUP states:

Before development is permitted in the Coastal Zone, a geotechnical report appropriate to the specific proposal shall be prepared for that development in the dunes or in the vicinity of any vernal pond. The report shall include at least geologic and seismic stability, liquefaction potential, identification of an appropriate hazard setback to protect the economic life of structures, and specific recommendations on drainage, irrigation and mitigation of identified problems. Report contents shall comply with guidelines of the California Division of Mines and Geology.

...

No new development shall be permitted which will require the construction of shoreline protection structures unless such development is in accordance with the provisions of the "Small Boat Harbor" section of this Land Use Plan, or when such structures are necessary to serve coastal dependent uses (as defined in the Coastal Act) or to protect publicly owned beaches from erosion.

The LCLUP states:

Tsunami Hazard: Tsunamis are seismic sea waves, often erroneously called "tidal waves". Because of the height and depth of the Coastal dunes in Marina, inland areas are not within the tsunami hazard zone. The areas most subject to tsunami in Marina are the sandy beaches and dunes. With an adequate tsunami warning system, there is no significant tsunami threat to beach users. Since there is little development within the tsunami run-up zone, there is little present threat. Future development should not occur in the tsunami run-up zone (on the sandy beaches and foredune area).

The LCLUP states:

Ground shaking and Liquefaction Hazard: All land in the Marina Coastal Zone is subject to potential ground shaking from earthquakes. The risk to structures is moderate and can be effectively reduced by application of the standards in the Uniform Building Code (required of all new construction). Risks to Coastal users from ground shaking are low and no special protection is needed.

Liquefaction is a condition which accompanies ground shaking when sandy soils become saturated with water. The effect is that the soil loses some of its strength to support structures. The potential for liquefaction occurring in various areas of the Coastal Zone is uncertain. Since water is an important factor in causing liquefaction, areas where there is standing water or the water table is close to the surface are more susceptible. Key among these areas are the Vernal Ponds, particularly during the wet season. However, the potential for liquefaction is highly site specific and should be determined by geotechnical investigation prior to permitting development. If development is permitted, it should be designed to account for possible ground failure.

The LCP's North of Reservation Road Planning Area requires proposed development consider:

Public safety and vulnerability to wave erosion.

Tsunami and other coastal hazards.

The LCLIP states:

Standards for Coastal Protection Structures: *Except for a few facilities associated with sand mining, there currently is little capital investment to be threatened by erosion along Marina's shoreline. The face of the dunes is subject to wave erosion, so future development shall be placed beyond the area vulnerable both to wave erosion and tsunami hazard. This setback shall be great enough to protect the economic life of the proposed development (at least 50 years) and be east of the tsunami hazard zone. The exact extent of this setback shall be determined by a qualified geologist, selected from an approved list compiled and maintained by the City. Because of variation from site to site, the setback line shall be determined at the time development of a site or parcel is proposed.*

Protective structures are not recommended in Marina; however, if they should ever be necessary, standards shall be established to insure that the type of protection, location, design and other factors are considered. In determining if it is suitable to issue a coastal permit for a shoreline structure, the following shall be addressed: (1) alternatives to a protective structure shall be determined and evaluated by appropriate specialists first; and (2) an EIR/EIS shall be required on the proposed structure. The EIR/EIS shall address specific issues of Local Coastal Land Use Plan concern, construction and maintenance. The environmental evaluation and mitigations shall be prepared by qualified specialists and shall address at a minimum the following specific issues and design considerations.

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.*

The LCP generally requires that development be sited and designed to avoid and minimize risks associated with coastal and geologic hazards. The site is subject to several of these hazards, including coastal erosion and seismic-related events such as groundshaking, liquefaction, and tsunami, each of which is addressed below.

Coastal Erosion

The site is on and adjacent to the actively eroding shoreline of Monterey Bay. Parts of the Bay shoreline exhibit the highest annual erosion rates in the state, due in part to relatively high levels of wave energy and the easily erodible sand that makes up most of the Bay shoreline. In recognition of the area's high erosion potential, the LCP requires that development be located inland of areas near the shoreline that are vulnerable to erosion.

The CPUC prepared a technical memorandum as part of its environmental review for Cal-Am's full-scale proposal that estimates the coastal erosion expected at several sites along the southern Monterey Bay shoreline through the year 2060, including the CEMEX site.²⁴ The estimates were based on computed historic erosion rates, erosion expected from sea level rise, and erosion from infrequent extreme events. For this proposed test well, a consultant hired by the City prepared an additional analysis based on that provided in the CPUC technical memorandum to determine likely erosion hazards to the test slant well during its expected operating life.²⁵ This analysis described the erosion rates in the CPUC memorandum as "worst-case," based in part on its use of the upper range of expected sea level rise and "aggressive" events such as the 100-year storm, and because it did not consider possibly beneficial effects that might result from potential beach nourishment projects or reduction of sand mining. Using what it describes as the "very conservative" CPUC analysis, the City's consultant determined that the test slant wellhead location would not be subject to erosion until sometime around 2040. The report noted, however, that if a 100-year storm event occurred during the approximately two years of the test well study, the wellhead would be close to the erosion area and potentially at risk and that erosion could expose a subsurface section of the well casing down to about -15 feet NAVD88, or about 40 feet below the wellhead (see Exhibit 11 – Expected Erosion and Future Beach Profiles). It recommends that in the event of exposure or at project completion, whichever comes first, the wellhead and at least the top 40 feet of the casing be removed. This recommendation is reflected in **Special Condition 6**, which requires Cal-Am to remove all test well-related infrastructure to a depth of no less than 40 feet below the ground surface upon exposure due to erosion or within two years of completing the test well project, whichever occurs first. **Special Condition 17** also requires Cal-Am to post a bond that is sufficient to pay for necessary removal if Cal-Am does not complete the required removal. **Special Condition 6** further requires Cal-Am to conduct monitoring at least once per week to determine whether beach erosion is likely to expose any components of the well or associated infrastructure.

In recognition of the risks associated with the project site, **Special Condition 7** requires Cal-Am to acknowledge those risks and assume any liability that may result from constructing and operating the test well at this location. Additionally, **Special Condition 8** provides that Cal-Am will not construct a shoreline protective device to protect the project and will remove any structures threatened by coastal erosion.

²⁴ ESA PWA, *Technical Memorandum – Analysis of Historic and Future Coastal Erosion with Sea Level Rise for Monterey Peninsula Water Supply Project (205335.01)*, March 19, 2014.

²⁵ See Sea Engineering, Inc., *Review of Coastal Erosion Analysis by ESA PWA (2014) for the California American Water Temporary Slant Test Well Environmental Impact Evaluation*, prepared for SWCA Environmental Consultants, April 18, 2014.

Groundshaking, Liquefaction, and Lateral Spread

The entire Monterey Bay area is seismically active. There are no known faults at the project site, though there are several nearby.²⁶ Seismic activity from these faults could damage the test well and its associated infrastructure due to groundshaking, liquefaction, or lateral spread at the site.²⁷

As required by the LCP, Cal-Am produced a site-specific geotechnical investigation for the project.²⁸ It concludes that the site could expect a maximum 7.0 earthquake, with peak horizontal ground acceleration of up to 0.572 g, liquefaction-induced settlement of up to about three inches, and lateral spread of up to about one foot in the event of the design-level earthquake. Although these maximum expected events are unlikely to occur during the relatively short-term project life, **Special Condition 9** establishes the minimum design standards that Cal-Am must use in the design and construction of the project to ensure safety and minimize risks due to these geologic hazards.

Tsunami

Portions of the CEMEX site are subject to tsunami runup, and the LCP requires that development be located inland of areas subject to tsunami hazards. The most recent (2009) California Geological Society tsunami inundation map for the area shows the potential runup area extending about two hundred feet inland from the shoreline. As noted previously, the wellhead would be set back about 450 feet from mean sea level at an elevation of about 25 feet. At that location, it is not expected to be subject to tsunami hazards during the expected project life. Nonetheless, the above-noted **Special Conditions 6 & 8** requiring removal of the test well will act to reduce the potential for the development to be affected by current or future tsunami-related hazards.

Conclusion

Based on the discussion above, the Commission finds that the project, as conditioned, will conform to the geologic and coastal hazard provisions of the LCP.

²⁶ Faults within about 20 miles of the site include the San Andreas, Reliz, Rinconada, Monterey Bay, Palo Colorado, Navy, Chupines, and Vergeles Faults.

²⁷ Liquefaction occurs when ground movement causes saturated or partially-saturated soils to lose strength and act as a liquid. It can cause settlement or displacement of overlying structures unless they are designed to resist the expected amount of liquefaction at a site. Lateral spread occurs when soils that are on flat to gently sloping surfaces above liquefiable soils and adjacent to an unsupported slope move in response to a seismic event – essentially, a landslide that occurs on nearly flat ground.

²⁸ See GeoSoils, Inc., *Geotechnical Investigation – California American Water Temporary Slant Test Well Project, Marina, Monterey County, California*, produced for SWCA Environmental Consultants, April 3, 2014.

K. ARCHAEOLOGICAL AND PALEONTOLOGICAL RESOURCES

Overview

The City's LCP does not include provisions related to the protection of archaeological resources. However, the Coastal Act provides some guidance on protection of archeological resources in the coastal zone.

Coastal Act Section 30244 states:

Where development would adversely impact archaeological or paleontological resources by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Analysis

Cal-Am's project footprint is within a previously disturbed area of the CEMEX sand mining facility and partially within and adjacent to an area that was excavated during construction of the MRWPCA outfall. The site is also within a dynamic dune habitat that has continually shifted due to wind and wave action along the Monterey Bay shoreline. Given the dynamic nature of the site and the previous disturbances, it is unlikely that it contains archaeological resources, and extensive surveys already conducted at the site have identified no such resources.²⁹ Nonetheless, the area is within an extensive reach of shoreline habitat known to have provided a rich bounty for the Ohlone-speaking Native Americans that lived in the Monterey Bay area. The City's General Plan has generally identified coastal beaches as areas of high archaeological sensitivity.

Additionally, parts of the sand mining facility are more than 50 years old and could be eligible to be considered a cultural resource. The City prepared a Cultural Resources Survey Report that identified features of the facility as part of a historic district eligible for listing in the state and national historic registers. These include several buildings and structures on site, some of which are close to the proposed Cal-Am activities.

As part of its project description, Cal-Am has included several mitigation measures to avoid and minimize potential effects to archaeological and cultural resources. Project activities will be located to avoid direct effects on known cultural resources, and all ground disturbance activities will be conducted in coordination with a qualified archaeologist. Cal-Am has also incorporated into its project description several proposed conditions that were developed by City staff during the City's project review. These include the following:

- 1) The project shall be redesigned to avoid significant adverse effects to historic resources; in particular, direct impacts to the Lapis Siding that is identified as a contributor to the Lapis Sand Mining Plant Historic features shall be avoided. Because the Siding extends through the eastern portion of the construction footprint, the construction plans shall be redesigned to locate all project components and construction activities in adjacent areas*

²⁹ See City of Marina *Draft Initial Study/Mitigated Negative Declaration*, Section V – Cultural Resources, May 2014, and SWCA Environmental Consultants, *Cultural Resources Survey Report for the California American Slant Test Well Project, Marina, Monterey County, California*, prepared for the City of Marina, May 2014.

that do not contain structures associated with the Lapis Sand Mining Plant historic features. Avoidance of impacts to historic district contributors in close proximity to construction activities shall be accomplished by installing flagging or safety fencing around, or covering with plywood, any adjacent buildings or structures that are within 5 feet of mechanized equipment.

- 2) *A qualified archaeologist that meets the Secretary of the Interior's professional qualifications standards in archaeology (National Park Service 1983) shall be retained to provide archaeological services for the project. Archaeological services for the project shall at minimum include the following:*
 - a. *Prior to initiation of ground-disturbing activities, an archaeological monitor working under the direction of the qualified archaeologist shall conduct a brief awareness training session for all construction workers and supervisory personnel. The training shall explain the importance of and legal basis for the protection of significant archaeological resources. Each worker should learn the proper procedures to follow in the event that cultural resources or human remains/burials are uncovered during ground-disturbing activities, including those that occur when an archaeological monitor is not present. These procedures include work curtailment or redirection and the immediate contact of the site supervisor and the archaeological monitor. It is recommended that this worker education session include visual images or samples of artifacts that might be found in the project vicinity, and that the session take place on-site immediately prior to the start of ground-disturbing activities.*
 - b. *An archaeological monitor working under the direction of the qualified archaeologist shall monitor all ground disturbance in areas within 100 feet of the historic buildings within the eastern portion of the project area. These include the Superintendent's Residence, Bunkhouse, Garage/Office, Maintenance Shop, and Scale House. The timing and duration of the monitoring may be adjusted during project implementation by the qualified archaeologist, in consultation with the City, whose decision shall be informed by the apparent sensitivity of the sediments in the project area once they are exposed.*
 - c. *The project applicant shall coordinate with representatives from the Ohlone/Coastanoan-Esselen Nation and Amah Mutsun Tribal Band of Mission San Juan Bautista to designate a Native American monitor to be present during ground disturbing activities associated with the project. Documentation of such coordination shall be provided to MBMNS prior to construction activities. The timing and duration of the monitoring may be adjusted during project implementation by the qualified archaeologist, in consultation with MBNMS, whose decision shall be informed by the apparent sensitivity of the sediments in the project area once they are exposed.*
- 3) *If archaeological resources (artifacts or features) are exposed during ground-disturbing activities, construction activities in the immediate vicinity (25 feet) of the discovery shall be halted while the resources are evaluated for significance by the qualified archaeologist. Construction activities may continue in other areas. If the discovery proves to be significant, additional work, such as archaeological data recovery or project redesign, may be warranted and would be discussed in consultation with the City.*

In the event of inadvertent discovery of human remains, no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner shall be notified of the find immediately. If the human remains are determined to be prehistoric, the coroner will notify the Native American Heritage Commission, which will determine and notify a most likely descendant (MLD). The MLD shall complete the inspection of the site within 48 hours of notification, and may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials. The California Health and Safety Code Section 7050.5 process shall be noted on project grading and construction plans and reviewed during the construction worker awareness training session.

With these mitigation measures and conditions, Cal-Am is expected to avoid causing adverse effects to archaeological and cultural resources and will be able to respond appropriately should any such resources be found during project activities.

L. VISUAL RESOURCES

The LCP's Preservation and Enhancement of Coastal Views policy states:

Views of the dunes from Highway 1 and the beach shall be protected by keeping development off of the primary ridgeline. Development below the ridgelines shall be limited in height and mass to blend into the face of the dunes: generally structures should be hidden from public view where physical and habitat constraints allow. Where this is not possible, structures shall be clustered and sited to be as inconspicuous as possible.

In areas where mining activity or blowouts have removed sand dune landforms, new development shall not extend above the height of the nearest adjacent sand dunes and shall be clustered so as to preserve access views across its site from Highway One.

The LCP's North of Reservation Road Planning Area requires proposed development consider:

Visibility of new uses from Highway 1 and from the water's edge.

Coastal Act Section 30251 states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The LCP generally requires that permitted development protect views to and along the coast. The LCP specifically requires that views of the dune area from Highway 1 and the beach be protected by keeping development below the dune ridgelines, limiting its height, and clustering structures to the extent allowed by physical and habitat constraints.

Some project activities would occur near to the Monterey Bay shoreline and would be visible from other nearby publicly-accessible shoreline areas, including the highly scenic Marina Dune Complex. These areas are valued in part for their views of the Bay, for wildlife and bird watching, and for recreational activities.

The main project activities that will affect visual resources are staging and operating the equipment needed for drilling and other related activities. These activities will cause some visual impacts, though they will be temporary. Most of the activities – e.g., the use of large construction equipment – are similar to those related to the ongoing sand mining activities already occurring over a portion of the site and are expected to be visually subservient to the mining operations. Some of the project's activities – e.g., ingress and egress, and some

construction – may be viewed by passing motorists on Highway 1 or by beach users, though most are expected to be blocked by intervening dune formations and vegetation. The most visible activities would be lighting associated with the project, and construction of the discharge pipeline and connection to the existing outfall, which would be the closest activities to the beach; however, the area in which these activities would occur is also currently used and disturbed by CEMEX trucks and heavy equipment, so these activities are expected to blend in with CEMEX's industrial operations. Additionally, Cal-Am's construction activities would occur during the non-peak winter months when beach use is less.

To reduce the project's visual impacts, Cal-Am is not proposing to remove or alter landforms that would be visible from offsite, and it will restrict its activities to stay within the less than one-acre project footprint. To address potential lighting-related impacts, **Special Condition 10** requires Cal-Am to produce a lighting plan for Executive Director review and approval that identifies all lighting to be used during the project and describes all measures that will avoid or reduce effects of lighting on nearby public areas, such as using the minimum lighting necessary for safety purposes, directing all necessary lighting downward and inward to the extent feasible, ensuring light fixtures and poles are painted or colored to blend in with the area, and others.

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 scenic and visual resources and is therefore consistent with the relevant LCP provisions and Coastal Act Section 30251.

M. COASTAL AGRICULTURE

LCP Policy 28 states:

To support agricultural use in the Coastal Zone.

LCP Policy 29 states:

To provide incentives to retain agricultural activities within the Coastal Zone.

The LCP requires that agricultural uses be supported in the coastal zone. There are no agricultural operations with the City, but other nearby coastal agricultural operations are heavily reliant on groundwater from the aquifers proposed to be used by the test well project. Thus, there is the potential that the project might not be consistent with agricultural uses in the coastal zone. 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

The test slant well would remove up to about 3.6 million gallons per day 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. Past groundwater pumping in nearby portions of the Basin for agriculture have exceeded 100,000 acre-feet per year, and have resulted in seawater intrusion that extends several miles inland. This has both reduced the quality of groundwater for agricultural use and reduced the amount of groundwater pumped from sites close to the CEMEX facility. Seawater intrusion has been estimated to occur at a baseline rate of about 10,000 acre-feet (equal to about three billion gallons) per year³⁰, though the Basin's groundwater management programs are attempting to significantly reduce this rate. The Basin is divided into eight sub-regions, with the project area within what is known as the 180/400-Foot Sub-Basin, which has an estimated groundwater storage capacity of about 6.8 million acre-feet. Due in part to the aquifer being seawater-intruded near the site, the closest active off-site wells in the Sub-Basin are about 5,000 feet from the proposed test well.³¹

Effects of test slant well groundwater withdrawal on coastal agriculture

For several reasons, the amount of water that would be withdrawn for the test project is expected to result in an insignificant effect on coastal agriculture. As noted above, total water withdrawal for the test well would be no more than just over 4,000 acre-feet per year over the two-year test period, most of which is expected to be seawater or seawater-intruded groundwater from the sub-seafloor. This represents only about 0.1 percent of the Sub-Basin's groundwater storage.

³⁰ See 2001 *Salinas Valley Water Project Environmental Impact Report*, published by Monterey County Water Resources Agency.

³¹ As shown in City of Marina, *Draft Initial Study/Mitigated Negative Declaration for the California American Water Slant Test Well Project, Figure 11 – Preliminary Modeled Drawdown Contours*, May 2014.

Additionally, Cal-Am has modeled the expected “cone of depression” – that is, the area in which groundwater levels are lowered due to this water withdrawal – to extend to about 2,500 feet from the well, where the drawdown is expected to be about four inches. The closest active agricultural wells are about twice that distance from the test well, and are therefore not expected to be significantly affected by the well tests. Nonetheless, Cal-Am has incorporated into its project description the following mitigation measure:

A drawdown of 1 foot above natural fluctuations on groundwater levels shall be considered a significant adverse effect on water supply. If pumping activities reflect a drawdown of 1 foot or greater on any adjacent well, compensatory mitigation shall be required. Feasible mitigation shall include consultation with the affected water user and implementation of compensatory mitigation measures, including monetary compensation (i.e., for increased pumping costs or for upgraded wells), or provision of replacement water from alternative sources. If compensation or other remediation is found to be unfeasible, pumping activities shall be adjusted so that no more than 1 foot of drawdown on usable water sources would result.

Given the relatively small amount of water to be pumped, the distance to other active wells, and the above mitigation measure, the project is not expected to adversely affect coastal agriculture. Nonetheless, in recognition of the uncertain hydrogeologic characteristics of the substrate and aquifers beneath and near the project site that the project’s tests are meant to address, the Commission imposes **Special Condition 11**, which requires Cal-Am to conduct monitoring during all pumping activities and to record all drawdown levels and changes in salinity in those nearby inland wells. **Special Condition 11** also requires that Cal-Am cease its pump tests if monitoring shows a drawdown of one foot or more or shows an increase of more than two parts per thousand of salinity.

Conclusion

For the reasons described above, the Commission finds that the proposed project, as conditioned, will be carried out in a manner that is supportive of coastal agriculture and is therefore consistent with relevant provisions of the LCP.

N. ASSESSMENT OF ALTERNATIVES

Overview

CEQA Guidelines Section 15126.6 provides direction for the discussion of alternatives to the proposed project. This section requires:

- (1) a description of “...a range of reasonable alternatives to the project, or to the location of a project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” [15126.6(a)]*
- (2) a setting forth of alternatives that “...shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project. Of those alternatives, the [CEQA document] need examine in detail only the ones that the lead agency determined could feasibly attain most of the basic objectives of the project.” [15126.6(f)]*
- (3) a discussion of the “no project” alternative, and “...if the environmentally superior alternative is the “no project” alternative, the [CEQA document] shall also identify an environmentally superior alternative among the other alternatives.” [15126.6(e)(2)]*
- (4) a discussion and analysis of alternative locations “...that would substantially lessen any of the significant effects of the project need to be considered in the [CEQA document].” [15126.6(f)(2)(A)]*

In defining feasibility, the Coastal Act, Section 30108, states that:

“Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

The CEQA Guidelines at Section 15126.6 also defines the feasibility of alternatives and states:

Among the factors that may be taken into account when addressing the feasibility of alternatives are site suitability, economic viability, availability of infrastructure, general plan consistency, other plans or regulatory limitations, jurisdictional boundaries (projects with a regionally significant impact should consider the regional context), and whether the proponent can reasonably acquire, control or otherwise have access to the alternative site.

Alternative Methods, Alternative Locations, and “No Action” Alternative

As described above, Cal-Am has recognized the state’s preference for using subsurface intakes, where feasible, to provide source water for its proposed desalination facility. Those types of intakes are generally less environmentally damaging than intakes that draw directly from the water column. Consideration of potential alternative locations for this project has therefore been focused on sites within the Monterey Bay region where geologic and hydrogeologic characteristics are likely to lend themselves to subsurface intake methods.

Some of the sites that had been formerly considered for water supply projects, such as the Moss Landing Power Plant and the Marina Coast Water District site, are either no longer available or have been the subject of regulatory changes that limit their feasibility. For example, the State Water Board's 2010 adoption of an Ocean Plan amendment that limits the use of once-through cooled power plant intakes reduces the potential that the Moss Landing Power Plant intake could provide source water for a desalination facility. Additionally, much of the Monterey Bay shoreline that might otherwise be suitable for subsurface intakes is protected as preserves, State Parks, or other designations that would limit or prohibit the proposed activities.

For this proposed project, Cal-Am identified a number of candidate sites between Marina and Moss Landing and conducted a hydrogeologic investigation to determine potential alternative locations for a subsurface intake.³² This investigation was the product of the aforementioned Settlement Agreement prepared as part of Cal-Am's CPUC project review, and involved representatives from several involved parties and stakeholders.³³ The investigation included drilling test boreholes at several sites, including the CEMEX site, to determine the suitability of subsurface characteristics. The investigation concluded that slant wells would be feasible at the CEMEX site and identified a secondary site about eight miles further north near Moss Landing that might also be suitable for subsurface intakes. Cal-Am also prepared a biological assessment, consulted with state and federal wildlife agencies and other stakeholders, and considered other feasibility issues – e.g., availability of electrical service, proximity to acceptable discharge point for well water, effects on habitat, access, and other coastal resources – to narrow the set of potential sites. As noted above in Section IV.B – Project Background, a site in Moss Landing had been dismissed previously due in part to its distance to the Cal-Am service area on the Monterey Peninsula and its additional adverse impacts.

Within the CEMEX site, Cal-Am initially considered a location at the northern end of the sand mining facility; however, consultation with state and federal wildlife agencies and others showed that locating the test well there would have more significant potential impacts to nearby nesting Western snowy plovers, which are listed as federally-endangered. That site was also closer to the shoreline than the current site, and would have involved more excavation, required shoreline protective devices, and been subject to more erosion and associated coastal hazards. The focus then shifted to the current site at the south end of the CEMEX facility, which is within an already disturbed area, is further from the shoreline, and involves fewer coastal resource impacts.

“No Action” Alternative: For at least two reasons, the “no action” alternative is also likely to result in greater adverse environmental impacts than the currently proposed project. First, if the test slant well is not completed or is delayed, Cal-Am would not have the information needed to inform the CPUC's review of the potential full-scale project. A delay in that review would likely delay final consideration of the full-scale MPWSP or require significant modifications to that

³² Geosciences Support Services, Inc., *Monterey Peninsula Water Supply Project Hydrogeologic Investigation – Technical Memorandum (TM1)*, prepared for California American Water / RBF Consulting, July 8, 2014.

³³ The investigation was led by a Hydrogeology Working Group that consisted of representatives from the CPUC's CEQA team, Salinas Valley Water Coalition, and Monterey County Farm Bureau.

proposed project. Either of these options could extend the period of Cal-Am's excessive withdrawals from the Carmel River, thereby exacerbating the ongoing adverse effects of those withdrawals on fish and habitat in that watershed.

Not completing or delaying this test slant well could also lead to a reconsideration of what project might serve as an expected water supply project for the Monterey Peninsula. At this point, the other potential desalination projects in the Monterey Bay area are proposing to use open intakes, which are expected to result in greater adverse effects to marine life and coastal waters than the MPWSP. Those other projects are also not as far along in the review and permitting process as the MPWSP. Similar to the above, delays or reconsideration due to this option would also extend the adverse effects occurring on the Carmel River.

Conclusion

Thus, the Commission finds that the test well is necessary to assess whether a subsurface intake is a feasible source of water for Cal-Am's proposed desalination facility and that the proposed location for the test well is the environmentally preferred alternative.

P. COASTAL-DEPENDENT FACILITY

The City's LCP includes numerous policies identifying coastal-dependent industrial uses as priority uses.

LCLUP Policy 41:

To give priority to Coastal-dependent development on or near the shoreline and ensure that environmental effects are mitigated to the greatest extent feasible.

LCLUP Geotechnical Policies, Policy 1 (first bullet)

Structural development shall not be allowed on the ocean-side of the dunes, in the area subject to wave erosion in the next 50 years, or in the tsunami run-up zone. The only exception to this would be essential support facilities to a coastally-dependent industry, and in these areas the city will not undertake liability for property damage due to hazards.

The project is proposed on property designated as "Coastal Conservation and Development," a designation that prioritizes coastal-dependent industrial uses.

LCLUP Coastal Conservation and Development Uses, Policy 2 (second bullet)

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 available in this particular environment. Development in this area will be allowed in already disturbed areas.

Uses allowed in areas designated Coastal Conservation and Development include (LCLUP p. 41):

such uses as are dependent upon salt water, the unique coastal-marine 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.

The IP, in its regulations for Coastal Conservation and Development Districts, includes similar standards for allowed uses in this district. They include:

Coastal research and educational uses; developed public access and other coastally dependent recreation uses; coastal dependent industrial uses including but not limited to marine agriculture (mariculture), dredge pond, surf zone and offshore sand extraction;

The LCLUP's policies relating to the North of Reservation Road Planning Area identify appropriate uses within the high Flandrian dune area, in which this project is proposed, to include "activities specifically dependent upon proximity to the ocean." LCLUP p. 37. It further states that the uses allowed in Coastal Conservation and Development districts are consistent with numerous Coastal Act policies, including section 30260. LCLUP p. 38, 44.

Coastal Act Section 30260 states:

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Sections 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

Consistency Analysis

When it certified the City's LCP, the Coastal Commission acknowledged the importance of the City's dune ecosystem to provide habitat for rare and endangered species.³⁴ It nevertheless designated the area north of reservation road and west of Dunes Drive as Coastal Conservation and Development (CD), in which appropriate uses include "commercial activities dependent for economic survival on proximity to the ocean, salt water or other elements only available in this particular environment." LCLUP p. 15. The LCP states that this designation is consistent with section 30260. LCLUP p. 38, 44.

Coastal Act Section 30260 provides for special consideration of coastal-dependent industrial facilities that may otherwise be found inconsistent with coastal resource protection policies. Section 30260 provides for approval of such projects, notwithstanding the project's inconsistencies with those other policies, only if: alternative locations are infeasible or more environmentally damaging; to do otherwise would adversely affect the public welfare; and as long as adverse effects are mitigated to the maximum extent feasible.

Similarly, the LCP only allows approval of coastal-dependent industrial uses in dune habitat if they are appropriately sited in the most disturbed areas and the adverse impacts of the development are mitigated.³⁵ Thus, the Commission interprets these LCP provisions consistently with Section 30260 to determine if the proposed project is approvable, despite its inconsistency with the habitat protection policies of the LCP.³⁶

³⁴ See, for example, Natural Habitats map, LCLUP p. 72, Disturbed Vegetation map, LCLUP p. 71, Potential Wildlife Habitats map, LCLUP p. 75, Discussion of dune habitat north of Reservation Road, LCLUP pp. 74-76, Habitat Protection Policies, LCLUP pp. 9-10.

³⁵ For example, LCLUP Uses allowed in the CD District, Policy 2, p. 41, LCLUP Habitat Protection Policy 1, LCLIP Regulations for CD Districts section b(2)(b).

³⁶ *McAllister v. California Coastal Commission*, (2009) 169 Cal.App.4th 912, 931.

Coastal-Dependent Industrial Facility: The initial question is whether the proposed project is a coastal-dependent industrial facility, such that it is an allowed use in the CD district and subject to 30260 and LCP provisions for coastal-dependent industrial uses. The LCP does not define the term coastal-dependent development, but the Coastal Act does. Coastal Act Section 30101 states:

Coastal-dependent development or use "means any development or use which requires a site on, or adjacent to, the sea to be able to function at all."

The proposed test slant well is dependent on accessing seawater from beneath the Monterey Bay seafloor. Because slant wells are limited to no more than a few hundred feet in length, the well must be located on or adjacent to the sea in order to function and is therefore coastal-dependent. The test well is also considered a type of industrial facility. It would be built within an active industrial site using similar equipment and methods as are currently occurring at the site. It falls within at least one category of the North American Industry Classification System ("NAICS") – i.e., NAICS #237110: Water and Sewer Line and Related Structures Construction.³⁷ Further, it is being implemented by Cal-Am, an entity that, along with being a publicly-regulated utility, is considered part of the water and wastewater industry. In addition, the Commission has previously recognized that public utilities conduct industrial activities – for example, in its 2013 certification of Santa Barbara County Local Coastal Program Amendment No. LCP-4-STB-13-0215-2 allowing natural gas exploration and production only by public utilities.

Application of Tests for Approval of Coastal-Dependent Industrial Facilities: Because the test slant well is a coastal-dependent industrial facility, and the LCP finds that the designation of dune areas as appropriate for coastal-dependent industrial uses is consistent with section 30260, the Commission may the LCP policies consistently with section 30260 to approve a project despite an inconsistency with other LCP policies.

- **Test 1 – Alternative Locations are Infeasible or More Environmentally Damaging and Development is Limited to Already-Disturbed Areas:** Section 30260's first test and LIP CD policy (b)(2)(c) require an assessment of alternative locations.³⁸ Section N of these Findings provides a more comprehensive assessment of alternatives, including an assessment of alternative locations. Applying those Findings to this first test of Section 30260 shows that other locations are infeasible or more environmentally damaging than the currently proposed location. The applicant has sited the project in areas that have been subject to continual disturbance by sand mining operations for at least several decades. Development associated with the proposed project is strictly limited to already-disturbed areas, consistent with the LIP and LCLUP Habitat Protection Policy 2. The Commission therefore finds that the proposed project meets the first test of Section 30260 and the applicable LCP policies.

³⁷ NAICS was formerly the Standard Industrial Classification, or SIC system. Both systems have been used by U.S. EPA, the State and Regional Water Boards, and others to categorize various industrial activities.

³⁸ By requiring findings that development in CD Districts is limited to already-disturbed areas, the LCP ensures that projects can only be allowed in environmentally preferable alternative locations.

- **Test 2 – To not permit the development would adversely affect public welfare:**
Section 30260's second test provides that coastal-dependent industrial development may be permitted if to do otherwise would adversely affect the public welfare. Determining the public welfare considerations for the proposed project includes several benefits and concerns.

As noted above, since 1995, Cal-Am and other entities in the Monterey Peninsula area have been seeking a water supply to replace that obtained from the Carmel River. Cal-Am is under an Order from the State Water Board that imposes a schedule for reducing its water withdrawals from the Carmel River by about two-thirds by 2016. The water to be replaced has represented up to about 75% of the water used on the Peninsula in Cal-Am's service area. The required reductions are meant to benefit the Carmel River watershed, particularly the federally-listed Central Coast steelhead.

This proposed test well and its potential follow-up MPWSP represent the culmination of almost two decades of multiple public agencies and area stakeholders seeking alternative water sources to facilitate the required reductions. As noted above, the test well was identified within the Settlement Agreement negotiated as part of the CPUC's review process, in which area stakeholders recognized the need for the hydrogeologic data to be obtained from the test. Those stakeholders represent a wide range of public interests whose welfare relies on the Monterey Peninsula having a water supply to replace the Carmel River overdrafts. The pumping and water quality testing to be conducted during the slant well test is necessary to inform the design of a potential full-scale facility. Other actions, such as drilling additional boreholes or conducting additional modeling, would not be sufficient to characterize the site and its potential to provide source water.

Based on the above, the Commission finds that not permitting the proposed project would adversely affect the public welfare, and that the project therefore meets the second test of Section 30260.

- **Test 3 – Adverse environmental effects are mitigated to the maximum extent feasible:**
The third test of Section 30260 and LCLUP Habitat Protection Policy 1 require that the proposed project's adverse environmental effects be fully mitigated. With the exception of habitat protection, the special conditions required to ensure that the impacts of this project are fully mitigated are discussed and imposed in the section analyzing that resource. Because the proposed project was found to be inconsistent with the LCP's habitat protection policies, mitigation for the impacts of the project on habitat was not discussed in that section of this report. As a result, in order to meet this final test and to determine whether this coastal-dependent industrial project can be approved, the Commission must find that the biological impacts of this project will be fully mitigated.

Based on site-specific biological studies, Cal-Am and City staff developed a number of mitigation measures meant to avoid and minimize potential impacts to these coastal resources. Cal-Am has incorporated several of these measures as part of its project (see Exhibit 5) and the Commission has additionally imposed a number of Special Conditions that would add to and modify these measures to ensure any adverse effects are avoided or

minimized and to allow conformity to relevant LCP provisions to the extent feasible (see **Special Conditions 12 – 16**). These include:

- Requiring project construction, well pack replacement, and decommissioning to occur outside of the Western snowy plover breeding and nesting season, the active season for the Smith’s blue butterfly, and the blooming period of the Monterey spineflower.
- Requiring a pre-construction survey to identify protected species that may be present at or near project work areas, and requiring measures to avoid or minimize effects on those species.
- Requiring a number of Best Management Practices during construction activities, such as providing training to on-site personnel, controlling noise, trash, and lighting at the site, and others
- Requiring preparation and implementation of a Hazardous Spill Management Plan to minimize the risks of spills and to properly respond to spills should they occur.
- Requiring preparation and implementation of a site restoration plan that is consistent with the detailed provisions developed by the City for such plans (see Exhibit 13 – City of Marina Municipal Code Section 17.41.100, Requirements for Habitat Restoration).

With Cal-Am’s mitigation measures and with the imposition of the Commission’s **Special Conditions**, the Commission finds that the project meets the third test of Section 30260.

Conclusion

The Commission finds that the proposed project meets all of the tests of section 30260 and the parallel LCP policies. It therefore exercises its discretion to approve this coastal-dependent industrial project, despite its inconsistency with the LCP’s habitat protection policy prohibiting non-resource dependent development in primary habitat.

O. CUMULATIVE IMPACTS

Applicable Policies

Based on the above analysis, the Commission finds that as conditioned herein the proposed project is consistent with the City's LCP and the relevant Coastal Act policies. It nevertheless considers whether the project could have a considerable cumulative adverse effect on the environment, after taking into account past and probable future projects in the area.

Coastal Act Section 30105.5 states:

"Cumulatively" or "cumulative effect" means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

CEQA Guidelines Section 15355 states:

"Cumulative impacts" refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.

Analysis

The past and current projects in the project vicinity are the sand mining activities that have been ongoing at varying degrees of intensity since 1906 and the sewer outfall constructed just adjacent to and downcoast of the proposed test well project. The purpose of the proposed test well is to provide data that would allow Cal-Am and the California Public Utilities Commission (CPUC) to evaluate not only whether a well for a desalination facility is viable in the proposed location of the test well but to assess the potential adverse environmental effects of withdrawing water from this location for a full-scale desalination facility. A possible future project in the project vicinity is therefore a desalination facility.

Cal-Am has submitted an application for this desalination facility to the CPUC, which is in the process of preparing an EIR for that facility. Thus, at this stage, there is uncertainty about the potential adverse effects of the proposed desalination facility since some of the information needed to assess those impacts will only be available after the proposed test well project has operated for the planned two year test period. Nevertheless, the Commission must consider the interaction between the proposed project and the future desalination facility for potential impacts of which it is aware, which include additional adverse impacts to sand dune habitat, and potential coastal agricultural impacts.

Dune Habitat Impacts: If the proposed desalination facility withdraws water from the site of the test well, Cal-Am expects to construct several additional subsurface slant wells and pipelines to convey the source water from these wells to the facility, which is currently proposed to be several miles inland and outside of the coastal zone. It is likely that several wells would share a single wellhead and that all wells would share a single delivery pipeline to the facility. The precise location of these additional wells cannot be determined until the results of the test well are available, but the location of the test well could become permanent, rather than temporary, so the loss of dune habitat covered by the current test wellhead would be permanent. In a worst

case scenario, if the full desalination plant drew all of its source water from within the vicinity of this test well, then the permanent dune habitat impacts would likely be approximately several thousand square feet from the wells and pipelines, with up to about five acres of additional temporary construction impacts. This estimate is based on assuming that there would need to be three to four similar 0.75 acre project footprint areas similar to the current project footprint, and additional areas needed to install the pipeline, although these figures will be assessed more accurately in the CPUC EIR being prepared for the full desalination facility.

The potential “cumulative” effect of the test well on dune habitat in this scenario is therefore about five acres of temporary impacts plus the future permanent loss of about one acre of dune habitat, on top of the existing impacts to about 120 acres of dune habitat caused by the current CEMEX operations and the existing outfall. The expected cumulative habitat loss of all of these projects together is therefore about 121 acres, with five acres of temporary impacts, within the approximately 400 acre CEMEX site. Much of this site is not currently being used by CEMEX for its sand mining operations but it is significantly degraded due to previous sand mining operations. As a result, there are opportunities for on-site restoration or habitat creation that could provide appropriate mitigation for the one acre of permanent dune habitat impacts and five acres of temporary impacts estimated to be caused by the test well and the potential future facility combined. While these potential impacts and mitigation will be assessed in the EIR for the desalination facility, the information available to the Commission at this time suggests that any cumulative adverse habitat impacts caused by the test well and the desalination facility, in combination with past impacts, can be mitigated to be less than significant.

Coastal Agriculture Impacts: At least one of the opponents of the test well project raises concerns that the test well and any full scale desalination facility using the test well as a source water well will have significant adverse environmental impacts on coastal agriculture, particularly on the quantity and quality of water available to neighboring agricultural interests.³⁹ They assert that the aquifer underlying their property is already subject to seawater intrusion and that the test well will exacerbate this effect.

As described more completely in Section IV.A of the above findings, one of the purposes of the test well is to evaluate this exact issue. By operating the test well, Cal-Am will be able to test its models to better determine the degree to which drawing water from an offshore extension of the underlying aquifers will affect inland areas of aquifer. The data gathered through operation of the test well will provide data the CPUC will consider in its evaluation of the full desalination facility.

In order to address these concerns, **Special Condition 11** requires Cal-Am to monitor both the quantity and quality of water in areas that may be affected by operation of its test well. If these monitoring wells show a reduction in water quantity of one foot above natural fluctuations or a minor increase in salinity, Cal-Am is required to stop its test well operations. The test well is therefore designed and conditioned to ensure that it will have no significant adverse environmental effect on water quantity or quality in the area surrounding the test project.

³⁹ See, for example, the October 29, 2014 letter from William Parkin on behalf of AgLand Trust.

In addition, the data produced through operation of the test well will allow the CPUC in its EIR to evaluate the potential adverse effects of converting this test well into a source water well for the full desalination facility. If the data produced by the test well demonstrate that conversion of the test well to a permanent well will have an adverse effect on the environment, then the CPUC will evaluate these potential effects in its EIR. Should the CPUC, or any other entity that must provide a permit or approval for the full desalination facility, find that the test well is not an appropriate location for a source water well, then Cal-Am is required to remove the test well and restore the area. **Special Condition 17** ensures that the funds needed to remove and restore the test well are available prior to commencement of construction of the test well, so there are additional assurances in this CDP that the location of the test well will not prejudice the ability to fully evaluate the potential adverse environmental effects of a full-scale desalination facility.

Conclusion

When considered against past, current and potential future projects at the CEMEX sand mining site, the proposed test well is not anticipated to have a cumulative adverse impact. The temporary construction impacts on dune habitat as well as permanent estimated habitat loss caused by the test well, if it becomes permanent, and the future permanent losses due to the full desalination facility are anticipated to be able to be mitigated through on-site habitat restoration and creation so that their effects are less than significant.

The test well is conditioned to ensure that it is shut down if adverse effects to water quality and availability are detected at any of its monitoring wells, thereby ensuring that the well itself will not have adverse effects on coastal agriculture. The data produced by the test well is necessary to evaluate the potential adverse impacts of the full desalination facility, so the test well is expected to allow a more complete evaluation of that proposed project to ensure that it will not have adverse impacts on water available for coastal agriculture either. Thus, at this time there is no basis for determining that the test well, together with a future desalination facility, will cumulatively create adverse impacts to water quality or quantity available for coastal agriculture.

Finally, the test well is conditioned to require, prior to commencement of construction, that the funds estimated to remove and restore the test well are available through a bond or equivalent surety. This ensures that if the test well is not needed as a source water well for a future desalination facility for any reason, the funds are available for removal of the test well and restoration of the site. Accordingly, approval of this test well will not prejudice the ability of the CPUC or any other entity to fully evaluate alternative locations for potential source water wells for the proposed desalination facility, as the cost for removal of this facility will be guaranteed from the start of construction.

V. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as conditioned 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 a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

Because the proposed project has the potential to result in significant adverse environmental impacts, the Commission has identified and adopted seventeen special conditions necessary to avoid, minimize, or mitigate these impacts. With the inclusion of these special conditions, the Commission finds that, within the meaning of the California Environmental Quality Act of 1970, there are no further feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the proposed project may have on the environment. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA.

A-3-MRA-14-0050 / 9-14-1735

EXHIBITS

Figure 1. Project Vicinity Map



Figure 2. Project Location Map

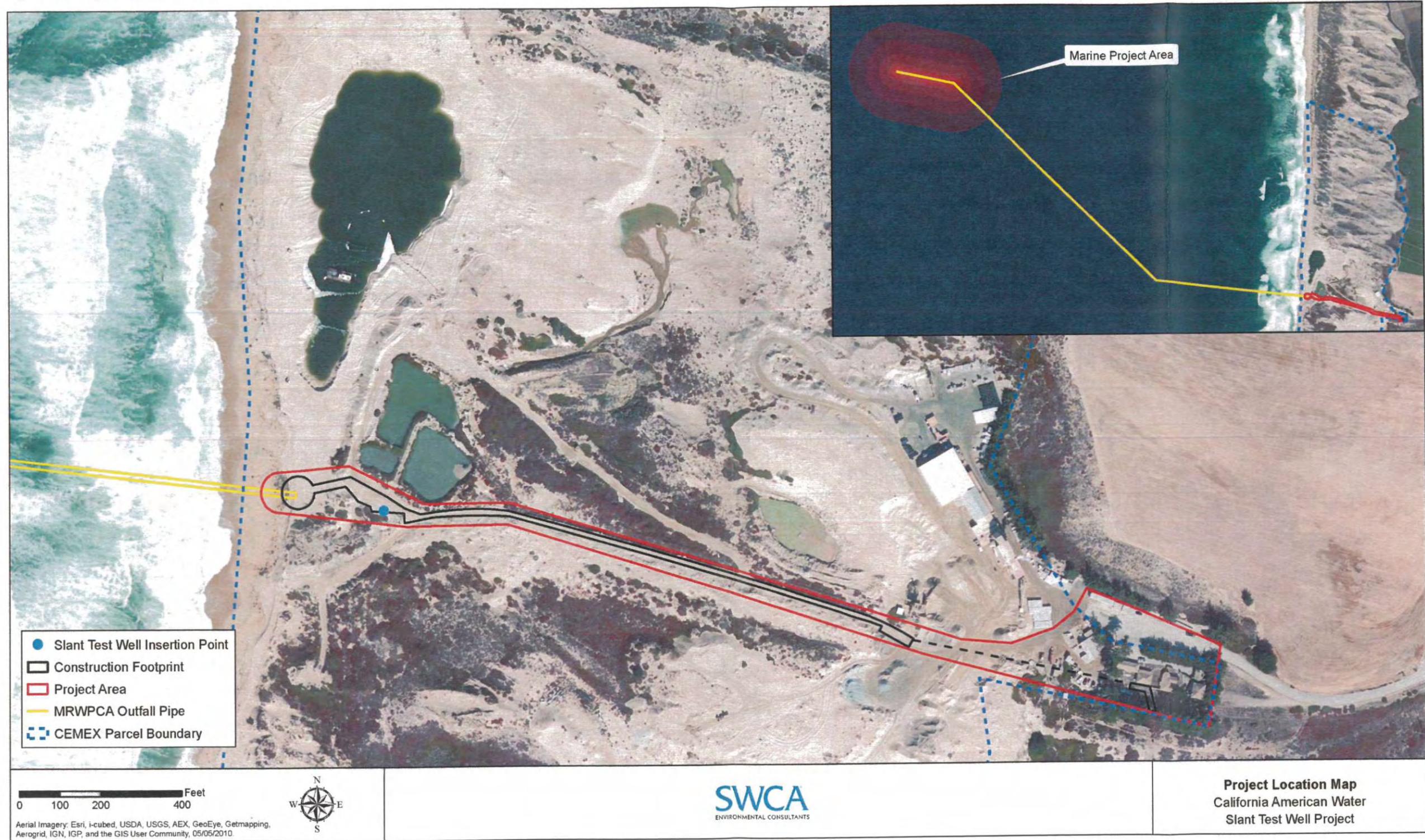
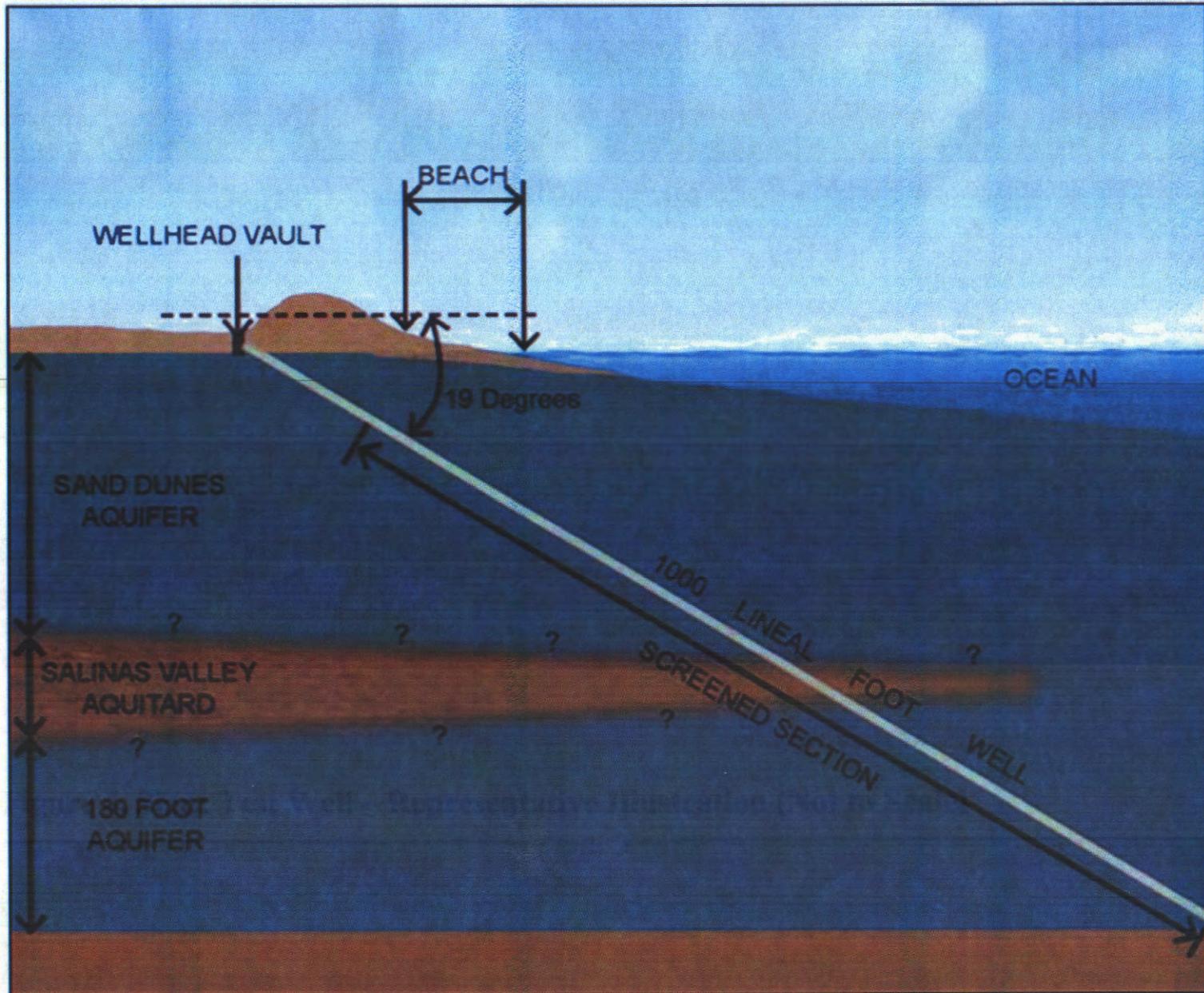


Figure 4. Slant Test Well – Representative Illustration (Not to Scale)



From MBNMS Cal-Am Slant Test Well Project, Draft Environmental Assessment, June 2014

A-3-MRA-14-0050 / 9-14-1735

EXHIBIT 3

Table 1. Proposed Water Quality Analytical Suite

Constituent	Units	Method Reporting Limit	Method
Physical Properties			
Color	Color Units	3.0	SM 2120B/EPA 110.2
Odor	T.O.N.	-	EPA 140.1
Oxidation-Reduction Potential (Field)	mV	-	Field Meter - Myron L 6Pll
pH (Lab)	Units	0.10	SM 4500 H+B
pH (Field)	Units	-	Field Meter - YSI Pro Plus
Turbidity (Laboratory)	NTU	0.20	EPA 180.1/SM 2130B
Turbidity (Field)	NTU	-	Field Meter - Hach 2100P
Temperature (Field)	°C	-	Field Meter - YSI Pro Plus
Dissolved Oxygen (Field)	mg/L	-	Field Meter - YSI Pro Plus
Silt Density Index (Field)	-	-	ASTM D4189-07
Threshold Odor Number	T.O.N.	1.0	EPA 140.1/SM 2150
Total Dissolved Solids (Lab)	mg/L	10	SM 2540 C
Total Dissolved Solids (Field)	mg/L	-	Field Meter - YSI Pro Plus
Specific Conductance (Lab)	µmhos/cm	1	SM 2510 B
Specific Conductance (Field)	µS/cm	-	Field Meter - YSI Pro Plus
General Minerals			
Total Cations	meq/L	-	Calculation
Total Anions	meq/L	-	Calculation
Alkalinity as CaCO ₃	mg/L	3	SM 2320 B
Bicarbonate Alkalinity as HCO ₃	mg/L	3	SM 2320 B
Carbonate Alkalinity as CaCO ₃	mg/L	3	SM 2320 B
Hydroxide Alkalinity as CaCO ₃	mg/L	3	SM 2320 B
Total Hardness as CaCO ₃	mg/L	3	Calculation
Aluminum	µg/L	1	EPA 200.7
Arsenic	µg/L	1	EPA 200.7 / EPA 200.8
Barium, Dissolved	µg/L	0.01	EPA 200.7
Boron, Dissolved	µg/L	0.5	EPA 200.8
Bromide, Dissolved	mg/L	0.1	EPA 326.0
Calcium, Dissolved	mg/L	1	EPA 200.7
Chloride, Dissolved	mg/L	1	EPA 300.0
Copper, Total	µg/L	50	EPA 200.7
Fluoride, Dissolved	mg/L	0.10	EPA 300.0 / SM 4500 FC
Iodide, Dissolved	mg/L	0.1	USGS I-2371 / EPA 9056A
Iron, Dissolved	µg/L	100	EPA 200.7 / EPA 200.8
Iron, Total	µg/L	100	EPA 200.7 / EPA 200.8
Lithium	µg/L	10	EPA 200.7 / EPA 6010B
Magnesium, Dissolved	mg/L	1	EPA 200.7
Manganese, Dissolved	µg/L	20	EPA 200.7 / EPA 200.8
Manganese, Total	µg/L	20	EPA 200.7 / EPA 200.8
MBAS	mg/L	0.050	SM 5540 C / EPA 200.8
Nitrogen, Nitrate as NO ₃	mg/L	1	EPA 353.2 / EPA 300.0
Nitrogen, Nitrite, Dissolved	mg/L as N	1	SM 4500 NO ₂ B
Nitrogen, NO ₂ + NO ₃	mg/L as N	1	EPA 300.0
Nitrogen, Ammonia, Dissolved	mg/L as N	0.1	SM 4500 NH ₃ H / EPA 350.1
Nitrogen, Ammonia + Organic, Diss. (TKN)	mg/L as N	0.1	EPA 351.2
Phosphorus, Dissolved	mg/L as P	0.01	EPA 365.3
Phosphorus, ortho, Dissolved	mg/L as P	0.01	EPA 365.3
Potassium, Dissolved	mg/L	1	EPA 200.7
Silica, Dissolved	mg/L	1	SM 4500 SIE
Sodium, Dissolved	mg/L	1	EPA 200.7
Strontium, Dissolved	mg/L	0.1	EPA 200.7 / EPA 200.8
Sulfate as SO ₄ , dissolved	mg/L	0.5	EPA 300.0
Zinc, Total	µg/L	50	EPA 200.7

Constituent	Units	Method Reporting Limit	Method
Radiology / Age Dating Methods			
Delta-Deuterium	$\delta^2\text{H}$	-	TC/EA/IRMS
Delta Oxygen-18	$\delta^{18}\text{O}$	-	TC/EA/IRMS
Tritium	TU	-	-
Tritium, prec. est.	TU	-	-
Volatile Organic Compounds			
VOCs plus Oxygenates (MTBE)	$\mu\text{g/L}$	varies	EPA 524.2
EPA Organic Methods			
EDB and DBCP	$\mu\text{g/L}$	varies	EPA 504.1
Chlorinated Pesticides & PCB's as DCP	$\mu\text{g/L}$	varies	EPA 508
Chlorinated Acid Herbicides	$\mu\text{g/L}$	varies	EPA 515
Nitrogen & Phosphorus Pesticides DEHP, DEHA, Benzo(a)Pyrene	$\mu\text{g/L}$	varies	EPA 525
Carbamates	$\mu\text{g/L}$	varies	EPA 531.1
Glyphosate	$\mu\text{g/L}$	varies	EPA 547
Endothal	$\mu\text{g/L}$	varies	EPA 548.1
Diquat	$\mu\text{g/L}$	varies	EPA 549.1
Dioxin (2,3,7,8 TCDD)	$\mu\text{g/L}$	varies	EPA 1613

Each monitoring well cluster would include two or three individual monitoring wells, including two wells at different depths into the targeted Dune Sand and 180-FTE Aquifers. If a third monitoring well is included in a cluster, it would be drilled into the 400-Foot Aquifer, to evaluate the response of that aquifer to slant test well pumping. One of the monitoring well clusters would be located in the immediate vicinity of the slant test well insertion point and wellhead vault, and the others would be located further inland, either within the existing graded CEMEX access road or the disturbed area at the east end of the project area. As proposed, the monitoring well clusters would be decommissioned upon project completion consistent with DWR regulations.

Outfall Connection

The water pumped from the aquifers would be discharged into MBNMS waters via an existing ocean outfall pipeline used by the MRWPCA for treated wastewater disposal. The existing outfall pipeline is buried as it crosses the CEMEX property generally south of the access road (refer to Figure 3, which shows the 20-foot wide outfall easement). A 12-inch diameter discharge pipe would extend approximately 250 feet from the wellhead vault to an existing junction structure located on the MRWPCA outfall in the foredune area of the project site. The discharge pipe would be constructed approximately 3 feet below grade and would connect to the pressure lid on the junction structure, which is also currently below surface.

**California American Water Slant Test Well Project
Mitigation Monitoring and Reporting Plan (includes Errata)**

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
<i>Aesthetic Resources</i>				
AES/mm-1	<p>Prior to issuance of a grading permit, a lighting plan shall be submitted to the City of Marina Planning Services Division for review and approval. The lighting plan shall be prepared by a qualified engineer and shall address any lighting proposed for the slant test well project. The lighting plan shall be prepared using guidance and best practices, as applicable and feasible. The lighting plan shall address all aspects of any new sources of lighting associated with the slant test well project, including but not limited to light towers, parking lots and pathway lighting, construction equipment, and safety lighting. The lighting plan shall also consider effects on wildlife in the surrounding area. The lighting plan shall include the following in conjunction with other measures as determined by the illumination engineer:</p> <ol style="list-style-type: none"> a. The point source of all exterior lighting shall be shielded from off-site views towards ocean side or identified habitat. b. Light trespass from exterior lights shall be minimized by directing light downward and utilizing cut-off fixtures or shields. c. Lumination from exterior lights shall be the lowest level allowed by public safety standards. d. Any required lighting poles shall be colored dark to reduce reflectivity. <p>The requirements of the lighting plan are not applicable to existing light sources at the project site associated with ongoing CEMEX mining activities and facilities.</p>	<p>Approval of Plan</p> <p>Periodic Site Inspections</p>	<p>Prior to Issuance of Permits</p> <p>Throughout Construction and Decommissioning Activities</p>	<p>City</p> <p>City</p>

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
<i>Air Quality</i>				
AQ/mm-1	<p>Prior to issuance of a grading permit, the following Best Management Practices and standard mitigation measures for reducing fugitive dust emissions shall be noted on project grading plans. All measures shall be adhered to during all project construction and decommissioning activities.</p> <ul style="list-style-type: none"> a. Reduce the amount of disturbed area where possible. b. Water all sand/dirt stockpiles at least twice daily. Increased watering frequency may be required when wind speeds exceed 15 mph. c. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site. d. All trucks hauling dirt, sand, soil, or other loose materials shall be covered or shall maintain at least 2 feet of freeboard (minimum vertical distance between top of load and top of trailer). e. Plant appropriate vegetative ground cover in disturbed areas that are planned for habitat restoration as soon as possible. f. Cover inactive storage piles with methods approved in advance by U.S. Fish and Wildlife Service and California Department of Fish and Wildlife. g. Not necessary due to nature of site and activity, i.e. sand only. Sweep streets if visible soil material is carried out from the construction site. h. [Not necessary. Project site is an active surface sand mining site with far more disturbance than project and in remote location.] 	Review of Project Plans	Prior to Issuance of Permits	City
		Periodic Site Inspections	Throughout Construction and Decommissioning Activities	City

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
AQ/mm-2	<p>Prior to issuance of a grading permit, the following Best Management Practices and standard mitigation measures for reducing nitrogen oxides (NO_x), reactive organic gases (ROG) and diesel particulate matter (DPM) emissions from construction equipment shall be noted on project grading plans. All measures shall be adhered to during all project construction and decommissioning activities.</p> <ol style="list-style-type: none"> a. Maintain all construction equipment in proper tune according to manufacturer's specifications. b. Diesel powered equipment shall be replaced by electric equipment whenever feasible to reduce NO_x emissions. c. Diesel-powered equipment shall be replaced by gasoline-powered equipment whenever feasible. d. Diesel construction equipment meeting the California Air Resources Board (CARB) Tier 1 emission standards for off-road heavy-duty diesel engines shall be used. Equipment meeting CARB Tier 2 or higher emission standards shall be used to the maximum extent feasible. e. Catalytic converters shall be installed on gasoline-powered equipment, if feasible. f. All on- and off-road diesel equipment shall not idle for more than 5 minutes. Signs shall be posted in the designated queuing areas and or job site to remind drivers and operators of the 5-minute idling limit. g. Diesel equipment idling shall not be permitted within 1,000 feet of sensitive receptors. h. The engine size of construction equipment shall be the minimum practical size when feasible. i. The number of construction equipment operating simultaneously shall be minimized through efficient management practices to ensure that the smallest practical number is operating at any one time. j. Construction worker trips shall be minimized where practical by providing options for carpooling.. Onsite meals 	<p>Review of Project Plans</p> <p>Periodic Site Inspections</p>	<p>Prior to Issuance of Permits</p> <p>Throughout Construction and Decommissioning Activities</p>	<p>City</p> <p>City</p>
Biological Resources				
BIO/mm-1	<p>Prior to construction, the applicant shall retain a qualified biological monitor(s) through or as approved by Point Blue, to ensure compliance with all measures</p>	<p>Approval of Biological</p>	<p>Prior to Construction</p>	<p>Point Blue</p>

A-3-MRA-14-0050 / 9-14-1735
EXHIBIT 5
Page 3 of 16
October 10, 2014

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>identified in the project environmental documents and permits. Monitoring shall occur throughout the duration of construction and decommissioning activities, or as directed by relevant regulatory agencies. Monitoring may be reduced during project operation, as determined through consultation with the CCC, USFWS, and CDFW.</p>	Monitor	Activities	
BIO/mm-2	<p>A qualified biologist(s) shall conduct preconstruction surveys for special-status species as described below.</p> <ol style="list-style-type: none"> a. Because of the dynamic nature of sand dunes and the tendency for Monterey spineflower to establish in recently-disturbed areas, surveys for Monterey spineflower and buckwheat (host plant for Smith's blue butterfly) shall be conducted within all project disturbance areas and within 20 feet of project boundaries during the blooming period for the spineflower (April-June) in the year prior to construction to identify and record the most current known locations of these species in the project vicinity. Surveys shall be conducted by a qualified botanist, and shall include collection of Global Positioning System (GPS) data points for use during flagging of sensitive plant species locations and avoidance buffers prior to construction. b. A preconstruction survey shall be conducted for special-status species no more than 14 days prior to construction. If project construction takes place during the avian nesting season (February 15th through September 1st), the survey shall encompass all suitable nesting habitat within 500 feet of the project. Should active nests be identified, avoidance buffers shall be established (250 feet for passerines and up to 500 feet for raptors) until a qualified biologist can confirm that nesting activities are complete. Variance from the no disturbance buffers may be implemented when there is compelling biological or ecological reason to do so. Any variance requested by the applicant shall be supported with a written statement by a qualified biologist and subject to USFWS and CDFW approval. c. One to two weeks prior to initiation of construction and decommissioning activities, a qualified biologist from Point Blue or in consultation with Point Blue, shall field evaluate the nature and extent of wintering snowy plover activity in the project area and shall make 	Documentation by Biological Monitor	Prior to Construction and Decommissioning Activities	Biological Monitor

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>avoidance recommendations regarding construction activities to minimize disturbance to plovers. The applicant shall comply with all Point Blue avoidance recommendations.</p> <p>d. Preconstruction surveys shall be conducted by a qualified biologist(s) for California legless lizard and coast horned lizard prior to disturbance of any suitable habitat. Surveys shall utilize hand search methods in areas of disturbance where these species are expected to be found (i.e., under shrubs, other vegetation, or debris on sandy soils). Any individuals located during the survey shall be safely removed and relocated in suitable habitat outside of the proposed disturbance area.</p>			
BIO/mm-3	<p>Prior to construction and decommissioning activities, a qualified biologist shall conduct an environmental awareness training for the lead (e.g. foreman, supervisor, manager) construction personnel that are on-site during activities, which at a minimum shall include: descriptions of the special-status species that have potential to occur in the project area; their habitat requirements and life histories as they relate to the project; the avoidance, minimization, and mitigation measures that will be implemented to avoid impacts to the species and their habitats; the regulatory agencies and regulations that manage their protection; and, consequences that may result from unauthorized impacts or take of special-status species and their habitats. The training shall include distribution of an environmental training brochure, and collection of signatures from all attendees acknowledging their participation in the training. Subsequent trainings shall be provided by the qualified biologist as needed for additional construction or operations workers through the life of the project.</p>	Documentation by Biological Monitor	Prior to Construction and Decommissioning Activities	Biological Monitor
BIO/mm-4	<p>Prior to construction, a qualified biologist shall coordinate with construction crews to identify and mark the boundaries of project disturbance, locations of special-status species and suitable habitat, avoidance areas, and access routes. GPS data collected during preconstruction surveys completed in 2012, 2013, and 2014 shall be used to flag the known locations of Monterey spineflower and buckwheat for avoidance during construction. Avoidance buffers shall be established and flagged or fenced as necessary to avoid surface disturbance or vegetation removal. The monitoring biologist shall fit the placement of flags and fencing to minimize impacts to any sensitive resources. At a minimum, the biologist shall direct the placement of highly visible exclusion fencing (snow fence or similar) at the</p>	Field Verification	Prior to Construction and Decommissioning Activities	Biological Monitor

A-3-MRA-14-0050 / 9-14-1735

EXHIBIT 5

Page 5 of 16

October 10, 2014

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>following locations:</p> <ul style="list-style-type: none"> a. Around sensitive snowy plover habitat areas that do not require regular access; b. Areas along the northern edge of the CEMEX access road in the vicinity of the settling ponds; and c. In between the work area and any identified occurrence of Monterey spineflower or buckwheat within 10 feet of the existing access road or work area. <p>All delineated areas of temporary fencing shall be shown on grading plans and shall remain in place and functional throughout the duration of construction and decommissioning activities.</p>			
BIO/mm-5	<p>A qualified biologist(s) shall be present during all project construction and decommissioning activities on a periodic basis as determined necessary by the biologist, and as needed during operational activities as determined in accordance with BIO/mm-1, to monitor for special-status species and to limit potential impacts to suitable habitat. The biologist(s) shall monitor construction equipment access and shall have authority to halt work activities, if the potential for impacts to special-status species or habitat is identified, until the issue can be resolved. The qualified biologist(s) shall immediately report any observations of special-status species to the project applicant, the Coastal Commission and any additional relevant regulatory agencies (CDFW, USFWS), as necessary.</p>	Documentation by Biological Monitor	Throughout the Duration of the Project	Biological Monitor
BIO/mm-6	<p>During the operational phase, a qualified biologist shall consult with Point Blue monitors on a weekly basis during the plover nesting season to stay current with nesting activity in the vicinity of the slant test well. If active plover nests are located within 250 feet of the project or access routes, avoidance buffers shall be established to minimize potential disturbance of nesting activity, and the biologist shall coordinate with and accompany Cal Am operational staff as necessary during the nesting season to guide access and activities to avoid impacts to nesting plovers. The biologist shall contact the USFWS and CDFW immediately if a nest is found in areas near the wellhead that could be affected by project operations. Operations shall be immediately suspended until written authorization to proceed is provided by USFWS.</p>	Documentation by Biological Monitor	Throughout Operational Testing Phase	Biological Monitor

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
BIO/mm-7	To ensure Point Blue has adequate staff and funding to complete necessary monitoring and coordination throughout development and operation of the slant test well project, Cal Am shall provide any necessary funding to Point Blue in an amount agreed upon by Point Blue and the applicant.	Documentation by Point Blue	Prior to Construction	Point Blue
BIO/mm-8	All construction and decommissioning activities shall be conducted between October 1 st and February 28 th , unless otherwise authorized by Coastal Commission and USFW, in order to be outside of the blooming period for Monterey spineflower, the active flight season for adult Smith's blue butterflies and active larval stage of the species, and the nesting season for western snowy plover and other avian species protected by the Migratory Bird Treaty Act. Construction activities shall be restricted to the designated construction areas and CEMEX access road. No construction equipment, materials, or activity shall occur outside of the specified areas. This measure shall be included on all construction and grading plan sets.	Field Verification	Throughout Construction and Decommissioning Activities	Biological Monitor
BIO/mm-9	In order to minimize potential for vehicular collision with special-status species, all construction, decommissioning, and operational traffic shall maintain speeds of 10 miles per hour or less on access roads within the CEMEX parcel. All personnel shall conduct a visual inspection for special-status species around and under all vehicles prior to moving them. This measure shall be included on all construction and grading plan sets.	Field Verification	Throughout Construction and Decommissioning Activities	Biological Monitor
BIO/mm-10	Noise blankets shall be installed to provide visual and sound attenuation during all drilling operations to minimize potential disturbance of wintering western snowy plover. This measure shall be included on all construction and grading plan sets.	Field Verification	Prior to Construction	Biological Monitor
BIO/mm-11	Wire excluders or similar anti-perching devices shall be incorporated into the top of all aboveground structures (e.g., electrical panel) to deter perching by avian predators. This measure shall be included on all construction and grading plan sets.	Field Verification	Prior to Construction	Biological Monitor

A-3-MRA-14-0050 / 9-14-1735

EXHIBIT 5

Page 7 of 16

October 10, 2014

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
BIO/mm-12	Construction personnel shall be required to keep all food-related trash items in sealed containers and remove them daily to discourage the concentration of potential predators in snowy plover habitat. Following construction, all trash and construction debris shall be removed from work areas and properly disposed of at a certified landfill. All vegetation removed from the construction site shall be taken to a certified landfill to prevent the spread of invasive species. This measure shall be included on all construction and grading plan sets.	Field Verification	Throughout Construction and Decommissioning Activities	Biological Monitor
BIO/mm-13	Prior to issuance of grading permits, the applicant shall develop a Restoration Management Plan (Plan) consistent with the requirements of the City of Marina LCP. At a minimum, the Plan shall include a description of the following methods and metrics: ratios of plants to be replaced based on a minimum replacement of 3:1, or as otherwise directed by regulatory agencies; areas of habitat to be restored, which shall at minimum include all areas of temporary disturbance in identified Primary or Secondary Habitat, except for areas actively used by CEMEX for mining purposes; timing of restoration activities; monitoring of restoration success; and any required reporting to relevant agencies. The Plan shall also include all relevant conditions of approval or requirements related to site restoration from permits issued by regulatory agencies for the project. The applicant shall seek input and/or review of the Plan from relevant regulatory agencies prior to finalization, including at a minimum the USFWS, CDFW, and CCC. The Plan shall be implemented: 1) during and immediately following construction and prior to operation of the test well, and 2) during and immediately following decommissioning activities.	Approval of Plan	Prior to Issuance of Permits	City and Biological Monitor
BIO/mm-14	After construction, all disturbed areas shall be restored and revegetated to preconstruction contours and conditions to the extent feasible, in accordance with the Restoration Management Plan. Following decommissioning of the test well, all disturbed areas shall be re-contoured and revegetated as determined necessary and in coordination with applicable agencies and representatives of Point Blue to ensure that the optimum ground configuration is obtained for potential nesting plovers and other special-status species that may occur in the area.	Field Verification and Documentation by Biological Monitor	After Construction and Decommissioning Activities	Biological Monitor

A-3-MRA-14-0050 / 9-14-1735

EXHIBIT 5

Page 8 of 16

October 10, 2014

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
BIO/mm-15	To ensure that restoration efforts are successful and unanticipated events are expeditiously managed, restored areas shall be monitored following planting and during operation of the test well and for 5 years following planting and decommissioning of the test well. This applies only if actual replanting are performed. [Dunes are disturbed active surface mining area, restoring to a level of adjacent dunes undisturbed dunes is not practical and the revegetation in this area is not applicable until Cemex ceases operation in this area.]	Field Verification and Documentation by Biological Monitor	After Decommissioning Activities	Biological Monitor
BIO/mm-16	During construction and decommissioning activities, the biological monitor(s) shall ensure that the spread or introduction of invasive plant species is avoided to the maximum extent possible through the following measures, which shall be included in all construction and grading plan sets: <ul style="list-style-type: none"> a. When practicable, invasive exotic plants in the project area shall be removed and properly disposed of at a certified landfill. b. The use of imported soils for fill shall be limited to the greatest extent feasible. Soils currently existing on-site shall be used for fill material to the extent feasible. If the use of imported fill material is necessary, the imported material must be obtained from a source that is known to be free of invasive plant species, or the material must consist of purchased clean material. c. The Restoration Management Plan shall include an invasive species control program to be implemented throughout the duration of the project and shall emphasize the use of native species expected to occur in the area. 	Field Verification	Throughout Duration of the Project	Biological Monitor
BIO/mm-17	Prior to operation of the test well and any discharge of pumped test water into the Pacific Ocean, the project applicant shall provide the Coastal Commission with a valid NPDES permit or other RWQCB approval for the proposed slant test well discharge. The NPDES permit or approval shall incorporate all relevant standards of the California Ocean Plan.	Review of RWQCB Permit or Approval	Prior to Operation of Project	CCC
BIO/mm-18	Prior to issuance of grading permits, the applicant shall submit a grading plan identifying all stockpile and staging areas. Stockpiles and staging areas shall not be placed in areas that have potential to experience significant runoff during the rainy season. All project-related spills of hazardous materials within or adjacent to	Approval of Plan	Prior to Issuance of Permits	City

A-3-MRA-14-0050 / 9-14-1735

EXHIBIT 5

Page 9 of 16

October 10, 2014

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>project sites shall be cleaned up immediately. Spill prevention and cleanup materials shall be on-site at all times during construction. Cleaning and refueling of equipment and vehicles shall occur only within designated staging areas. The staging areas shall conform to standard Best Management Practices (BMPs) applicable and feasible to attaining zero discharge of storm water runoff. No maintenance, cleaning or fueling of equipment shall occur within Primary or Secondary Habitat areas, or within 50 feet of such areas. At a minimum, all equipment and vehicles shall be checked and maintained on a daily basis to ensure proper operation and to avoid potential leaks or spills. The grading plan shall be subject to review and approval by the City of Marina.</p>			
Cultural Resources				
CR/mm-1	<p>The project shall be redesigned to avoid significant adverse effects to historic resources; in particular, direct impacts to the Lapis Siding that is identified as a contributor to the Lapis Sand Mining Plant Historic features shall be avoided. Because the Siding extends through the eastern portion of the construction footprint, the construction plans shall be redesigned to locate all project components and construction activities in adjacent areas that do not contain structures associated with the Lapis Sand Mining Plant historic features. Avoidance of impacts to historic district contributors in close proximity to construction activities shall be accomplished by installing flagging or safety fencing around, or covering with plywood, any adjacent buildings or structures that are within 5 feet of mechanized equipment.</p>	Review of Revised Development Plans	Prior to Issuance of Permits	City and Qualified Archaeologist
CR/mm-2	<p>A qualified archaeologist that meets the Secretary of the Interior’s professional qualifications standards in archaeology (National Park Service 1983) shall be retained to provide archaeological services for the project. Archaeological services for the project shall at minimum include the following:</p> <ol style="list-style-type: none"> a. Prior to initiation of ground-disturbing activities, an archaeological monitor working under the direction of the qualified archaeologist shall conduct a brief awareness training session for all construction workers and supervisory personnel. The training shall explain the importance of and legal basis for the protection of significant archaeological resources. Each worker should learn the proper procedures to follow in the event that cultural resources or human remains/burials are uncovered during 	Approval of Qualified Archaeologist and Documentation by Qualified Archaeologist	Prior to and Throughout Construction and Decommissioning Activities	MBNMS and Qualified Archaeologist

A-3-MRA-14-0050 / 9-14-1735

EXHIBIT 5

Page 10 of 16

October 10, 2014

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>ground-disturbing activities, including those that occur when an archaeological monitor is not present. These procedures include work curtailment or redirection and the immediate contact of the site supervisor and the archaeological monitor. It is recommended that this worker education session include visual images or samples of artifacts that might be found in the project vicinity, and that the session take place on-site immediately prior to the start of ground-disturbing activities.</p> <p>b. An archaeological monitor working under the direction of the qualified archaeologist shall monitor all ground disturbance in areas within 100 feet of the historic buildings within the eastern portion of the project area. These include the Superintendent’s Residence, Bunkhouse, Garage/Office, Maintenance Shop, and Scale House. The timing and duration of the monitoring may be adjusted during project implementation by the qualified archaeologist, in consultation with the City, whose decision shall be informed by the apparent sensitivity of the sediments in the project area once they are exposed.</p> <p>c. The project applicant shall coordinate with representatives from the Ohlone/Coastanoan-Esselen Nation and Amah Mutsun Tribal Band of Mission San Juan Bautista to designate a Native American monitor to be present during ground disturbing activities associated with the project. Documentation of such coordination shall be provided to MBMNS prior to construction activities. The timing and duration of the monitoring may be adjusted during project implementation by the qualified archaeologist, in consultation with MBNMS, whose decision shall be informed by the apparent sensitivity of the sediments in the project area once they are exposed.¹</p>			
CR/mm-3	In the event that archaeological resources (artifacts or features) are exposed during ground-disturbing activities, construction activities in the immediate vicinity (25 feet) of the discovery shall be halted while the resources are evaluated for significance by the qualified archaeologist. Construction activities could	Documentation by Qualified Archaeologist	Throughout Construction and Decommissioning Activities	Qualified Archaeologist

¹ Added from Environmental Assessment for the California American Water Slant Test Well Project

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	continue in other areas. If the discovery proves to be significant, additional work, such as archaeological data recovery or project redesign, may be warranted and would be discussed in consultation with the City.			
CR-mm-4	In the event of inadvertent discovery of human remains, no further disturbance shall occur until the County Coroner has made a determination of origin and disposition pursuant to Public Resources Code Section 5097.98. The County Coroner shall be notified of the find immediately. If the human remains are determined to be prehistoric, the coroner will notify the Native American Heritage Commission, which will determine and notify a most likely descendant (MLD). The MLD shall complete the inspection of the site within 48 hours of notification, and may recommend scientific removal and nondestructive analysis of human remains and items associated with Native American burials. The California Health and Safety Code Section 7050.5 process shall be noted on project grading and construction plans and reviewed during the construction worker awareness training session.	Documentation by Qualified Archaeologist	Throughout Construction and Decommissioning Activities	Qualified Archaeologist
<i>Geology and Soils</i>				
GEO/mm-1	The project shall be designed to meet or exceed all applicable requirements of the CBC. Design and construction of the project shall meet or exceed all applicable feasible conclusions and recommendations in the Geotechnical Investigation for the California American Water Temporary Slant Test Well Project, Marina, Monterey County, California, dated April 3, 2014 (GeoSoils 2014).	Review of Grading and Engineering Documents and Construction Inspections and Testing As Required	Prior to and Throughout Construction	City
<i>Hazards and Hazardous Materials</i>				
HAZ/mm-1	Prior to construction, the applicant shall prepare a Hazardous Material Spill Prevention, Control and Countermeasure Plan to minimize the potential for, and effects of, spills of hazardous or toxic substances or the inadvertent discovery of buried hazardous materials during construction or decommissioning of the project. The plan shall be submitted for review and approval by the City, and shall	Approval of Plan	Prior to Construction	City

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>include, at minimum, the following:</p> <ul style="list-style-type: none"> a. A description of hazardous materials to be used, storage procedures and construction and decommissioning site maintenance and upkeep practices; b. Identification of a person or persons responsible for monitoring implementation of the plan and spill response; c. Identification of BMPs to be implemented to ensure minimal impacts to the environment occur, including but not limited to the use of containment devices for hazardous materials, training of construction staff regarding safety practices to reduce the chance for spills or accidents, and use of non-toxic substances where feasible; d. A description of proper procedures for containing, diverting, isolating, and cleaning up spills, hazardous substances and/or soils, in a manner that minimizes impacts on sensitive biological resources; e. Positive location of any past or current septic systems on the CEMEX parcel in the vicinity of construction activities, and a plan for avoiding impacts to any known or unknown buried refuse disposal locations;² f. A description of the actions required if a spill or inadvertent discovery occurs, including which authorities to contact and proper clean-up procedures; and g. A requirement that all construction personnel participate in an awareness training program conducted by qualified personnel approved by the City. The training must include a description of the Hazardous Materials Spill Prevention, Control and Countermeasure Plan, the plan's requirements for spill prevention, information regarding the importance of preventing spills, the appropriate measures to take should a spill or inadvertent discovery occur, and identification of the location of all clean-up materials and equipment. 			
HAZ/mm-2	Prior to commencement of construction or decommissioning activities, the applicant shall consult with the property owner (CEMEX) regarding construction/	Documentation by Applicant	Prior to Construction and	CCC

² Added from Environmental Assessment for the California American Water Slant Test Well Project

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>decommissioning operations and schedule. In coordination, the project applicant shall provide advance notice of construction activities and construction shall be scheduled to avoid disruption of existing mining activities to the extent feasible. Coordination shall include construction and decommissioning phase parking needs and the number of on-site construction crewmember vehicles shall not be more than can be accommodated within the CEMEX parking area, as determined by the property owner. If the on-site parking area is insufficient to accommodate project crewmembers, the applicant shall implement carpooling, off-site parking, shuttle service to the site, or other similar measures to reduce the number of vehicles at the site consistent with property owner approval. If construction activities within the CEMEX access road would conflict with CEMEX operations, such construction shall be conducted during non-operational mining periods (i.e., nighttime or weekends). Construction activities shall be conducted to avoid any need for the grading of any new access roads for use by CEMEX.</p>		Decommissioning Activities	
<i>Hydrology and Water Quality</i>				
HYD/mm-1	<p>Prior to construction, the applicant shall prepare a groundwater monitoring plan for City review and approval. The plan shall determine, through preliminary monitoring and sampling prior to pumping activities, a baseline condition of groundwater levels and quality, including the reasonable range of natural fluctuations, in the Dune Sand, 180-FTE, and 400-Foot Aquifers. The effects of pumping activities on groundwater levels and quality in the Dune Sand, 180-FTE, and 400-Foot Aquifers shall be monitored throughout the duration of pumping activities. Monitoring activities shall be conducted through regular assessment of the proposed on-site monitoring wells, as well as through additional coordination with surrounding well owners, including CEMEX and adjacent agricultural water users, to identify changes in off-site water levels to the maximum extent feasible.</p> <p>A drawdown of 1 foot above natural fluctuations on groundwater levels shall be considered a significant adverse effect on water supply. If pumping activities reflect a drawdown of 1 foot or greater on any adjacent well, compensatory mitigation shall be required. Feasible mitigation shall include consultation with the affected water user and implementation of compensatory mitigation measures, including monetary compensation (i.e., for increased pumping costs or for upgraded wells), or provision of replacement water from</p>	Approval of Plan	Prior to Construction	Monterey County Water Resources Agency

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>alternative sources. If compensation or other remediation is found to be unfeasible, pumping activities shall be adjusted so that no more than 1 foot of drawdown on usable water sources would result.</p> <p>The plan shall designate a person or persons to monitor implementation of the monitoring plan and to order implementation of mitigation if necessary. The name and telephone number of the person(s) shall be listed in the monitoring plan and provided to the Monterey County Water Resources Agency (MCWRA) prior to the start of construction. The plan shall include a requirement for regular reporting (no less than annually) on the results of the monitoring activities, and the reports shall be submitted to the MCWRA and other relevant regulatory agencies.</p>			
HYD/mm-2	<p>Prior to issuance of grading permits, the applicant shall submit an erosion control plan for approval by the City Public Works Director. The plan shall be prepared by an appropriately certified professional and shall include a schedule for the completion of erosion- and sediment-control structures, which ensures that all such erosion-control structures are in place by mid-November of the year that construction begins. The plan shall identify standard Best Management Practices to be implemented to address both temporary and permanent measures to control erosion and reduce sedimentation. Site monitoring by the applicant's erosion-control specialist shall be undertaken and a follow-up report shall be prepared that documents the progress and/or completion of required erosion-control measures both during and after construction and decommissioning activities. No synthetic plastic mesh products shall be used in any erosion control materials. All plans shall show that sedimentation and erosion control measures are installed prior to any other ground disturbing work.</p>	Approval of Plan	Prior to Construction	City
HYD/mm-3	<p>The slant test well and wellhead vault shall be sited to avoid areas identified in the coastal erosion memorandum prepared by ESA-PWA (March 2014) as subject to coastal erosion during the duration of the project. The alternative slant test well location shall avoid all identified sensitive plant species and shall be limited to the graded area of the CEMEX access road to the maximum extent feasible. The slant test well location shall not encroach north of the graded roadway in closer proximity to the CEMEX settling ponds or Canal Flume. If test well is designated to be decommissioned because test well is determined to have no future use, the slant test well and all related infrastructure shall be removed to a depth of no less</p>	Review of Revised Development Plans and Field Verification	Prior to Issuance of Permits and After Decommissioning	MCWRA

A-3-MRA-14-0050 / 9-14-1735

EXHIBIT 5

Page 15 of 16

October 10, 2014

Mitigation Measure	Requirements of Measure	Compliance Method	Verification Timing	Responsible Party
	<p>than 40 feet below ground surface to eliminate the possibility for future re-surfacing and exposure of submerged well casing or related project components as a result of coastal erosion and shoreline retreat. Removal of the well would take place upon decommissioning and/or in segments over time as mutually agreed upon by the MRWPCA, Cal Am, the California State Lands Commission, CEMEX, and other identified regulatory agencies. If removal to the total required depth of 40 feet below ground surface is not completed within 5 years following completion of the decommissioning, the applicant shall post a bond with the City to ensure future removal measures would be appropriately supported and timed to prevent any future resurfacing of the well casing or other project components.</p>			
<i>Utilities and Service Systems</i>				
UTIL/mm-1	<p>Prior to commencement of construction activities, the applicant shall provide the CCC with a copy of a negotiated agreement or memorandum of understanding between the applicant and the Monterey Regional Water Pollution Control Agency regarding connection and use of the ocean outfall. At minimum, the agreement shall include MRWPCA engineering design review, USA North 811 positive location of the outfall, construction trestle, and any related infrastructure, RWQCB approval or permits for discharge of seawater through the MRWPCA outfall, and access to flow meter data and alarm system triggers and signals.</p>	Review of Agreement or Memorandum	Prior to Issuance of Permits Construction	CCC and RWQCB

1972 coastal records project



A-3-MRA-14-0050 / 9-14-1735
EXHIBIT 6

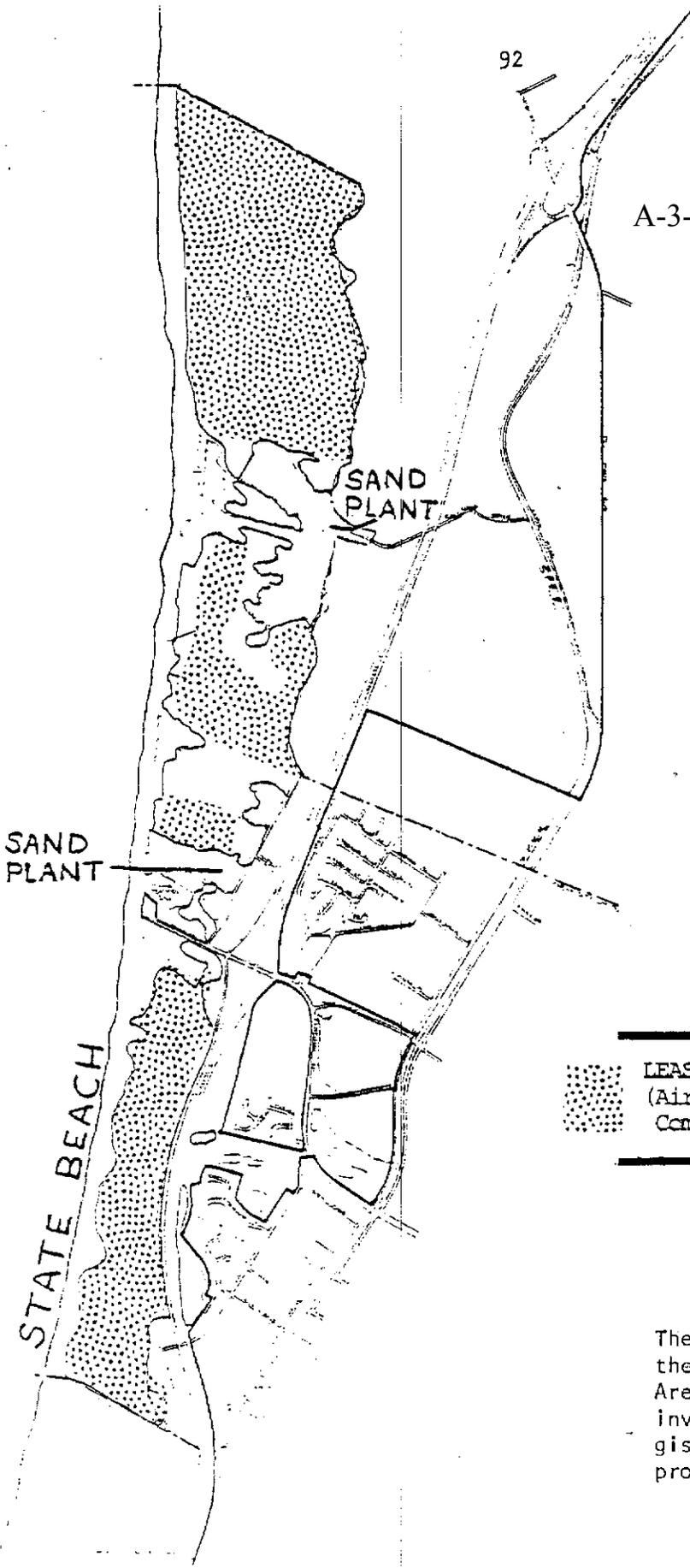
2013



A-3-MIRA-14-0050 / 9-14-1735

EXHIBIT 6

A-3-MRS-14-0050 / 9-14-1735
EXHIBIT 7




 LEAST-DISTURBED DUNE HABITAT AREAS
 (Air Photo Interpretation By Coastal
 Commission Staff, October, 1981)



The Precise location and edges of these Least Disturbed Dune Habitat Areas shall be determined by ground investigation by a qualified biologist and mapped at the time use is proposed.

LEAST - DISTURBED DUNE HABITAT AREAS
MARINA LOCAL COASTAL PROGRAM

EXHIBIT
B

LCP Primary and Secondary Habitat Delineation

The purpose of this Memorandum is to discuss the delineation of Primary and Secondary Habitat for the Snowy Plover within the area examined by the Habitat Assessment. This delineation supersedes that of the habitat delineation in referenced in the Restoration Management Plan prepared by Zander Associates, dated July 2014. This delineation of Primary and Secondary Habitat stems from a finer grained evaluation of habitat quality in the project area.

The City of Marina LCP (1982) requires protection and preservation of "primary habitat areas," which includes "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...", "all 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 temporary project footprint lies wholly within the active mining area with much of the area being disturbed. The Draft Initial Study and Mitigated Negative Declaration for the project defined Primary Habitat as coastal dunes and sandy beach. Upon reexamination, it was noted that areas originally classified as Primary Habitat within the project area were in fact disturbed to a degree that would preclude them as Primary Habitat, altering the classification to Secondary Habitat. For instance areas south of the Mitigated Well Location previously classified as coastal dunes is in fact a stock pile for sand, is periodically graded by Cemex and is largely devoid suitable vegetation. The disturbance of habitat area stems from the operations of the Cemex mining area. The habitat within the Mitigated Well Location footprint is within the approved Cemex Restoration Plan.

Habitat was reevaluated using a combination of site photos from field reconnaissance and from satellite imagery. Areas with significant disturbance such as dirt roads, graded surfaces, areas disturbed by mining activities, and soils/sand stock piles were reclassified as Secondary Habitat. The reclassified habitat is shown in the attached Exhibit. As seen in the Exhibit, the area of the Mitigated test well footprint is within Secondary Habitat. Total Primary Habitat area within the Project Area is approximately .68 acres and is located on the western most end of the project area. Secondary Habitat accounts for the majority of the project area at 2.01 acres.

Habitat reclassifications were reviewed by Zander Associated and RBF biologists for concurrence.

A-3-MRA-14-0050 / 9-14-1735
EXHIBIT 8

Attachments:

Attachment A: Primary and Secondary Habitat Map

Attachment B: Historic Aerials of Project Site

Attachment C: Project Site Photos

Attachment D: Existing Biological Conditions Map



Image Date: 2006 (Source: Google Earth)



Image Date: 2007 (Source: Google Earth)



Image Date: 2012 (Source: Google Earth)



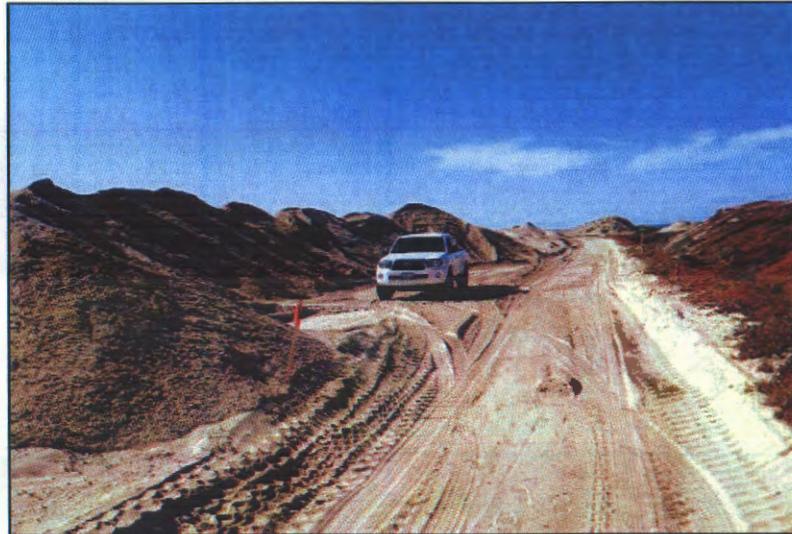
Image Date: 2013 (Source: Google Earth)



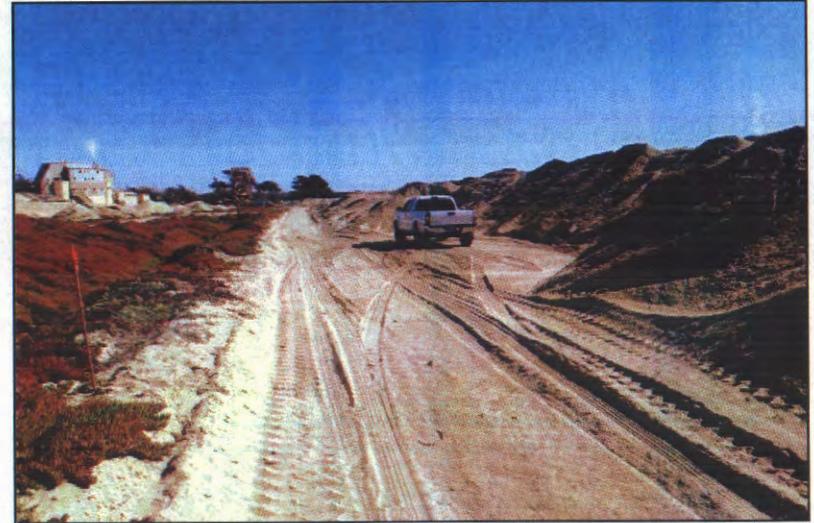
View of Cemex Access Road and Stockpiles Facing East. (Image Date: 10/30/2013)



View of Stockpiling and Cemex Access Road Facing East. (Image Date: 10/22/2013)

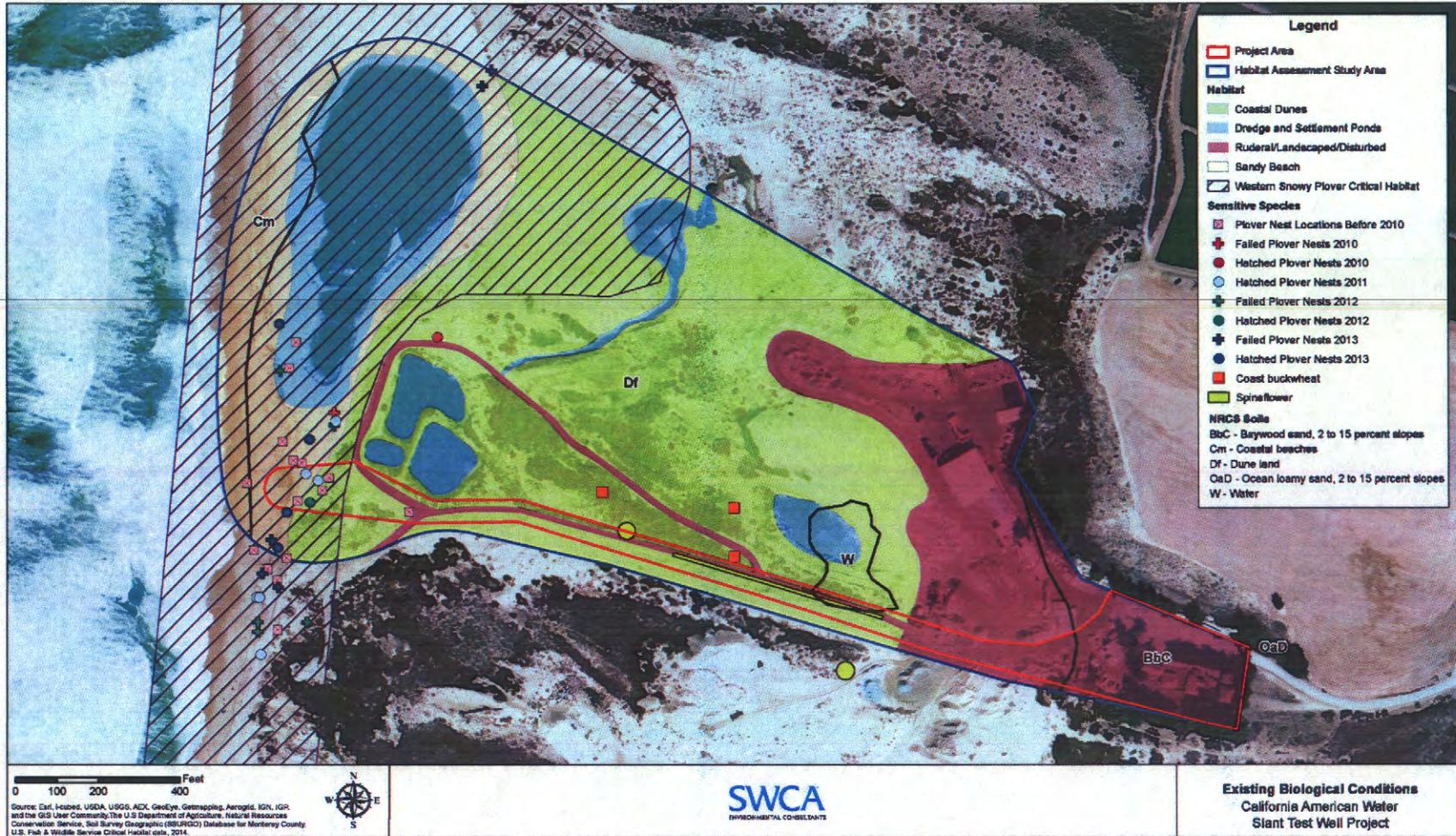


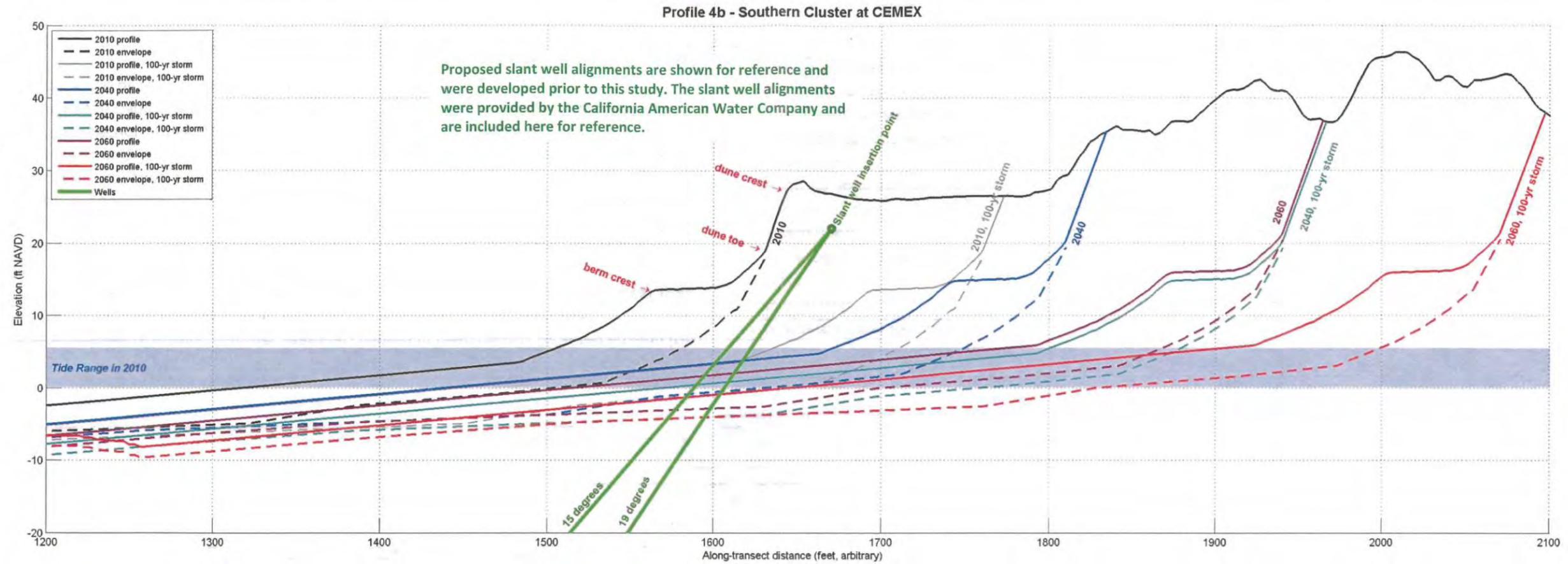
View of Cemex Access Road and Stockpiling facing West. (Image Date: 10/30/2013)



View of Cemex Access Road and Stockpiling facing East. (Image Date: 10/30/2013)

Figure 6. Existing Biological Setting





Proposed slant well alignments are shown for reference and were developed prior to this study. The slant well alignments were provided by the California American Water Company and are included here for reference.

Notes:

1. These envelopes of erosion consider seasonal changes in beach width, localized erosion (rip currents), long-term erosion, and accelerated erosion caused by sea level rise.
2. The profile shape is linearly interpolated between the bathymetry data and the topography data (between x = 820 ft and x = 1480).
3. This profile is located immediately south of the CEMEX Pacifica Lapis sand mining plant. No data is available to quantify the uncertainty in adjacent beach and dune erosion related to sand mining activities. The potential for fluctuations in beach width associated with sand mining were not considered in this analysis.
4. Slant well location and angle are based on the "Well 3 Alignment" and "Well 3 Cross-Section" drawings provided by Geoscience on July 30, 2013.
5. The well input parameters in the table to the right were developed prior to this study and were provided by the California American Water.

Southern Cluster Parameters

	Production Well		Notes
type of well	Production Well	Production Well	
inputs			
angle (degrees from horizontal)	15	19	
length (feet)	800	800	
insertion pt elevation (feet NAVD)	22.0	22.0	AMSL to NAVD 88 conversion: 2.97 ft
insertion point loc (feet, arbitrary)	1670	1670	
calculations			
intake elevation (feet NAVD)	-185	-238	
intake loc (feet, arbitrary)	897	914	
Bed elevation at intake (ft NAVD)	-9	-9	linearly interpolated btwn bathy and topo data
Depth of sediment above intake (ft)	176	230	difference between bed and intake elevation

Monterey Peninsula Water Supply Project. 205335.01
Figure 9. Representative Profile #4b at CEMEX

Exhibit 10 – City of Marina Municipal Code Section 17.41.100, Requirements for Habitat Restoration

All direct and potential impacts to primary and secondary habitats shall be fully mitigated. Appropriate acreage replacement/restoration ratios for any unavoidable direct impacts to habitat areas and buffer areas shall be applied to fully protect identified habitat. Habitat restoration plans shall be prepared and approved prior to issuance of any grading or building permits.

A. Habitat Restoration Plan Requirement.

- 1. All habitat restoration, enhancement, and/or buffering plans shall be prepared by a qualified biologist and where appropriate, with the assistance of a qualified hydrologist. Plans shall be developed in consultation with the Department of Fish and Game and U.S. Fish and Wildlife Service in cases where these agencies have jurisdiction. The plans and the work encompassed in the plans shall be authorized by a coastal development permit. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the city. No changes to the approved final plans shall occur without a city-approved amendment.*
- 2. The elements of such a plan shall include, at a minimum:*
 - a. A detailed site plan of the entire habitat and buffer area with a topographic base map;*
 - b. A baseline ecological assessment of the habitat buffer area, including but not limited to, assessment of biological, physical, and chemical criteria for the area;*
 - c. The goals, objectives, performance standards, and success criteria for the site, including specific coverage and health standards for any areas to be planted. At a minimum, explicit performance standards for vegetation, hydrology, sedimentation, water quality and wildlife, and a clear schedule and procedure for determining whether they are met shall be provided. Any such performance standards shall include identification of minimum goals for each herbaceous species, by percentage of total plantings and by percentage of total cover when defined success criteria are met; and specification of the number of years active maintenance and monitoring will continue once success criteria are met. All performance standards shall state in quantifiable terms the level and extent of the attributes necessary to reach the goals and objectives. Sustainability of the attributes shall be a part of every standard. Each performance standard shall identify: (1) the attribute to be achieved; (2) the condition of level that defines success; and (3) the period over which success must be sustained. The performance standards must be specific to provide for the assessment of habitat performance over time through the measurement of habitat attributes and functions including, but not limited to, wetland vegetation, hydrology, and wildlife abundance;*
 - d. The final design, installation, and management methods that will be used to ensure the mitigation site achieves the defined goals, objectives and performance standards;*
 - e. Provisions for the full restoration of any impacts that are identifiable as temporary necessary to install the restoration or enhancement elements;*

- f. Provisions for submittal, within thirty days of completion of initial (and subsequent phases, if any) of restoration work, of “as built” plans demonstrating that the restoration and enhancement has been established in accordance with the approved design and installation methods;*
- g. Provisions for a detailed monitoring program to include, at a minimum, provisions for assessing the initial biological and ecological status of the site. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation;*
- h. Provisions to ensure that the site will be promptly remediated if monitoring results indicate that the site does not meet the goals, objectives and performance standards identified in the approved mitigation programs and provisions for such remediation. If the final report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit a revised or supplemental mitigation program to compensate for those portions of the original program that did not meet the approved performance standards;*
- i. Provisions for submission of annual reports of monitoring results to the city of the first five years after all restoration and maintenance activities have concluded (including but not limited to watering and weeding, unless weeding is part of an ongoing long-term maintenance plan) and periodic monitoring after that time, beginning the first year after submission of the “as-built” assessment. Each report shall include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the project in relation to the performance standards. (Ord. 2007-11 § 3 (Exh. A (part)), 2007)*

Exhibit 11 – City of Marina Municipal Code – Coastal Zoning, Section 17.41.100,
Requirements for Habitat Restoration:

All direct and potential impacts to primary and secondary habitats shall be fully mitigated. Appropriate acreage replacement/restoration ratios for any unavoidable direct impacts to habitat areas and buffer areas shall be applied to fully protect identified habitat. Habitat restoration plans shall be prepared and approved prior to issuance of any grading or building permits.

A. *Habitat Restoration Plan Requirement.*

1. *All habitat restoration, enhancement, and/or buffering plans shall be prepared by a qualified biologist and where appropriate, with the assistance of a qualified hydrologist. Plans shall be developed in consultation with the Department of Fish and Game and U.S. Fish and Wildlife Service in cases where these agencies have jurisdiction. The plans and the work encompassed in the plans shall be authorized by a coastal development permit. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the city. No changes to the approved final plans shall occur without a city-approved amendment.*
2. *The elements of such a plan shall include, at a minimum:*
 - a. *A detailed site plan of the entire habitat and buffer area with a topographic base map;*
 - b. *A baseline ecological assessment of the habitat buffer area, including but not limited to, assessment of biological, physical, and chemical criteria for the area;*
 - c. *The goals, objectives, performance standards, and success criteria for the site, including specific coverage and health standards for any areas to be planted. At a minimum, explicit performance standards for vegetation, hydrology, sedimentation, water quality and wildlife, and a clear schedule and procedure for determining whether they are met shall be provided. Any such performance standards shall include identification of minimum goals for each herbaceous species, by percentage of total plantings and by percentage of total cover when defined success criteria are met; and specification of the number of years active maintenance and monitoring will continue once success criteria are met. All performance standards shall state in quantifiable terms the level and extent of the attributes necessary to reach the goals and objectives. Sustainability of the attributes shall be a part of every standard. Each performance standard shall identify: (1) the attribute to be achieved; (2) the condition of level that defines success; and (3) the period over which success must be sustained. The performance standards must be specific to provide for the assessment of habitat performance over time through the measurement of habitat attributes and functions including, but not limited to, wetland vegetation, hydrology, and wildlife abundance;*
 - d. *The final design, installation, and management methods that will be used to ensure the mitigation site achieves the defined goals, objectives and performance standards;*

- e. *Provisions for the full restoration of any impacts that are identifiable as temporary necessary to install the restoration or enhancement elements;*
- f. *Provisions for submittal, within thirty days of completion of initial (and subsequent phases, if any) of restoration work, of “as built” plans demonstrating that the restoration and enhancement has been established in accordance with the approved design and installation methods;*
- g. *Provisions for a detailed monitoring program to include, at a minimum, provisions for assessing the initial biological and ecological status of the site. The assessment shall include an analysis of the attributes that will be monitored pursuant to the program, with a description of the methods for making that evaluation;*
- h. *Provisions to ensure that the site will be promptly remediated if monitoring results indicate that the site does not meet the goals, objectives and performance standards identified in the approved mitigation programs and provisions for such remediation. If the final report indicates that the mitigation project has been unsuccessful, in part, or in whole, based on the approved performance standards, the applicant shall submit a revised or supplemental mitigation program to compensate for those portions of the original program that did not meet the approved performance standards;*
- i. *Provisions for submission of annual reports of monitoring results to the city of the first five years after all restoration and maintenance activities have concluded (including but not limited to watering and weeding, unless weeding is part of an ongoing long-term maintenance plan) and periodic monitoring after that time, beginning the first year after submission of the “as-built” assessment. Each report shall include a “Performance Evaluation” section where information and results from the monitoring program are used to evaluate the status of the project in relation to the performance standards. (Ord. 2007-11 § 3 (Exh. A (part)), 2007)*

APPENDIX A

Substantive File Documents

California American Water, Appeal of City of Marina Denial of CDP, September 2014.

California American Water, Application for Coastal Development Permit 9-14-1735.

California American Water, Application to California Public Utilities Commission for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates, April 2012.

City of Marina, Final Local Action Notice and accompanying documentation, September 2014.

City of Marina, Draft Initial Study/Mitigated Negative Declaration, May 2014.

Geoscience Support Services, Inc., *Monterey Peninsula Water Supply Project Hydrogeologic Investigation: Technical Memorandum (TM1) Summary of Results – Exploratory Boreholes*, prepared for California-American Water and RBF Consulting, July 8, 2014.

Monterey Bay National Marine Sanctuary, Draft Environmental Assessment, June 2014.

SWCA Environmental Consultants, *Environmental Assessment for the California American Water Slant Test Well Project*, prepared for Monterey Bay National Marine Sanctuary, June 2014.

A-3-MRA-14-0050 / 9-14-1735
CORRESPONDENCE

COMMITTEES
CHAIR: INSURANCE
BUDGET & FISCAL REVIEW
BUDGET SUBCOMMITTEE 3
ON HEALTH & HUMAN SERVICES
EDUCATION
HEALTH
JUDICIARY
NATURAL RESOURCES & WATER

WEB
HTTP://SD17.SENATE.CA.GOV

California State Senate



WILLIAM W. MONNING
SENATOR, SEVENTEENTH DISTRICT

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SAN LUIS OBISPO, CA 93401
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GILROY, CA 95020
TEL (408) 847-6101

October 21, 2014

Steve Kinsey, Chair
Attn: Mike Watson, Coastal Planner
California Coastal Commission
725 Front Street, Suite 300
Santa Cruz, CA 95060

RECEIVED

OCT 28 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Dear Chair Kinsey:

This letter is to express my support for the California American Water Company's (CalAm's) appeal to the California Coastal Commission for approval of the Coastal Development Permits required for CalAm's test well project.

CalAm is requesting a Coastal Development Permit to complete and operate a test well that is a critical component of the Monterey Peninsula Water Supply Project. The test well will gather data on the feasibility of slant wells at the site. In addition, the information obtained will be used to finalize the number, capacity, location, and design criteria of future intake wells, as well as improve the precision of groundwater modeling that is required to determine future water supply decisions.

As you know, the Monterey Peninsula Water Supply Project is a critical environmental project to protect the Carmel River; threatened species, such as the South Central Coast Steelhead and California-Red Legged Frog; and the future water supply for Monterey Peninsula residents and businesses.

The Monterey Peninsula Water Supply Project is reliant on the operation of a test well to study the feasibility of subsurface intakes and I ask that the California Coastal Commission give all due consideration to the California American Water Company's appeal for Coastal Development Permits.

Thank you for your time and consideration.

Sincerely,

WILLIAM W. MONNING
Senator, 17th District

WWM:nc

COMMITTEES
JUDICIARY
BUDGET
BUDGET SUBCOMMITTEE #5 ON
PUBLIC SAFETY
NATURAL RESOURCES
ENVIRONMENTAL SAFETY AND
TOXIC MATERIALS

CHAIR, SELECT COMMITTEE ON
COASTAL PROTECTION

Assembly California Legislature



MARK STONE
CHAIR, HUMAN SERVICES
ASSEMBLYMEMBER, TWENTY-NINTH DISTRICT

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Appeal No. A-3-MRA-14-0050

October 29, 2014

Hon. Steve Kinsey, Chair and Commissioners
California Coastal Commission
Attn: Mike Watson
725 Front Street, Suite 300
Santa Cruz, CA 95060

RE: SUPPORT Appeal No. A-3-MRA-14-0050 (California American Water Co., Marina)

Dear Chair Kinsey and Commissioners:

As the Assemblymember for the Monterey Bay Area, Chair of the Assembly Select Committee on Coastal Protection, and Co-Chair of the Legislative Environmental Caucus, I submit this letter to urge you to grant the appeal and the required Coastal Development Permits for the proposed Slant Test Well Project. The Monterey Peninsula community has a significant stake in the future of the region's water supply, the health of the Carmel River, and the protection of our Monterey Bay National Marine Sanctuary and beautiful coastline.

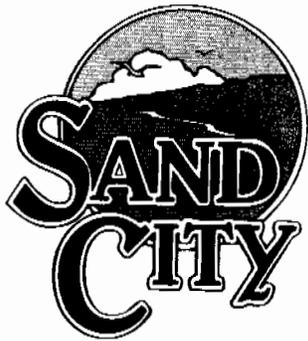
The appeal and proposal are consistent with information provided to the Assembly Select Committee on Coastal Protection during its hearing on September 24th, 2014 in Sacramento on the topic of seawater desalination and its impacts on coastal resources. Extensive evidence was presented regarding the harm of open ocean intakes, including entrainment and impingement of marine organisms. However, the proposed subsurface intakes could reduce or eliminate that environmental harm and is largely considered as the best available technology in that regard.

The proposed solution is a part of a portfolio of water projects intended to minimize the environmental and ratepayer impacts as well as allow for a reduction in the size of the desalination plant. Existing aggressive conservation measures will continue, which have resulted in some of the lowest water use in the state of approximately 60 gallons per person per day.

The information that will be gathered from the slant test well on source water and feasibility is an important step and will serve to further the state of knowledge with respect to alternatives to open ocean intakes. For these reasons, I urge you to grant the appeal and approve the Coastal Development Permits required for this Slant Test Well Project.

Sincerely,

Mark Stone
Assemblymember
Twenty-Ninth District



Reference Agenda Item
A-3-MRA-14-0050

October 24, 2014

RECEIVED

OCT 27 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

California Coastal Commission
Attn: **Mike Watson**
725 Front Street, Suite 300
Santa Cruz, CA 95060

Re: Agenda Item A-3-MRA-14-0050

Dear Members of the California Coastal Commission:

I strongly urge you to support Cal-Am's appeal for its slant test wells for the proposed regional desalination project, north of Marina. As Mayor of one of the Monterey Peninsula's cities and a Board Member of the Monterey Peninsula Water Management District as well as a member of the Peninsula Mayors Water Authority, I support this appeal.

It is critical that we find a timely solution to our area's water issues and Cal-Am's tests well are the first, critical step toward achieving that solution.

A broad coalition of environmental, business, community and labor leaders support this appeal, including the Sierra Club, the Monterey Peninsula Chamber of Commerce, Surfrider, the Carmel River Steelhead Association, the Carmel Watershed Conservancy and my fellow Peninsula Mayors.

I ask that you approve Cal-Am's appeal.

Yours truly,

Mayor David Pendergrass
Mayor, City of Sand City

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1 Sylvan Park,
Sand City, CA
93955

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Planning
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FAX
(831) 394-2472

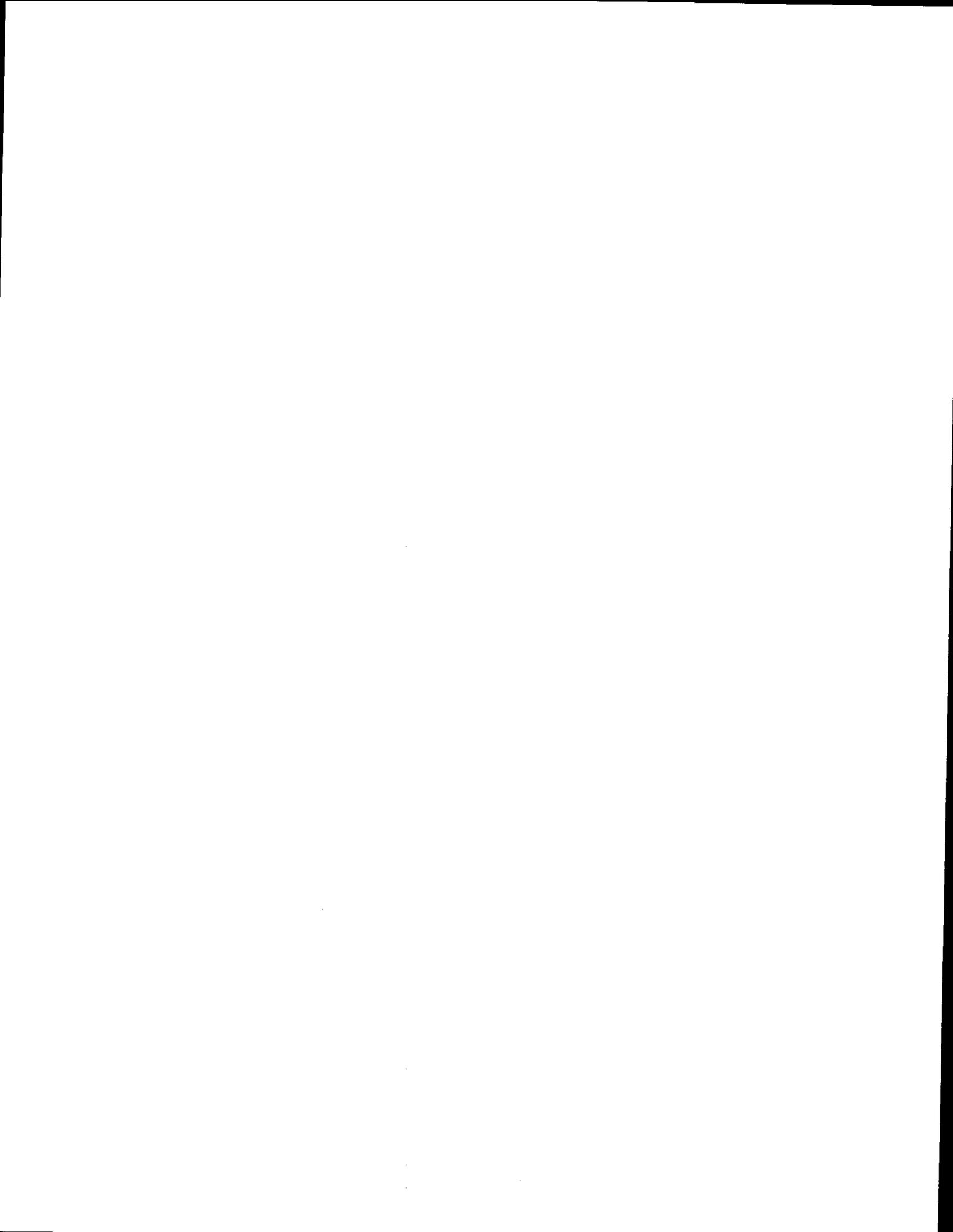
Police
(831) 394-1451

FAX
(831) 394-1038

CC: Catherine Stedman
Peninsula Mayors
MPWMD
Peninsula Mayors Water Authority
Sand City Council

DP:TB

Incorporated
May 31, 1960



RECEIVED

OCT 14 2014

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

October 9, 2014

Mike Watson
725 Front Street #300
California Coastal Commission
Santa Cruz, CA 95060

Re: CalAm Slant Test Well Project (No. A-3-MRA-14-0050)

Dear Mr. Watson:

I have attached a copy of a letter to Tom Luster having to do with the potential for greenhouse gas release from desalination feed sourced in the subsurface.

Regards,



William Bourcier, Ph.D.
8586 Tesla Road
Livermore, CA 94550
wbourcier@gmail.com
bourcier1@lcnl.gov
925-667-7165 m

RECEIVED

October 9, 2014

OCT 14 2014

Tom Luster
California Coastal Commission
45 Fremont Street #2000
San Francisco, CA 94105
415-904-5248

CALIFORNIA
COASTAL COMMISSION
CENTRAL COAST AREA

Re: CalAm Slant Test Well Project (No. A-3-MRA-14-0050)

Dear Mr. Luster:

I have a comment on the DWR ocean plan having to do with the CalAm Slant Test Well Project (No. A-3-MRA-14-0050) and specifically the emission of greenhouse gases from desalination feed sourced in the subsurface.

One aspect of placing seawater intakes in the subsurface which is not addressed in the EA is that of the potential for carbon dioxide and methane release from pumped waters from the Dune Sand Aquifer. Subsurface fluids generally have elevated carbon dioxide and methane contents due to subsurface microbial activity as well as gases generated at depth that vent upwards. The carbon dioxide contents are much higher than atmospheric so that upon discharge at the surface the fluids will release carbon dioxide to the atmosphere. This is true in general for all pumped subsurface waters. Macpherson (Chemical Geology, 2009, 264:328-336) estimates that globally this carbon dioxide flux generated by pumping fluids from wells to the surface is about equal to the sum of all volcanic carbon dioxide release. Macpherson did not include release from desalination plants in her assessment.

One can estimate the flux of carbon dioxide into the atmosphere from desalination of sea water obtained from the subsurface. If we assume a typical carbon dioxide partial pressure of 0.1 bars (typical of CO₂ pressures measured in soils), we can calculate that upon equilibration of the fluid with the atmosphere one liter of fluid will release about 34 mmoles of CO₂. For a 50 MGD sea water desalination plant this corresponds to about 0.2 million tonnes per year of released CO₂ – CO₂ that is basically pumped from the subsurface into the atmosphere as a result of the desalination plant. In addition, subsurface fluids often contain significant methane concentrations which would also be released into the atmosphere.

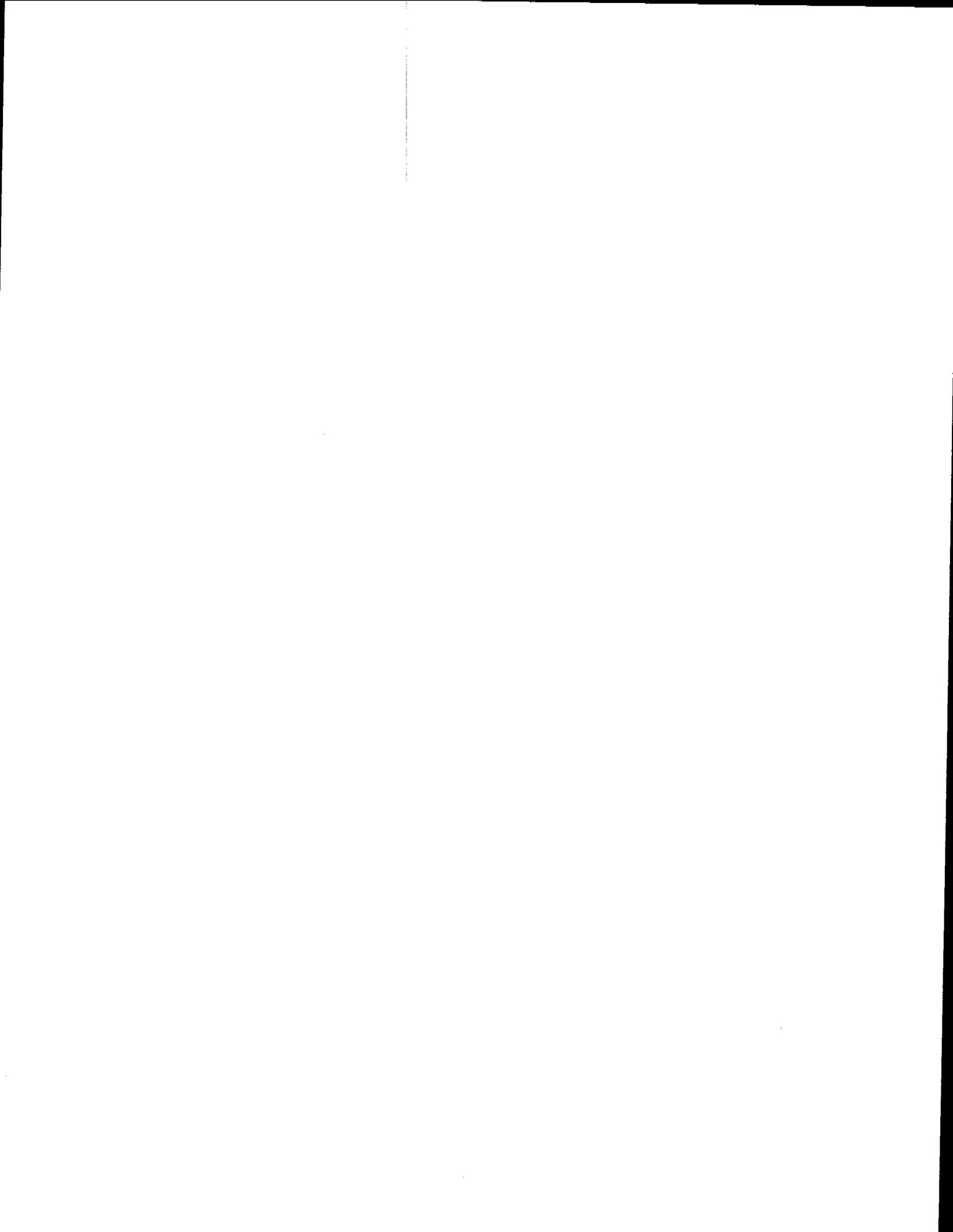
My suggestion is that MBNMS permission should be conditioned on accurate measuring of GHG emitted from this test well so that the greenhouse gas emission from the project slant wells can be accurately projected. In addition there should be a requirement for CalAm and other contractors to submit a plan for the monitoring and assessment of the greenhouse gas for review and approval of the Executive Director of the Coastal Commission prior to the issuance of a permit.

I have worked in the area of carbon management for several years and this aspect of feed sourcing for coastal desalination to my knowledge has never been addressed in the permitting of desalination plants. I hope it has some value for your analysis.

With regards,

A handwritten signature in black ink, appearing to read 'W Bourcier', written in a cursive style.

William Bourcier, Ph.D.
8586 Tesla Road
Livermore, CA 94550
wbourcier@gmail.com
bourcier1@llnl.gov



Luster, Tom@Coastal

From: Anne Blemker <ablemker@mccabeandcompany.net>
Sent: Thursday, October 16, 2014 3:53 PM
To: Luster, Tom@Coastal
Subject: CalAm Briefing Materials
Attachments: CCC Briefing Slides_CAW_Cemex Test Slant Well_10.16.14.pdf

Hi Tom,

Susan and Ian Crooks will be meeting with Commissioner Groom this afternoon. Attached please find a copy of the briefing materials they will be sharing with her.

Please let us know if you'd like a hard copy for your records.

Thanks,

Anne

Anne Blemker
McCabe & Company
310-463-9888

TEST SLANT WELL PROJECT



Date: October 16, 2014

Copy of these briefing materials have been provided to CCC Staff

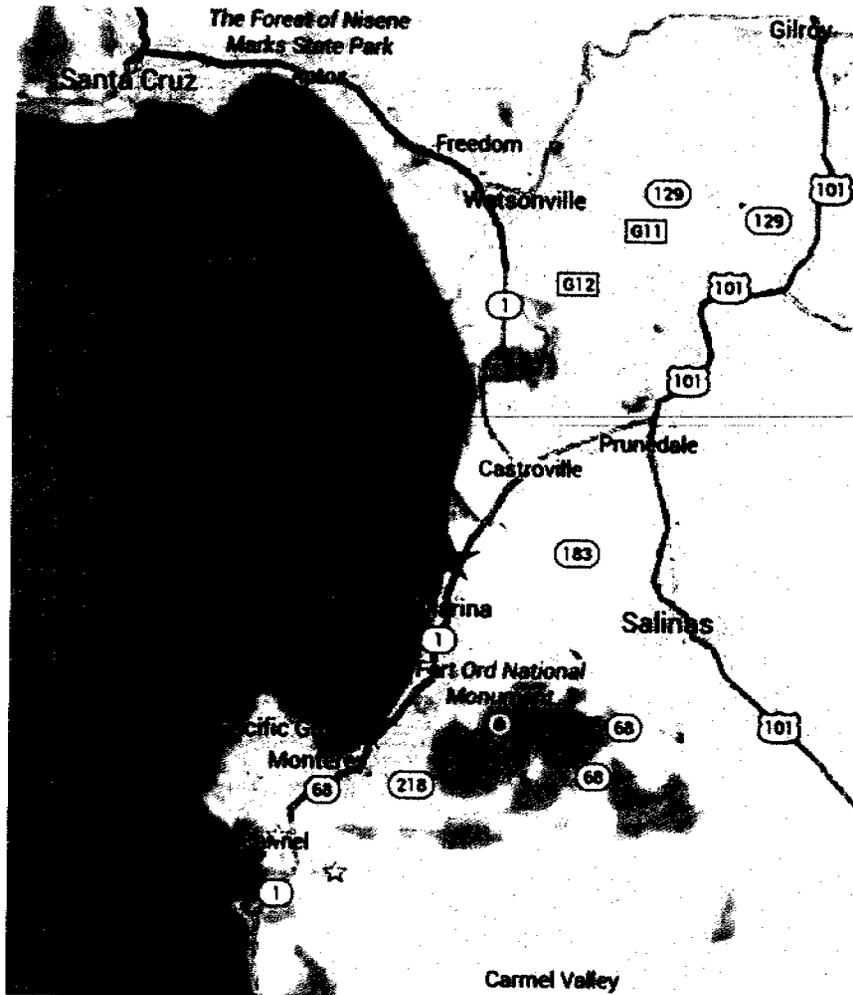


CALIFORNIA
AMERICAN WATER

Background Introduction

- Carmel River is Monterey Peninsula's main water source and home to threatened species
- In response to environmental concerns, SWRCB ordered Cal Am to reduce pumping from Carmel River by December 31, 2006
- Cal Am directed by CPUC to pursue a desalination water supply alternative
- Cal Am proposed the Monterey Peninsula Water Supply Project (MPWSP) which consists of 6,250 acre-feet per year (AFY) desalinated seawater, Aquifer Storage and Recovery, and 3,500 AFY of recycled water (GWR). If GWR proves not viable, desal plant increases to 9,750 AFY
- MPWSP seawater source is proposed to come from slant wells which reduce impacts to marine life and groundwater supplies brought by open ocean intakes or traditional vertical wells
- MPWSP is being evaluated by California Public Utilities Commission in a separate EIR from test slant well project, test slant well is separate project for testing and data gathering purposes
- Strong conservation measures have brought average residential water consumption to 60 gallons per person per day, lowest in California, further cuts to consumption are limited and pending water supply reductions will have severe economic impacts

Project Purpose (Test Slant Well)



CEMEX Test Slant Well Location Map

Test slant well project will gather data and evaluate feasibility of subsurface slant wells at CEMEX site

- Subsurface intakes are preferred method of seawater intake by coastal regulators
- Subsurface intakes require research to establish a location with ample water supply and acceptable water quality that will not impact inland groundwater supplies

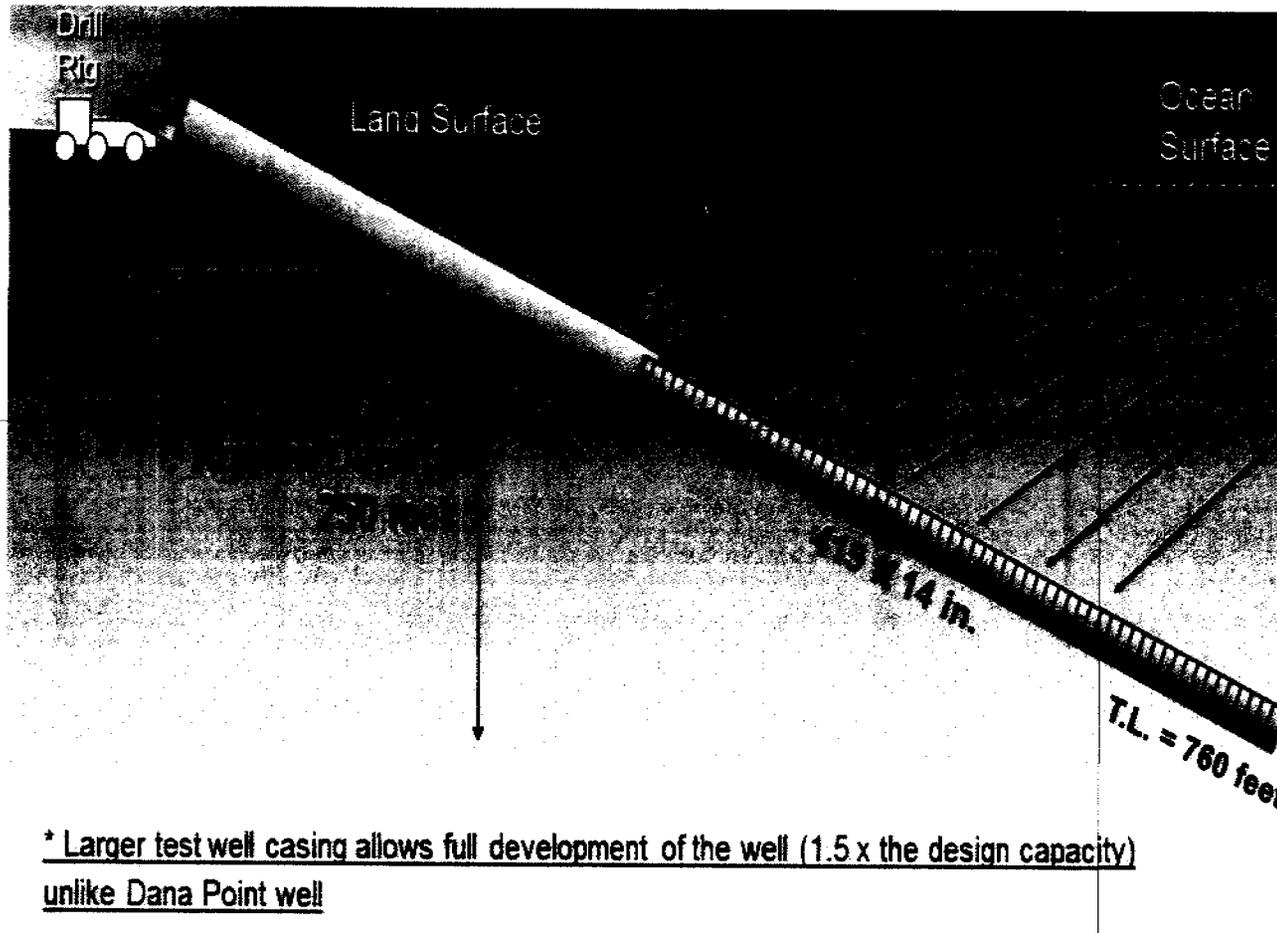


Project Description

- Located on 400-acre CEMEX active sand mining site in City of Marina, in a disturbed area of property
- Slant well drilled underground for approximately 760 feet at a 19 degree angle
- 20-inch diameter casing and 14-inch well screen extending from 50 feet to 250 feet below ground level designed to pump 2,500 gallons per minute
- Slant well water will be routinely sampled and simply returned to ocean in its nature state through an existing ocean outfall
- Existing outfall is owned and used by Monterey Regional Water Pollution Control Authority (MRWPCA)
- 4 Monitoring Well Clusters to monitor inland groundwater impacts and further develop groundwater model
- Operate for up to 24 months



Project Cross Section & Data Collection



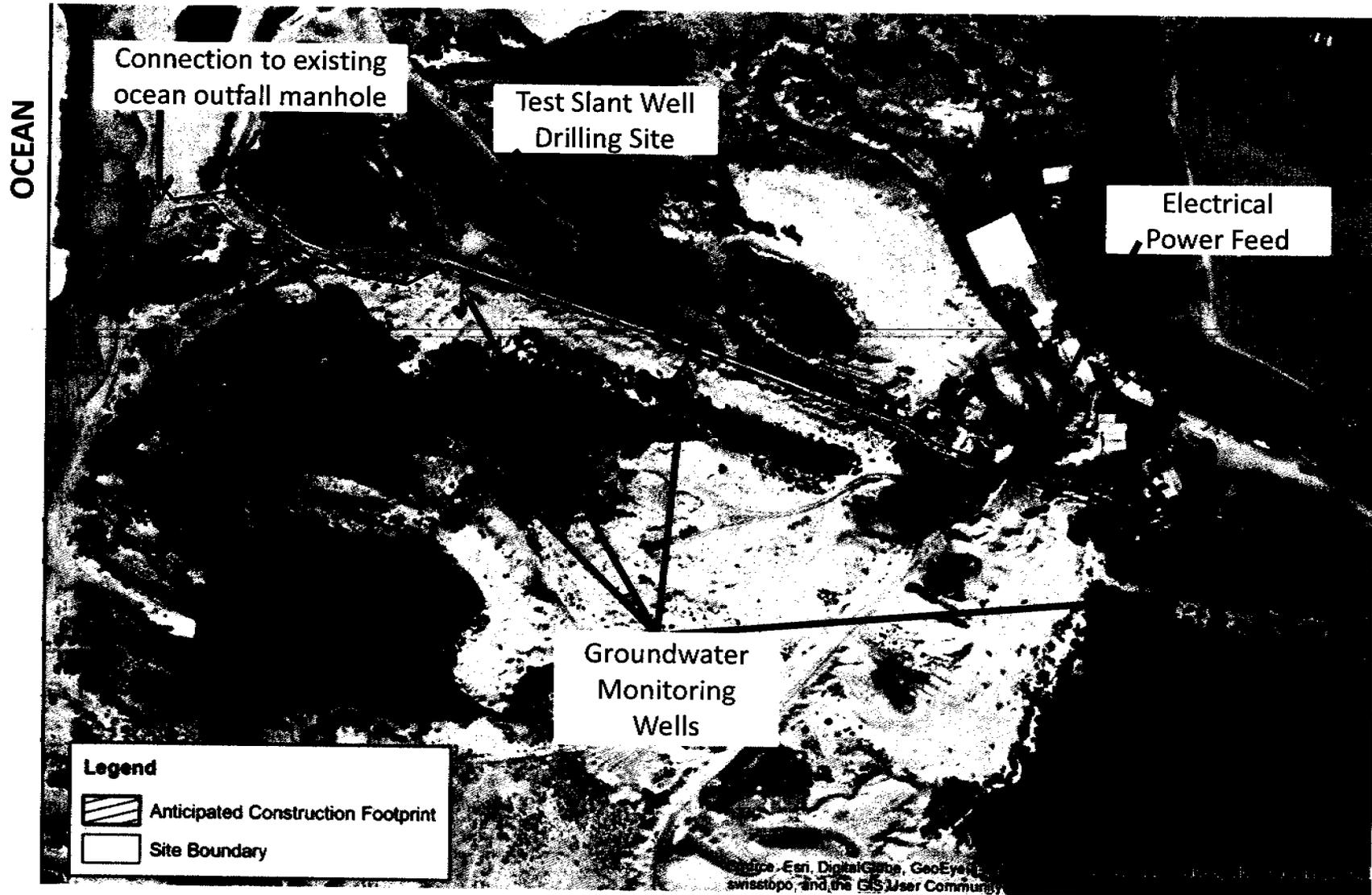
Cross Section View of Test Slant Well

Valuable data obtained from project:

1. Water quantity
2. Water quality
3. Geologic information
4. Inland groundwater aquifer impacts
5. Feasibility of Slant Wells at this site

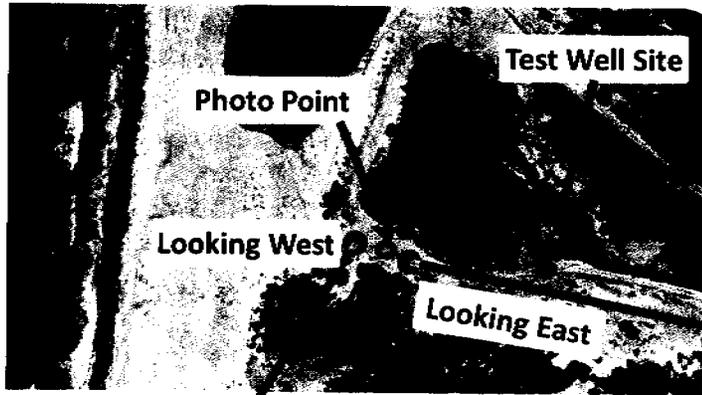


Project Site Overview

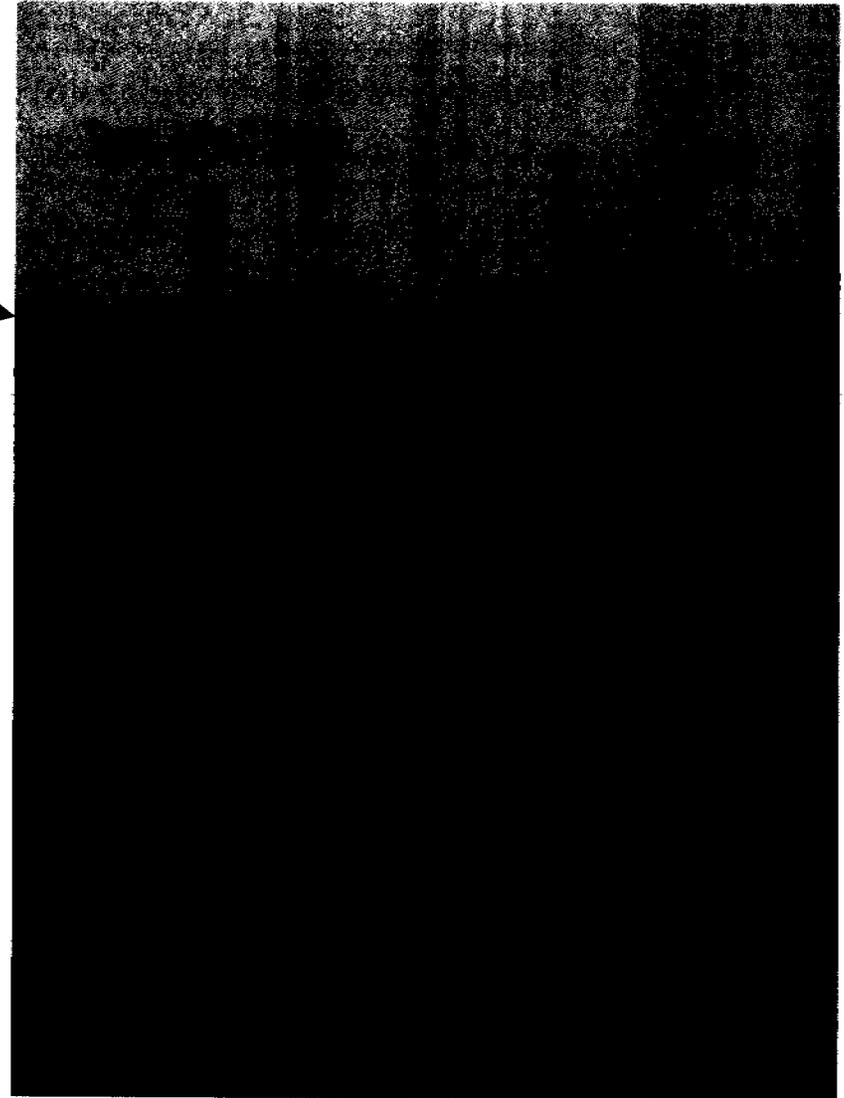


Map of Test Slant Well Project Site

Project Site Photos (1 of 3)

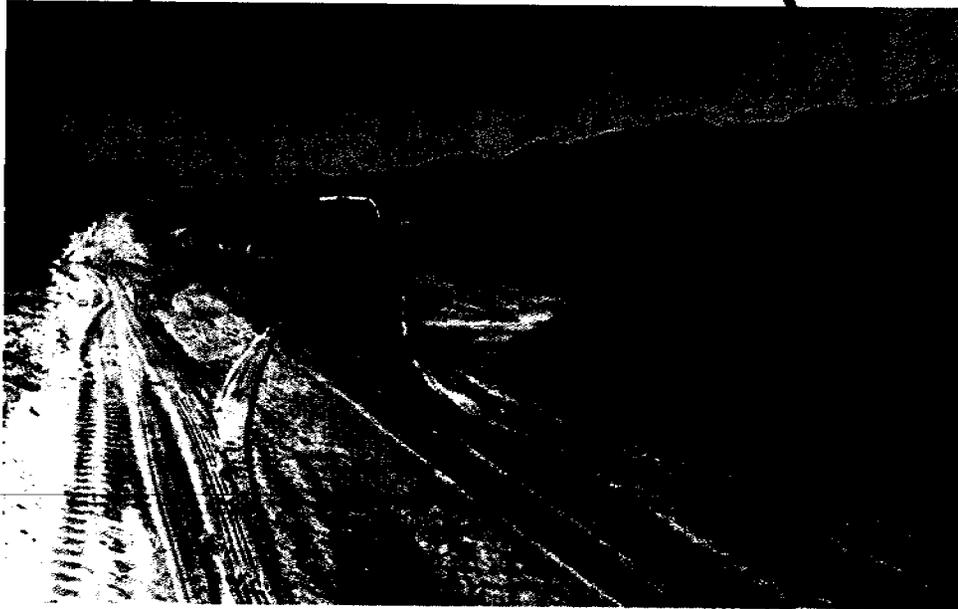


Project Site Photo of CalAm Borehole Drilling Showing Areas of Existing Disturbance. (2014)



Project Site Photo Showing Areas of Existing Disturbance. (2013)

Project Site Photos (2 of 3)



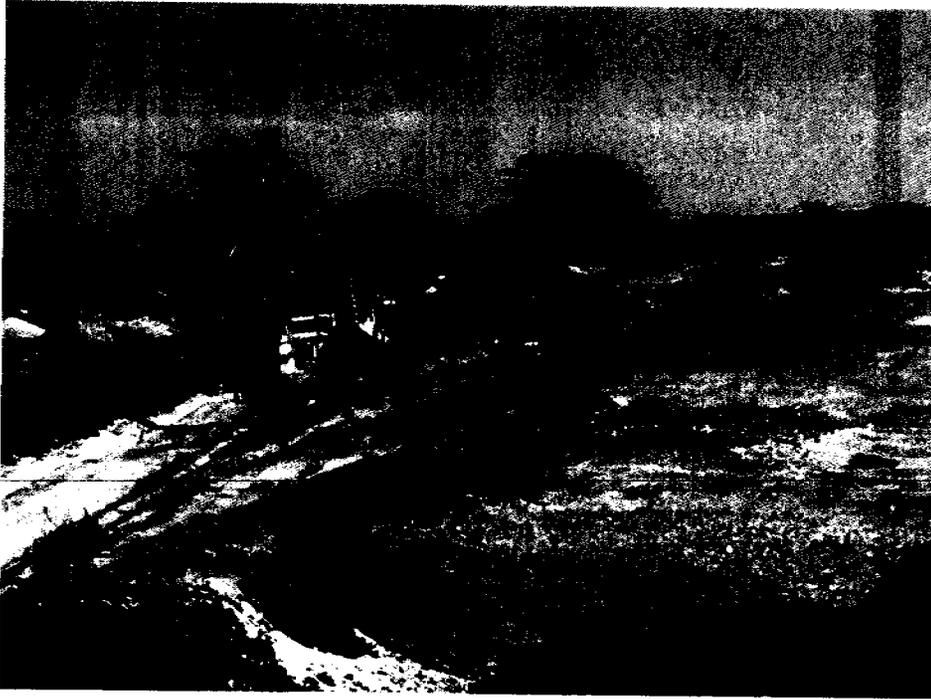
Cemex site access road looking east showing areas of existing disturbance. (2013)

Cal Am's prior borehole location and proposed location for Monitoring Well Cluster



Cemex site access road looking west showing areas of existing disturbance. (2013)

Project Site Photos (3 of 3)



Cemex access road showing activity and existing disturbance along south side.
(2013)



Project Advantages

- **Location:**

Cal Am conducted substantial stakeholder engagement and site feasibility studies including alternative locations

- **Cemex Site Advantages:**

Disturbed Site: Located at an active sand mining operation and would not cause substantial disturbance

Existing Infrastructure: Electrical infrastructure, access roads, and MRWPCA outfall

- **Temporary:**

2 years or less of operation

- **Completed Studies:**

Borehole Studies: Results establish further understanding of geologic conditions at site

Environmental Studies:

- Cultural Resources Assessment
- Biological Resources Assessment
- Historical Assessment
- Initial Study & Mitigated Negative Declaration
- Federal Environmental Review (NEPA)
 - FONSI – findings of no significant impact
- Wetland Delineation

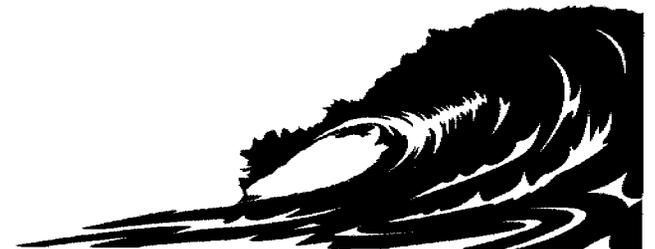
- **Findings:**

No significant impacts found to resources or environment



Project Schedule

- **Timeline is critical - construction must be complete before March 1, 2015 to avoid Snowy Plover nesting season**
- **November 2014 to January 2015:**
 - Drill / Install / Develop One (1) Test Slant Well and Twelve (12) Monitoring Wells
 - Civil Construction Including Electrical Conduit, Disposal Pipeline, Valve Vault, etc.
- **January 2015 to February 2015:**
 - Install Test Slant Well Vault and Complete all Electrical Work
 - Test Slant Well Start-up and Testing
- **March 2015 to Late 2016:**
 - Slant Well Pumping, Sampling and Monitoring

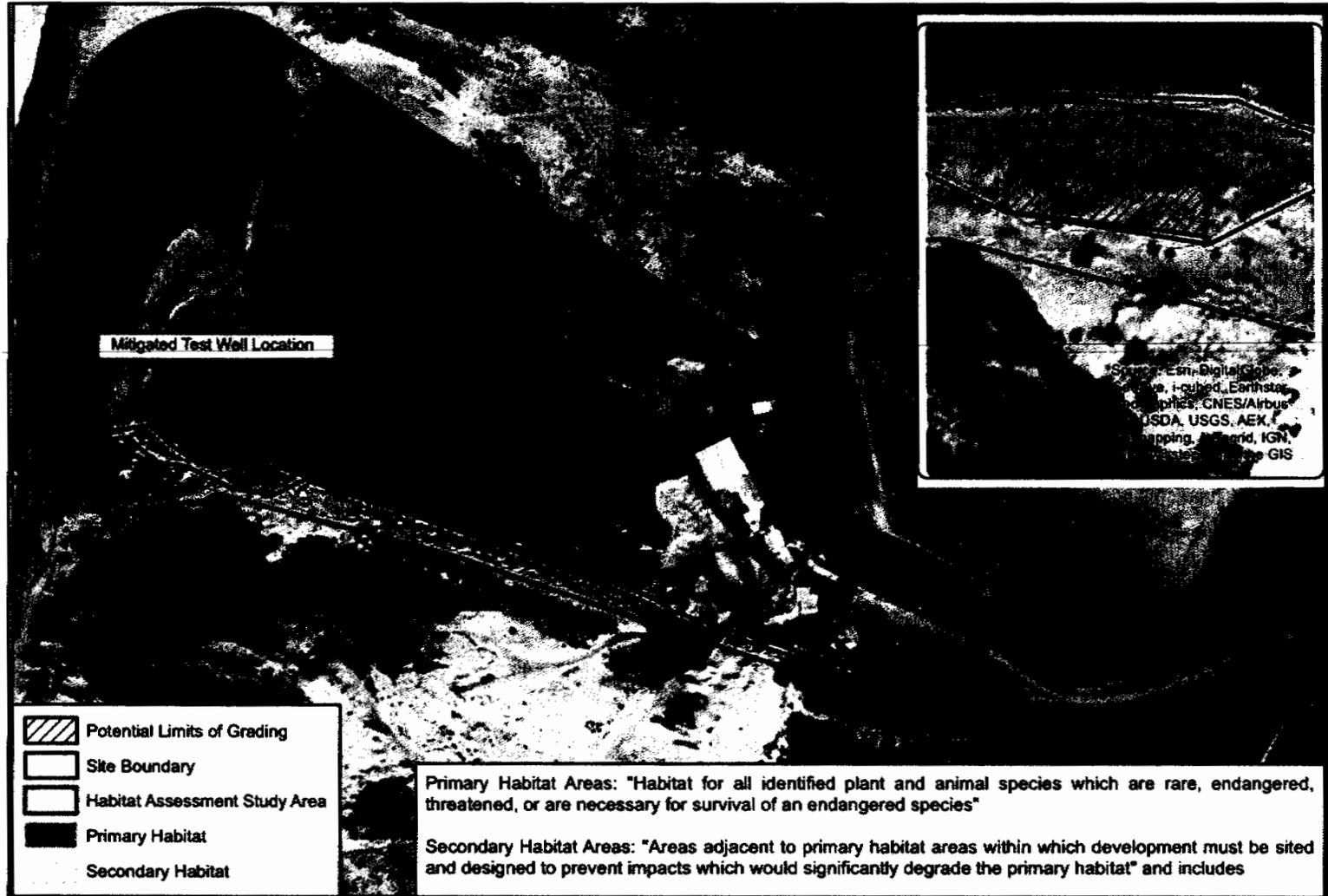


Biological Mitigation

- Located to avoid biological resources and Snowy Plover nesting season
- Located within area of continual and substantial disturbance – specifically, areas currently used for sand mining operations and stockpiling
- Mitigation Management and Restoration Plan includes:
 - Biological Monitoring & Survey from prior, during, and after construction and decommissioning
 - Replanting site as necessary
 - Hazard Spill Prevention Plan
 - Lighting Plan to reduce night time construction light disturbance



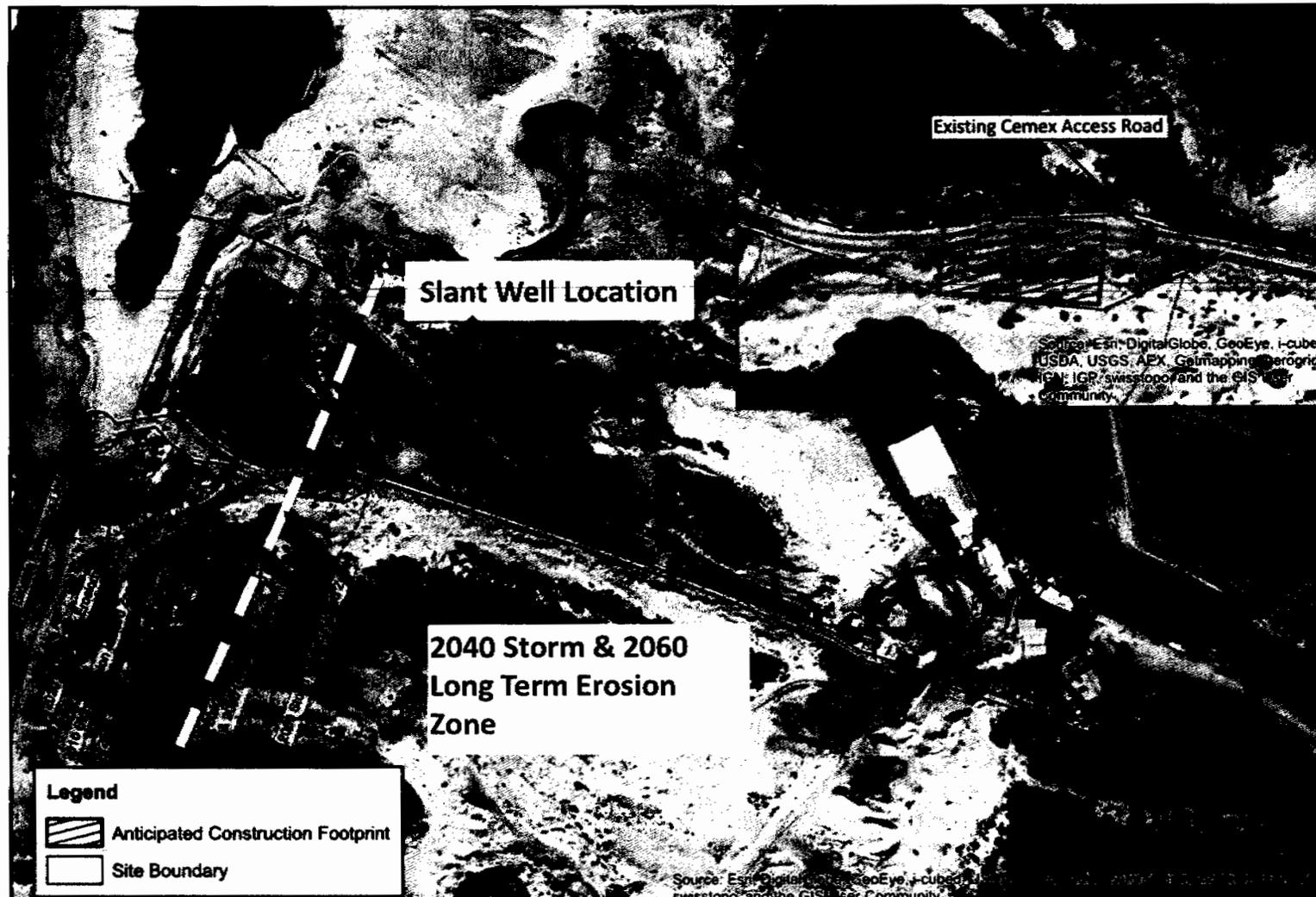
ESHA Avoidance



Project Site Map with Primary and Secondary Habitat Delineation

Coastal Erosion Hazards Mitigation

- Test Well Site is located to avoid 2040 storm and 2060 long term erosion zones



Site Map showing projected Coastal Hazard Zones through 2060

Appeal of City of Marina Decision

- Marina City Council denied test slant well CDP application on a 3-2 vote based on desire for additional CEQA review and did not make findings as to conformity with LCP or Coastal Act policies
- City's Planning Department, legal counsel, outside independent CEQA consultant, and Sierra Club determined that no additional environmental review was needed
- City's Planning Department Staff recommended approval, and outside independent CEQA consultant found that project is consistent with Marina LCP and in no way restricts coastal access
- Cal Am appealed City's action under appropriate Section 30603(a) of Coastal Act as this project constitutes a "major public works project" which is defined in Cal. Admin Code Section 13012(b) as project costing more \$100,000. This project is over \$6m



Community Support

Test slant well project is supported by a broad coalition of local governments and environmental organizations

Organization Support

1. Surfrider Foundation
2. Sierra Club
3. Planning and Conservation League Foundation
4. LandWatch Monterey County
5. Salinas Valley Water Coalition
6. Monterey County Farm Bureau
7. Carmel River Steelhead Association
8. Carmel River Watershed Conservancy
9. Citizens for Public Water
10. City of Pacific Grove
11. Coalition of Peninsula Businesses
12. County of Monterey
13. CPUC Division of Ratepayer Advocates
14. Monterey Peninsula Regional Water Authority
15. Monterey Peninsula Water Management District
16. Monterey Regional Water Pollution Control Agency

Regulatory Support

1. Project awarded \$1m grant from Cal. Department of Water Resources
2. U.S. Fish and Wildlife
3. Cal. Department of Fish and Wildlife
4. Monterey Bay National Marina Sanctuary
5. Monterey County Water Resources Agency
6. State Water Resources Control Board



Conclusion

- Consistent with LCP and Coastal Act Provisions
 - Protects Snowy Plover and other biological resources
 - ESHA, majority of work located in secondary habitat
 - Mitigation management and restoration plan
- Project's IS/MND prepared by City of Marina found Project is in compliance with LCP and consistent with current use at site (industrial sand mining operation)
- Located in currently used and disturbed areas of sand mining operation
- Awarded \$1m grant from Cal. Department of Water Resources to help determine viability of slant wells for California
- Supported by broad array of environment organizations and regulatory agencies
- We request Commission approve the project

Luster, Tom@Coastal

From: Molly Erickson <erickson@stamplaw.us>
Sent: Monday, October 20, 2014 4:54 PM
To: Luster, Tom@Coastal; Luster, Tom@Coastal
Cc: Watson, Michael@Coastal; Watson, Michael@Coastal
Subject: Legal limitations on pumping at the Cemex/Lonestar site
Attachments: Annexn.Agrmt.and.GW.Mitigation.for.Marina.Area.Lands.MCWRA.MCWD.1996.Armstrong.Lonestar.pdf

Tom:

Please tell me whether the CCC knows about the limitation on pumping at the Cemex (formerly Lonestar) site.

In 1996, Monterey County Water Resources, Marina Coast Water District and the City of Marina signed an agreement titled "Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands." (See attached.)

RMC Lonestar was a party to the negotiated agreement (see signatures on pp. 26 and 29 of the 52-page pdf). The agreement specifically states as to Lonestar as follows:

7. TERMS AND CONDITONS--LONESTAR.

....

7.2. Quantitv Limitations: Commencing on the effective date of this Agreement and Framework, Lonestar shall limit withdrawal and use of groundwater from the Basin to Lonestar's historical use of 500 afy of groundwater.

I am informed (but have not yet confirmed) that at the City of Marina hearing, the Cemex representative specifically stated that Cemex was not giving its 500 AFY water rights to Cal Am. Oddly, the list of speakers presented to the CCC by Cal Am (attachment 1A to the appeal) does not include anyone identified as a Cemex representative.

At 1,000 to 2,500 gpm, the proposed test well would pump more than 1,600 to 4,000 AFY from the basin. (The "basin" extends into Monterey Bay, according to the scientific maps.) Please help me understand how one state agency, the Coastal Commission, could approve a project to pump water where that project site has no water rights, and the project would violate an express term in a contract with three local public agencies.

Thank you. I look forward to your response.

Regards,

Molly Erickson
STAMP | ERICKSON
479 Pacific Street, Suite One
Monterey, CA 93940
tel: 831-373-1214
fax: 831-373-0242



**Annexation Agreement and
Groundwater Mitigation
Framework for
Marina Area Lands**

March 1996

**ANNEXATION AGREEMENT AND GROUNDWATER MITIGATION FRAMEWORK
FOR
MARINA AREA LANDS
EXECUTIVE SUMMARY**

PURPOSE--Groundwater Planning. This Agreement and Framework provides for annexing lands in the Marina area to MCWRA Zones 2 and 2A, the benefit assessment zones for the Nacimiento and San Antonio reservoirs. The Agreement and Framework establishes a groundwater mitigation framework process for the lands to be annexed, and provides money from the Marina area for Basin management planning.

ANNEXATION TO ZONES 2 AND 2A--MCWD, Armstrong, Lonestar. Annexation proceeds under section 7 of the MCWRA Act for lands within the service area of MCWD, and lands owned by Armstrong and Lonestar. Annexation of the MCWD service area was effective immediately upon approval by the MCWRA Board of Supervisors. The Armstrong Ranch annexation will be effective when LAFCO approves concurrent annexation to MCWD and the City of Marina on conditions satisfactory to Armstrong (including recordation of a final subdivision map). The Lonestar annexation will take effect when the Lonestar Property is annexed to MCWD.

Annexation Fees--more than \$3,500,000. Annexation fees are based on \$277/acre of land annexed, and \$783/af of water to be used. The fee for land on which water is not used is \$27.70/acre. The fee for agricultural water is \$261/af. Annexation fees total more than \$3,500,000, plus interest, as follows:

Fees for MCWD are \$2,449,410, based on 1,750 acres @ \$277/ac. and 3,020 afy of water @ \$783/af, and a credit of \$400,000 already paid by MCWD for groundwater management planning.

Fees for Armstrong will be about \$970,000 for Area A (urban), based on 900 acres @ \$277/ac. and 900 afy @ \$783/af, and an amount subject to final determination upon actual annexation for Area B (irrigated and unirrigated agriculture). If the annexation of the Armstrong Ranch occurs more than seven years after MCWRA approves the Annexation Agreement, Armstrong will pay the then-current annexation fees. If the agricultural water use on Area B of the Armstrong Ranch changes, Armstrong will pay an additional 2/3 of the then-current water charge portion of the annexation fee, and if water is used on any area annexed as unirrigated, Armstrong will pay an additional 9/10 of the then current land charge.

sites to irrigate Area B and to provide water for MRWPCA's regional treatment plant.

Alternate Water Supplies--300 afy of new water.

BMP. MCWRA's BMP planning will include consideration of the Marina area for a Basin alternative to groundwater pumping in the Marina area.

MCWD. MCWD will continue to plan for new water supplies, such as wastewater reclamation and desalination, to replace and supplement groundwater pumping.

Deep Aquifer Management. MCWRA and MCWD will manage the 900' aquifer to protect and preserve it and to sustain a secure water supply source for MCWD.

Water Source for Fort Ord. MCWD's deep wells may be used to provide up to 1400 afy of water already allocated to Fort Ord as part of the Fort Ord annexation to Zones 2 and 2A.

CONSERVATION. MCWD's aggressive water conservation program will continue in the Marina area.

EQUAL TREATMENT. The MCWRA will not impose greater restrictions on the Marina area's water use from the Basin than are imposed on water use or supply for use within the City of Salinas.

MRWPCA ADDENDUM. The Addendum attached to the Agreement and Framework as Exhibit "G" would provide for MRWPCA to join the Agreement and Framework on terms which would include possible acquisition of a buffer zone for the Regional Treatment Plant, and agreement to the other terms of the Agreement and Framework.

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
4.4. Request by Lonestar.	6
4.5. Effect of Request.	6
5. TERMS AND CONDITIONS--MCWD.	6
5.1. Quantity limitations on MCWD's groundwater pumping.	6
5.2. No objection by MCWRA to MCWD withdrawals except pursuant to section 22 of Agency Act.	7
5.3. Management of 900-foot aquifer.	7
5.4. Compliance with CEQA and other applicable laws.	7
5.5. MCWD development of alternative water supplies.	7
5.6. MCWD payment to MCWRA for tertiary treated water.	7
5.7. MCWD right to receive tertiary treated water from MRWPCA plant.	8
5.8. Effective date of annexation.	8
5.9. Annexation fee.	9
5.9.1. Amount of MCWD annexation fee.	9
5.9.2. Credit.	9
5.9.3. Payment of annexation fee.	9
5.10. MCWD use of revenues prior to full payment of annexation fee.	9
6. TERMS AND CONDITIONS--ARMSTRONG.	10
6.1. Ranch Areas.	10
6.2. Effective Date of Annexation.	10
6.3. Participation by Armstrong in MCWD water sources.	10
6.4. Prerequisites to annexation to MCWD and the City of Marina.	10
6.5. Annexation fee.	10
6.6. Payment of annexation fee in lump sum.	11
6.7. Payment of annexation fee in installments.	12
6.8. Costs, assessments, fees and charges.	12
6.9. Quantity limitations on Armstrong water use.	13
6.10. Reservation of lands for MCWD.	13
6.10.1. MCWD Reserved Area	13
6.10.2. Gift by Armstrong or payment by MCWD.	15
6.10.3. Waiver of further acquisitions by MCWD, MCWRA, and City of Marina; liquidated damages.	16

TABLE OF CONTENTS
(Continued)

	<u>Page</u>
17. NEGOTIATED AGREEMENT AND FRAMEWORK.	24
18. AMENDMENT.	24
19. COUNTERPARTS.	24
20. ADDENDUM.	24

EXHIBITS

- "A" Marina Area
- "B" MCWD service area to be annexed
- "C" Armstrong Ranch land to be annexed
- "D" Lonestar property to be annexed
- "E" Calculation of Incremental Cost for Tertiary Treated Water
- "F" Armstrong Areas Reserved For Transfer to MCWD
- "G" MRWPCA Addendum

2.1.5. City of Marina ("City"). An incorporated municipality within Monterey County, organized and operating under the laws of the State of California, governed by its City Council.

2.2. AFY. Acre-feet per year.

2.3. Agency Act. MCWRA's enabling legislation adopted by Chapter 1159 of the Statutes of 1990, and Chapter 1130 of the Statutes of 1991, set forth in full in West's California Water Code Appendix, Chapter 52.

2.4. Armstrong Ranch. About 1850 acres of land in the Marina area, as shown on Exhibit "C," about 322 acres of which is within the City of Marina, plus an additional 150 acres not shown on Exhibit "C" which is already in the Zones.

2.5. Basin. The Salinas River Groundwater Basin.

2.6. BMP. The MCWRA's Basin Management Plan for the Salinas River Groundwater Basin.

2.7. CEQA. The California Environmental Quality Act, Public Resources Code sections 21000 and following.

2.8. CSIP. The Castroville Seawater Intrusion Project, a distribution system project already approved and being implemented by MCWRA to provide reclaimed water for irrigation in the Castroville Area of Monterey County.

2.9. Effective Date. Subject to paragraph 4, this Agreement and Framework shall be fully effective when executed by all the Parties.

2.10. Exhibits.

"A" The general geographic relationship of MCWD, Armstrong and Lonestar to the Basin and to the Zones is shown on the diagram attached to this Agreement and Framework as Exhibit "A."

"B" MCWD service area to be annexed

"C" Armstrong Ranch land to be annexed

"D" Lonestar property to be annexed

"E" Calculation of Incremental Cost for Tertiary Treated Water

"F" Armstrong Areas Reserved For Transfer to MCWD

"G" MRWPCA Addendum

cooperation with MRWPCA, to reclaim water at the MRWPCA's regional treatment plant, for irrigation through the CSIP.

2.24. Zones. Zones 2 and 2A of the MCWRA, which are the zones of benefit and assessment for the MCWRA's Nacimiento and San Antonio reservoirs.

3. FACTS AND CIRCUMSTANCES. This Agreement and Framework is entered into with regard to the following facts and circumstances:

3.1. The MCWRA has approved fourteen other annexations to Zones 2 and 2A since 1991. Like other areas which have been annexed, the Marina area is within the Salinas River Groundwater Basin, has been using groundwater for many years, and has strong claims to groundwater rights. Since the Fort Ord annexation in 1993, the Marina area is surrounded on three sides by Zones 2 and 2A, and by Monterey Bay to the west.

3.2. MCWRA agreed in the 1990 Agreement to "encourage and support" annexing MCWD to Zones 2 and 2A. MCWD has worked for about thirteen years with the MCWRA on plans for a reliable, long-term water supply for the northern Basin area, including the Marina area and Fort Ord. MCWD's participation has included payment of money to assist the planning effort. As part of the 1990 Agreement, MCWD paid for survey and planning work for the long-term water supply effort. Sums paid by MCWD to MCWRA total over \$400,000. The work for which MCWD paid will be useful for the Mitigation Plan.

3.3. MCWD, City, Armstrong and Lonestar claim the right to use groundwater from the Basin, to the full extent provided by law. MCWD takes water from wells owned and operated by MCWD and drilled into the "150-foot", "400-foot" and "900-foot" aquifers in the Basin. About ninety-eight percent of potable water used currently by MCWD comes from the 900-foot aquifer. MCWD's current maximum pumping capacity is 5,800 gpm (9,350 afy) of potable water and 1,100 gpm (1,770 afy) of other usable water. Allowing for routine maintenance and providing a contingency factor for emergency shutdown, MCWD's current estimated operational pumping capacity for potable water is 3900 gpm (6,000 afy).

3.4. MCWD agreed in writing in 1988 to cooperate with the City in providing water service to the Lonestar property and the Armstrong Ranch. A coordinated and centralized water supply for the Marina Area in furtherance of that 1988 agreement will facilitate management and protection of the groundwater resource in the Marina Area. Armstrong claims the right and ability to use not less than 920 afy of potable water from the Basin to provide potable water service to the Armstrong Ranch, and the right to use water for agricultural purposes. MCWD currently supplies some water to the Armstrong Ranch. The Armstrong Ranch will need reclaimed water for golf course purposes, park purposes and such other general uses as may be required by any agency having

4.3. Request by Armstrong. Armstrong is requesting annexation of its land described in Exhibit "C", which annexation would take effect as provided in paragraph 6.2 of this Agreement and Framework.

4.4. Request by Lonestar. Lonestar is requesting immediate annexation of its land described in Exhibit "D", which annexation would take effect as provided in paragraph 7.3. of this Agreement and Framework.

4.5. Effect of Request. Other than to serve as a formal annexation request pursuant to section 7 of the Agency Act, this Agreement and Framework shall have no effect until its execution by the MCWRA.

5. TERMS AND CONDITIONS--MCWD.

5.1. Quantity limitations on MCWD's groundwater pumping.

5.1.1. Commencing on the effective date of this Agreement and Framework and continuing until Mitigation Plan Implementation, MCWD will limit its withdrawal of potable groundwater from the Basin for land in the Marina area and outside the former Fort Ord Military Reservation to 3,020 afy of potable groundwater, and only such additional quantities as are permitted by this paragraph 5.1. MCWRA's groundwater resource planning for the existing MCWD service area will be based on the latest information and projections contained in the MCWD Water Plans, using 3,020 afy as a planning guideline for potable water use.

5.1.1.1. After compliance with all applicable requirements of law, including but not limited to CEQA, MCWD may improve the interconnection between the MCWD water system and the water system serving Fort Ord, to provide for joint, conjunctive and concurrent use of all system facilities to serve Fort Ord and other areas served by MCWD, and the other Parties will cooperate on MCWD's increased withdrawal of potable groundwater by up to 1,400 afy from the 900-foot aquifer to enable the increased withdrawals from 5200 afy to 6600 afy for use on Fort Ord, as provided in paragraph 4.c. of the September 1993 Agreement between The United States of America and the MCWRA.

5.1.1.2. If the Armstrong property has been annexed to the Zones, the other Parties will cooperate on MCWD's increased withdrawal of up to 920 afy from the Basin, on the condition that such withdrawals shall be used only to provide water to the Armstrong Ranch and, to the extent that such water is requested and accepted by Armstrong, such use shall in its entirety be applied to the satisfaction of Armstrong's entitlement under paragraph 6.9. of this Agreement and Framework.

5.1.1.3. If the Lonestar property has been annexed to the Zones, the other Parties will cooperate on MCWD's

treatment to receive tertiary treated water from MRWPCA's planned tertiary treatment facilities at its regional treatment plant. The Parties agree that this cost shall be calculated as set forth on Exhibit "E" to this Agreement and Framework.

5.7. MCWD right to receive tertiary treated water from MRWPCA plant.

5.7.1. Pursuant to the MRWPCA Annexation Agreement, on or after the date of first delivery of water from the CSIP and upon compliance with all then-applicable requirements of law, including but not limited to CEQA, MCWD shall have the right to receive tertiary treated water from the tertiary treatment plant constructed and maintained pursuant to the SVRP, as provided herein.

5.7.2. The CSIP requires maximum available reclaimed water flows from the SVRP during the months of April through September to replace historically high uses of groundwater during those months, and to thereby maximize environmental benefits. Accordingly, during the months of April through September, MCWD agrees to defer taking any water over 300 afy it is entitled to take from the tertiary treatment plant under the MRWPCA Annexation Agreement. MCWD will also defer taking the first 300 afy of such flows to which it is entitled, if and after MCWD constructs a reservoir to store replacement winter flows.

5.7.3. During the months of October through March, MCWD may take the full amount of the reclaimed water to which it would, under the MRWPCA Annexation Agreement, have first priority during those months, together with an amount of water equal to the amount deferred during the immediately preceding months of April through September under paragraph 5.7.2. above. MCWD will take the deferred amount in equal or approximately equal monthly portions spread throughout the October-March period, or as otherwise agreed in writing by the MCWD and the MCWRA.

5.7.4. If MCWD's ability to supply reclaimed water is interrupted for any reason, MCWD and MCWRA will act jointly and diligently, together and with MRWPCA, to mitigate possible damage to users of such flows, including possible interim use of MCWD's wells to provide a substitute source of water.

5.8. Effective date of annexation. The annexation to Zones 2 and 2A of the MCWD lands described in Exhibit "B" shall take effect immediately upon approval of the annexation by the MCWRA Board of Supervisors on the terms of this Agreement and Framework, or, if the annexation is approved by ordinance, then thirty (30) days after adoption of an ordinance approving the terms of this Agreement and Framework.

providing water and sewer service, including, but not limited to, the payments required under this Agreement and Framework.

6. TERMS AND CONDITIONS--ARMSTRONG.

6.1. Ranch Areas. Annexation of the Armstrong Ranch to the Zones contemplates two general areas of the Ranch, which are designated for convenience "Area A" and "Area B." Area A consists of about 900 acres which is expected to be developed for urban uses. Area B consists of about 950 acres, a portion of which is expected to be used for irrigated agriculture, and about 220 acres of which is expected to be given to MCWD to store treated water. For purposes of determining assessments, standby charges and the like, the initial classification of the land within Area B will be determined at the time of annexation.

6.2. Effective Date of Annexation. Approval of this Agreement and Framework by the MCWRA Board of Supervisors shall constitute approval for annexation of the Armstrong Ranch to the Zones at the time and on conditions approved by LAFCO and satisfactory to Armstrong for concurrent annexation of the Armstrong Ranch to MCWD and the City of Marina, including recordation of a final subdivision map upon conditions satisfactory to Armstrong.

6.3. Participation by Armstrong in MCWD water sources. Subject to compliance with all then-applicable requirements of law, including but not limited to CEQA, Armstrong Ranch shall be entitled at all times to participate on an equitable basis with MCWD in potable water sources developed by MCWD pursuant to paragraph 5.5. of this Agreement and Framework, in which event the limitations concerning the use of water on the Armstrong Ranch, as set forth in paragraph 6.9. shall not be applicable to using potable water developed pursuant to paragraph 5.5.

6.4. Prerequisites to annexation to MCWD and the City of Marina. Any application to LAFCO for annexation of any Armstrong Ranch property to either MCWD or the City of Marina shall be concurrently submitted by the City and MCWD, and shall provide that such property to be annexed shall be within the boundaries of both MCWD and the City of Marina.

6.5. Annexation fee.

6.5.1. When the Armstrong Ranch has been annexed to the Zones, Armstrong will pay to MCWRA an annexation fee computed as the sum of

6.5.1.1. the product of multiplying the number of acres annexed by \$277/acre for land intended for urban or irrigated use and \$27.70/acre for land intended for grazing, dry land farming or other unirrigated use, and

6.7. Payment of annexation fee in installments.

6.7.1. If paid in installments, the installments shall include interest on the unpaid principal balance at the annual rate determined in the manner hereinafter set forth, which interest shall begin to accrue on July 1, next succeeding the first March 1 after the effective date of the annexation. The interest rate on installments shall be six percent per annum. The interest included in each installment shall be calculated as though the installment were paid on the last day before delinquency, even if the installment is paid in advance of that date.

6.7.2. The amount of each semi-annual installment shall be sufficient to amortize the full amount of principal and interest in twenty (20) equal semi-annual installments.

6.7.3. The semi-annual installments shall be paid and collected at the same time and in the same manner and by the same persons as, and together with and not separately from, general agency and zone taxes and shall be delinquent at the same time and thereafter subject to the same delinquency penalties. The first installment shall be due on November 1 following July 1, next succeeding the first March 1 after the effective date of the annexation and shall be delinquent if not paid on or before the following December 10. The second installment shall be due on the following February 1 and shall be delinquent if not paid on or before the following April 10. Thereafter, installments shall fall due and become delinquent on the same dates each year.

6.7.4. The full amount of principal and interest shall be paid not later than April 10, in the tenth year following July 1, next succeeding the first March 1 after the effective date of the annexation.

6.7.5. The amount of each installment shall constitute a lien on each annexed parcel as of noon on the March 1 immediately preceding the fiscal year (July 1-June 30) in which payment of the installment will be due. If the property is subdivided, then a prorata share of the annexation fee shall become a lien on each individual parcel, based upon the ratio that the land area of the individual parcel bears to the total land area of all parcels against which the annexation fee is a lien. All laws applicable to the levy, collection and enforcement of general agency and zone taxes, including, but not limited to, those pertaining to delinquency, correction, cancellation, refund and redemption, shall be applicable to such installments.

6.7.6. MCWD shall pay to MCWRA any fees to annex the lands within the MCWD Reserved Area described in paragraph 6.10 and shown on Exhibit "F" to this Agreement and Framework.

6.8. Costs, assessments, fees and charges. Costs, assessments, fees and charges imposed by MCWD in connection with providing water and wastewater treatment capacity and service to

communications), pipelines, and any other purpose for which a road may be used, shall be freely assignable and usable by others, and not subject to being extinguished or limited because of overburden or surcharge, and which said reserved easements shall not interfere or be used so as to interfere with the use of the balance of said MCWD Reserved Area for the production, storage, or distribution of treated water (tertiary treatment or its equivalent), or potable water. Before either MCWD or Armstrong installs any facilities in the reserved easements, MCWD and Armstrong will meet and confer to assure that their respective uses of and facilities in the said reserved easements will not conflict. Both parties shall act reasonably in considering the needs of the other. MCWD shall not place any non-potable water impoundment within the 160' x 1000' strip, nor any non-potable water pipeline closer than 110' north of the southerly boundary. MCWD shall not be required to move any facilities the installation of which has been approved by Armstrong. Water from wells located in said reserved strip shall be used only on lands of Armstrong and also may be used by the MCWD on the part of Area B conveyed to MCWD and may also be used on the adjacent lands of the MRWPCA.

6.10.1.1. The MCWD Reserved Area, which shall not exceed 250 acres within the boundaries shown on Exhibit "F", will be "office" surveyed at the expense of MCWD within sixty days, and "field" surveyed at the expense of MCWD within one year, following approval by the MCWRA Board of Supervisors of this Agreement and Framework.

6.10.1.2. MCWD will diligently undertake, and MCWRA, City and Armstrong will cooperate in the planning and conduct of, the appropriate environmental review and application for appropriate permits to use MCWD Reserved Area for facilities for the production, storage, or distribution of treated water (tertiary treatment or its equivalent), or potable water. Any use other than for the production, storage, or distribution of treated water (tertiary treatment or its equivalent), or potable water, shall require the prior written approval of Armstrong, and any conveyances from Armstrong to MCWD shall contain appropriate restrictions on such additional use in the form of a condition subsequent to the conveyances and a power of termination in favor of Armstrong. Any attempt to condemn the power of termination shall be subject to the provisions of paragraph 6.10.3. as if it were a condemnation of fee title.

6.10.1.3. MCWD may use and take conveyance of the MCWD Reserved Area in phases of not less than 40 acres. Armstrong's obligation to reserve the MCWD Reserved Area shall expire at midnight on June 30, 2003, or upon delivery to Armstrong of written notice from MCWD cancelling MCWD's right to receive conveyance of the MCWD Reserved Area. Armstrong's obligation to reserve the MCWD Reserved Area shall be extended to July 1, 2010, if MCWD has begun to use at least 40 acres of the MCWD Reserved Area by June 30, 2003.

6.10.3. Waiver of further acquisitions by MCWD, MCWRA, and City of Marina; liquidated damages. Except for incidental water system and wastewater system and storm water system easements, incidental access easements, incidental road easements, and incidental utility easements, as may be necessary from time to time, and further excepting land dedicated to public uses through the development process as a condition of development, MCWD, City, and MCWRA shall not seek to acquire fee title to land or easements thereon on any part of the Armstrong Ranch by eminent domain for use in providing water or wastewater service, or for any other public purpose whatsoever, except that, as to City only, said prohibition shall apply only with respect to eminent domain for water or sanitary sewer facilities and shall not be applicable to eminent domain for other public purposes; provided, however, that in the event that any of said agencies shall, notwithstanding the foregoing covenant, warranty and representation, seek to exercise the power of eminent domain for any other purpose except as excepted above, then, and in that event, all Parties hereto hereby agree that the fair market value of and the price to be paid for all such land lying within MCWD Reserved Area as shown on Exhibit "F" hereto (and any additional area shown on an exhibit to a fully executed addendum to this Agreement and Framework) shall be the sum of Twenty-Five Thousand Dollars (\$25,000.00) cash per acre and the fair market value and purchase price for all land lying outside of said MCWD Reserved Area as shown on Exhibit "F" hereto (and any additional area shown on an exhibit to a fully executed addendum to this Agreement and Framework) shall be the sum of ONE HUNDRED THOUSAND Dollars (\$100,000.00) cash per acre. FURTHERMORE, IN THE EVENT THAT MCWD, CITY, AND MCWRA, OR ANY OF THEM, SHOULD BREACH THIS COVENANT, WARRANTY AND REPRESENTATION, THEN, AND IN THAT EVENT, THE PARTIES AGREE THAT ARMSTRONG SHALL BE ENTITLED TO RECOVER FROM SUCH BREACHING PARTY, AS LIQUIDATED DAMAGES, AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE PRICE PER ACRE ACTUALLY PAID AND TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) PER ACRE MULTIPLIED BY THE NUMBER OF ACRES SO TAKEN IN THE CASE OF LAND WITHIN SAID MCWD RESERVED AREA (AND ANY ADDITIONAL AREA SHOWN ON AN EXHIBIT TO A FULLY EXECUTED ADDENDUM TO THIS AGREEMENT AND FRAMEWORK), AND THE DIFFERENCE BETWEEN THE PRICE PER ACRE ACTUALLY PAID AND ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) PER ACRE MULTIPLIED BY THE NUMBER OF ACRES TAKEN IN THE CASE OF LAND LYING OUTSIDE OF MCWD RESERVED AREA (AND ANY ADDITIONAL AREA SHOWN ON AN EXHIBIT TO A FULLY EXECUTED ADDENDUM TO THIS AGREEMENT AND FRAMEWORK), AS LIQUIDATED DAMAGES, WHICH THE PARTIES AGREE IS A REASONABLE SUM CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT AND FRAMEWORK, INCLUDING THE RELATIONSHIP OF THE SUM TO THE RANGE OF HARM TO ARMSTRONG THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. IN PLACING THEIR SIGNATURES BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME THIS AGREEMENT AND FRAMEWORK WAS MADE.

ARMSTRONG

James Lewis Anderson J.
John Lewis
W. M. Armstrong

MCWD

CITY

MCWRA

6.11. Annexation of portions of Armstrong Ranch used by MCWD. Notwithstanding any other provision of this section 6, portions of the Armstrong Ranch owned and/or used by MCWD may be annexed to the Zones at any time, upon MCWD's written request for such annexation, and after compliance with all then-applicable laws. Any annexation fees or charges by MCWRA for such annexed lands shall be paid by MCWD.

7. TERMS AND CONDITIONS--LONESTAR.

7.1. Compliance with Agency Act Section 22. The MCWRA acknowledges that it may not object to any withdrawal by Lonestar permitted by this section 7, except in compliance with section 22 of the Agency Act. All groundwater withdrawn from the Basin by Lonestar may be used only within the Basin.

7.2. Quantity Limitations. Commencing on the effective date of this Agreement and Framework, Lonestar shall limit withdrawal and use of groundwater from the Basin to Lonestar's historical use of 500 afy of groundwater.

7.3. Annexation of Lonestar Property to the Zones. Approval of this Agreement and Framework by the MCWRA Board of Supervisors shall constitute approval for annexation of the Lonestar Property in accordance with the terms of this Agreement and Framework. The actual annexation will occur as follows: The Lonestar Property annexation to the Zones will not take effect until the Lonestar Property has been approved for prior or concurrent annexation into MCWD. When such approval has been

ARMSTRONG

James Louis Anderson, Jr.
Shelby County

Paul H. W. [unclear] 4/24/96

MCWD

CITY

MCWRA

6.11. Annexation of portions of Armstrong Ranch used by MCWD. Notwithstanding any other provision of this section 6, portions of the Armstrong Ranch owned and/or used by MCWD may be annexed to the Zones at any time, upon MCWD's written request for such annexation, and after compliance with all then-applicable laws. Any annexation fees or charges by MCWRA for such annexed lands shall be paid by MCWD.

7. TERMS AND CONDITIONS--LONESTAR.

7.1. Compliance with Agency Act Section 22. The MCWRA acknowledges that it may not object to any withdrawal by Lonestar permitted by this section 7, except in compliance with section 22 of the Agency Act. All groundwater withdrawn from the Basin by Lonestar may be used only within the Basin.

7.2. Quantity Limitations. Commencing on the effective date of this Agreement and Framework, Lonestar shall limit withdrawal and use of groundwater from the Basin to Lonestar's historical use of 500 afy of groundwater.

7.3. Annexation of Lonestar Property to the Zones. Approval of this Agreement and Framework by the MCWRA Board of Supervisors shall constitute approval for annexation of the Lonestar Property in accordance with the terms of this Agreement and Framework. The actual annexation will occur as follows: The Lonestar Property annexation to the Zones will not take effect until the Lonestar Property has been approved for prior or concurrent annexation into MCWD. When such approval has been

ARMSTRONG

MCWD

CITY

MCWRA

Edith Johnson

6.11. Annexation of portions of Armstrong Ranch used by MCWD. Notwithstanding any other provision of this section 6, portions of the Armstrong Ranch owned and/or used by MCWD may be annexed to the Zones at any time, upon MCWD's written request for such annexation, and after compliance with all then-applicable laws. Any annexation fees or charges by MCWRA for such annexed lands shall be paid by MCWD.

7. TERMS AND CONDITIONS--LONESTAR.

7.1. Compliance with Agency Act Section 22. The MCWRA acknowledges that it may not object to any withdrawal by Lonestar permitted by this section 7, except in compliance with section 22 of the Agency Act. All groundwater withdrawn from the Basin by Lonestar may be used only within the Basin.

7.2. Quantity Limitations. Commencing on the effective date of this Agreement and Framework, Lonestar shall limit withdrawal and use of groundwater from the Basin to Lonestar's historical use of 500 afy of groundwater.

7.3. Annexation of Lonestar Property to the Zones. Approval of this Agreement and Framework by the MCWRA Board of Supervisors shall constitute approval for annexation of the Lonestar Property in accordance with the terms of this Agreement and Framework. The actual annexation will occur as follows: The Lonestar Property annexation to the Zones will not take effect until the Lonestar Property has been approved for prior or concurrent annexation into MCWD. When such approval has been

before delinquency, even if the installment is paid in advance of that date.

7.4.4.2. The amount of each semi-annual installment shall be sufficient to amortize the full amount of principal and interest in twenty (20) equal semi-annual installments.

7.4.4.3. The semi-annual installments shall be paid and collected at the same time and in the same manner and by the same persons as, and together with and not separately from, general agency and zone taxes and shall be delinquent at the same time and thereafter subject to the same delinquency penalties. The first installment shall be due on November 1 following July 1, next succeeding the first March 1 after the effective date of the annexation and shall be delinquent if not paid on or before the following December 10. The second installment shall be due on the following February 1 and shall be delinquent if not paid on or before the following April 10. Thereafter, installments shall fall due and become delinquent on the same dates each year.

7.4.4.4. The full amount of principal and interest shall be paid not later than April 10, in the tenth year following July 1, next succeeding the first March 1 after the effective date of the annexation.

7.4.4.5. The amount of each installment shall constitute a lien on the annexed property as of noon on the March 1 immediately preceding the fiscal year (July 1-June 30) in which payment of the installment will be due. If the property is subdivided, then a prorata share of the annexation fee shall become a lien on each individual parcel, based upon the ratio that the land area of the individual parcel bears to the total land area of all parcels against which the annexation fee is a lien. All laws applicable to the levy, collection and enforcement of general agency and zone taxes, including, but not limited to, those pertaining to delinquency, correction, cancellation, refund and redemption, shall be applicable to such installments.

7.4.5. Additional annexation fee for change in water use. If the water use on the Lonestar Property is changed from an industrial or agricultural use to a potable or other use, or if MCWD delivers potable water to the Lonestar Property pursuant to paragraph 5.1.1.3., then Lonestar shall pay to the MCWRA as an additional annexation fee, an additional water charge computed as two-thirds (2/3rds) of the product of 500 afy multiplied by the then-current annexation water charge. If Lonestar uses water on the 264-acre open-space area, Lonestar shall pay an additional land fee of nine times the land fee specified for the area in 7.4.1. above. The additional water charge or land fee will be paid either in one lump sum, due and payable on July 1, immediately following the change in water use, or in twenty (20) equal semi-annual installments over ten (10) years, with the payment period and interest accrual beginning on that July 1, in the same manner as

8.2. Water Conservation Measures. MCWD, Armstrong and Lonestar shall use, and MCWD may require the use of reasonable and appropriate water conservation measures on the lands described in Exhibits "B", "C" and "D" to this Agreement and Framework, which water conservation measures shall be uniformly applied and may be more restrictive but shall not be less restrictive than measures implemented by MCWRA as part of a Basin-wide or area-wide water conservation program. All planning and environmental review for the lands described in Exhibits "B", "C", and "D" to this Agreement and Framework shall be based on the requirement that development on such lands shall use reasonable and appropriate water conservation measures comparable to measures implemented by MCWRA as part of a Basin-wide or area-wide water conservation program, and by MCWD as part of a water conservation program applicable uniformly within MCWD's service area.

8.3. Defense of Rights. Upon Mitigation Plan Implementation, MCWRA will defend the rights of MCWD, Armstrong and Lonestar to a supply of water from the Mitigation Plan, as though those rights were the rights of MCWRA. Participation by MCWD, Armstrong and Lonestar in the Mitigation Plan or any other alternative water supply plan is subject to compliance with all applicable laws, including but not limited to CEQA.

8.4. Use of Annexation Fees. Annexation fees from the MCWD service area, the Armstrong Ranch and the Lonestar Property shall be used by MCWRA to pay the costs of a BMP process that includes mitigation plans for the Marina Area based on the planning guidelines contained in this Agreement and Framework. Such annexation fees shall also be used for management and protection of the "900-foot aquifer."

8.5. Assessments. After approval by the Board of Supervisors of annexation to the Zones of any property described in the exhibits to this Agreement and Framework, each parcel annexed shall be subject to all uniform assessments, charges, fees, and other exactions levied in Zones 2 and 2A for the fiscal year beginning on July 1, next succeeding the first March 1 after the effective date of the annexation, and shall remain subject thereto for as long as such exactions are levied and the parcel remains within the levying zone.

8.6. Recordation. Upon approval of this Agreement and Framework by the Board of Supervisors and execution by all Parties, this Agreement and Framework shall be recorded in the office of the Monterey County Recorder. All signatures shall be notarized as necessary to record the Agreement and Framework.

9. DISPUTE RESOLUTION PROCEDURE.

9.1. If any dispute arises between the Parties as to the proper interpretation or application of this Agreement and Framework, the Parties shall first seek to resolve the dispute in accordance with this Agreement and Framework, and the Parties must

To City: City Manager
211 Hillcrest Avenue
Marina, CA 93933
Phone No.: (408) 384-3715
Fax No.: (408) 384-0425

To Armstrong: John A. Armstrong
270 River Road
Salinas, CA 93908
Phone No.: (408) 455-1907
Fax No.: (408) 455-2817

To Lonestar: RMC LONESTAR
Attention: Mr. John Rubiales
P.O. Box 5252
Pleasanton, CA 94566
Phone No.: (510) 426-8787
Fax No.: (510) 426-2225

The address or fax number to which any notice or other writing may be given or made or sent to any party may be changed upon written notice given by such party as above provided.

13. SEVERABILITY. If any one or more of the covenants or agreements set forth in this Agreement and Framework on the part of MCWRA, MCWD, City, Armstrong or Lonestar, or any of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in no way affect the validity of this Agreement and Framework; provided, that if voiding of such individual covenants or agreements without voiding the whole agreement would frustrate a material purpose of Lonestar in entering into this Agreement and Framework, then this whole Agreement and Framework shall be null and void ab initio as to Lonestar only.

14. PARAGRAPH HEADINGS. Paragraph headings in this Agreement and Framework are for convenience only and are not to be construed as a part of this Agreement and Framework or in any way limiting or amplifying the provisions hereof.

15. SUCCESSORS AND ASSIGNS. This Agreement and Framework and all the terms, covenants, agreements and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

16. ADMINISTRATORS. MCWD and MCWRA hereby designate their respective General Managers as their Administrators for this Agreement and Framework. City designates its City Manager as City's Agreement and Framework Administrator. Armstrong designates Mr. John A. Armstrong as its Agreement and Framework Administrator. Lonestar designates Mr. John Rubiales as its Agreement and

STATE OF CALIFORNIA)
COUNTY OF MONTEREY) ss.

On this 26th day of March, 1996, before me, Ernest K. Morishita, Clerk of the Board of Supervisors, in and for said County and State, personally appeared Edith Johnson, known to me to be the Chairperson of said Board of Supervisors of the County of Monterey, and known to me to be the person who executed the within instrument on behalf of said political subdivision, and acknowledged to me that such County of Monterey executed the same.

ERNEST K. MORISHITA, Clerk of the
Board of Supervisors of Monterey
County, State of California

By: *Renee Olivas*
Deputy Clerk

Dated: _____, 1996

JAY MAX ARMSTRONG

Dated: _____, 1996

THE SANDRA ARMSTRONG MURRAY
REVOCABLE TRUST UTA dated March 7,
1989

By

DARRELL L. MURRAY, Trustee

Dated: 4-4-, 1996

THE LOIS AND CLYDE JOHNSON, JR.,
1989 IRREVOCABLE TRUST

By

Clyde W. Johnson III Trustee
CLYDE W. JOHNSON III, Trustee

Dated: 4-4, 1996

THE JOHNSON FAMILY REVOCABLE LIVING
TRUST UTA dated November 29, 1989

By

Clyde W. Johnson III Trustee
CLYDE W. JOHNSON III, Trustee

Dated: 4-4, 1996

Clyde W. Johnson III
CLYDE W. JOHNSON III

Dated: 4-4, 1996

Edwin A. Johnson
EDWIN A. JOHNSON

Dated: Mar 29, 1996

John A. Armstrong II
JOHN A. ARMSTRONG II

Dated: _____, 1996

SUSANNE IRVINE ARMSTRONG

Dated: Mar. 29, 1996

James Irvine Armstrong, Jr.
JAMES IRVINE ARMSTRONG, JR.

Dated: _____, 1996

JAY MAX ARMSTRONG

Dated: _____, 1996

THE SANDRA ARMSTRONG MURRAY
REVOCABLE TRUST UTA dated March 7,
1989

By _____
DARRELL L. MURRAY, Trustee

Dated: _____, 1996

THE LOIS AND CLYDE JOHNSON, JR.,
1989 IRREVOCABLE TRUST

By _____
CLYDE W. JOHNSON III, Trustee

Dated: _____, 1996

THE JOHNSON FAMILY REVOCABLE LIVING
TRUST UTA dated November 29, 1989

By _____
CLYDE W. JOHNSON III, Trustee

Dated: _____, 1996

CLYDE W. JOHNSON III

Dated: _____, 1996

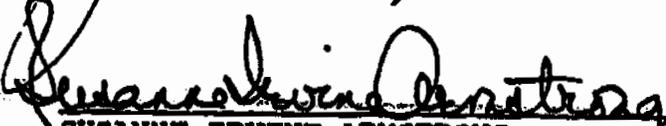
EDWIN A. JOHNSON

Dated: Mar 29, 1996



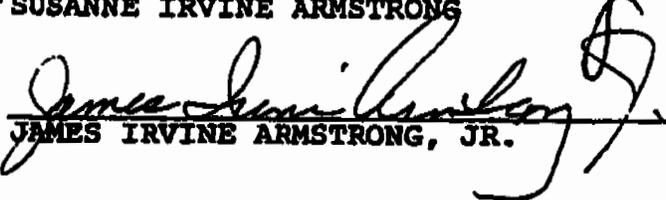
JOHN A. ARMSTRONG II

Dated: _____, 1996



SUSANNE IRVINE ARMSTRONG

Dated: Mar 29, 1996



JAMES IRVINE ARMSTRONG, JR.

SUSANNE IRVINE ARMSTRONG, JAMES IRVINE ARMSTRONG, JR., and JOHN A. ARMSTRONG II, as Trustees of the Trust for the benefit of MARY JANET ARMSTRONG WEBER as set forth in the Order Settling Report of Trustees due to the death of Lois Armstrong, etc., in the Estate of Irvine Armstrong, also known as James Irvine Armstrong, Deceased, recorded January 4, 1988, in Reel 2191, Official Records of Monterey County at page 643 therein (hereinafter referred to as the "Mary Janet Armstrong Weber Trust")

Dated: _____, 1996

By _____
SUSANNE IRVINE ARMSTRONG, Trustee

Dated: Mar 29, 1996

By _____
JOHN A. ARMSTRONG II, Trustee

Dated: Mar. 29, 1996

By _____
JAMES IRVINE ARMSTRONG, JR., Trustee

Dated: _____, 1996

THE 1990 ARMSTRONG FAMILY TRUST
established by Declaration dated
July 2, 1990

By _____
Walter J. McCullough

By _____
Elizabeth S. Armstrong

Dated: _____, 1996

RMC LONESTAR, a California general
partnership

By _____

Dated: _____, 1996

CITY OF MARINA

By _____
James L. Vocelka, Mayor

Dated: _____, 1996

SUSANNE IRVINE ARMSTRONG, JAMES IRVINE ARMSTRONG, JR., and JOHN A. ARMSTRONG II, as Trustees of the Trust for the benefit of MARY JANET ARMSTRONG WEBER as set forth in the Order Settling Report of Trustees due to the death of Lois Armstrong, etc., in the Estate of Irvine Armstrong, also known as James Irvine Armstrong, Deceased, recorded January 4, 1988, in Reel 2191, Official Records of Monterey County at page 643 therein (hereinafter referred to as the "Mary Janet Armstrong Weber Trust")

By _____, Trustee

Dated: _____, 1996

JAMES IRVINE ARMSTRONG, JR.

Dated: _____, 1996

THE 1990 ARMSTRONG FAMILY TRUST established by Declaration dated July 2, 1990

By _____
Walter J. McCullough

By _____
Elizabeth S. Armstrong

Dated: Mar 26, 1996

RMC LONESTAR, a California general partnership

By Ronald Z. Blick

Dated: _____, 1996

CITY OF MARINA

By _____
James L. Vocelka, Mayor

APPROVED AS TO FORM:

Dated: 8/5, 1996

William K. Rentz
WILLIAM K. RENTZ
Deputy County Counsel, Monterey
County

Dated: _____, 1996

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

By _____
Lloyd W. Lowrey, Jr.
Legal Counsel for MARINA COAST
WATER DISTRICT

Dated: _____, 1996

ROBERT R. WELLINGTON
Legal Counsel for CITY OF MARINA

Dated: _____, 1996

THOMPSON, HUBBARD & OMETER
A Law Corporation

By _____
Donald G. Hubbard
Legal Counsel for J.G. ARMSTRONG
FAMILY MEMBERS

Dated: _____, 1996

PILLSBURY, MADISON AND SUTRO

By _____
Thomas P. O'Donnell
Legal Counsel for RMC LONESTAR

APPROVED AS TO FORM:

Dated: _____, 1996

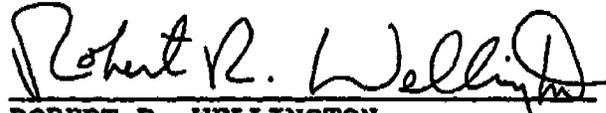
WILLIAM K. RENTZ
Deputy County Counsel, Monterey
County

Dated: _____, 1996

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

By _____
Lloyd W. Lowrey, Jr.
Legal Counsel for MARINA COAST
WATER DISTRICT

Dated: July 29, 1996



ROBERT R. WELLINGTON
Legal Counsel for CITY OF MARINA

Dated: _____, 1996

THOMPSON, HUBBARD & OMEYER
A Law Corporation

By _____
Donald G. Hubbard
Legal Counsel for J.G. ARMSTRONG
FAMILY MEMBERS

Dated: _____, 1996

PILLSBURY, MADISON AND SUTRO

By _____
Thomas P. O'Donnell
Legal Counsel for RMC LONESTAR

APPROVED AS TO FORM:

Dated: _____, 1996

WILLIAM K. RENTZ
Deputy County Counsel, Monterey
County

Dated: _____, 1996

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

By _____

Lloyd W. Lowrey, Jr.
Legal Counsel for MARINA COAST
WATER DISTRICT

Dated: _____, 1996

ROBERT R. WELLINGTON
Legal Counsel for CITY OF MARINA

Dated: _____, 1996

THOMPSON, HUBBARD & O'METER
A Law Corporation

By _____

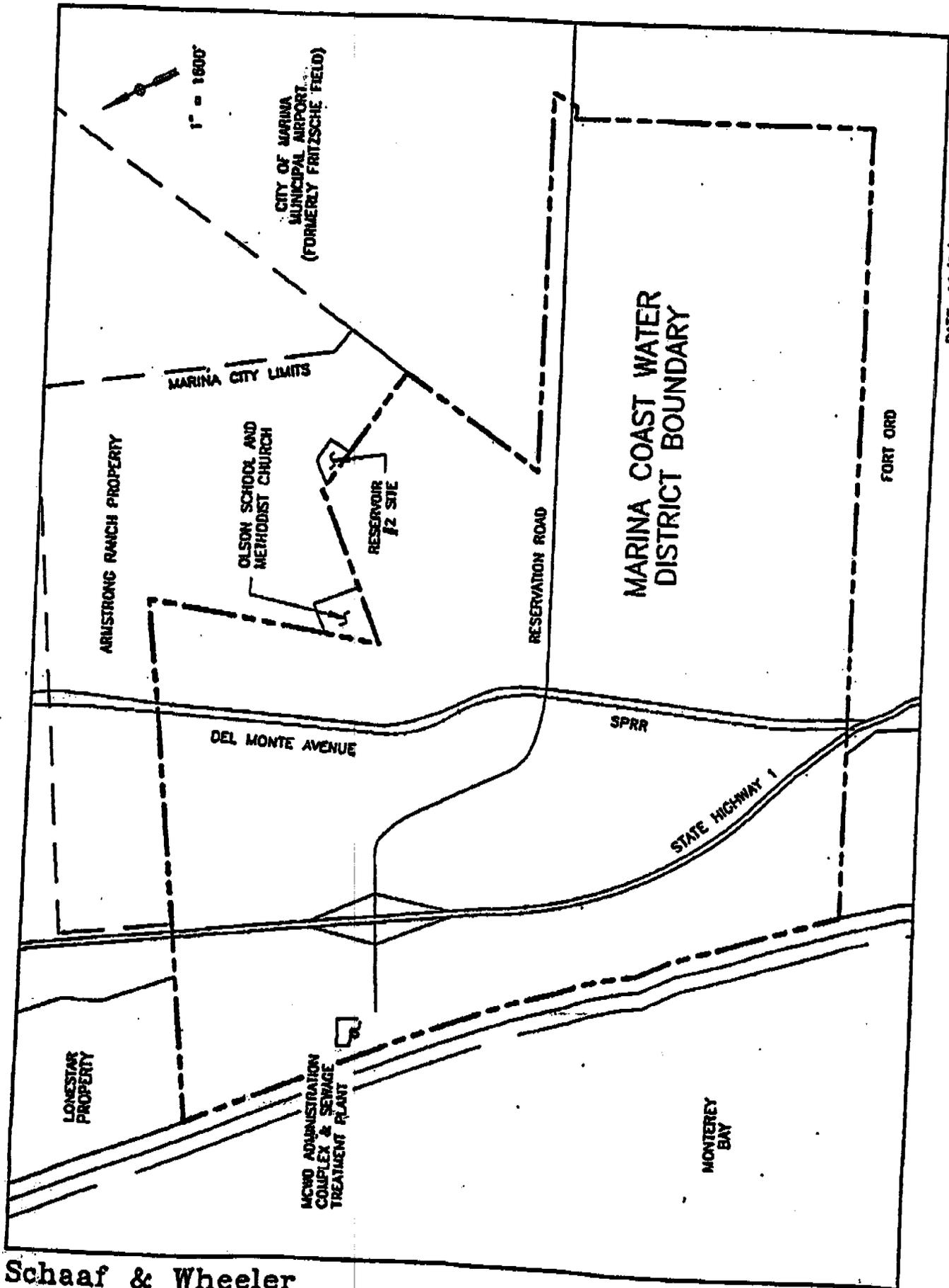
Donald G. Hubbard
Legal Counsel for J.G. ARMSTRONG
FAMILY MEMBERS

Dated: March 26, 1996

Thomas P. O'Donnell
PILLSBURY, MADISON AND SUTRO LLP

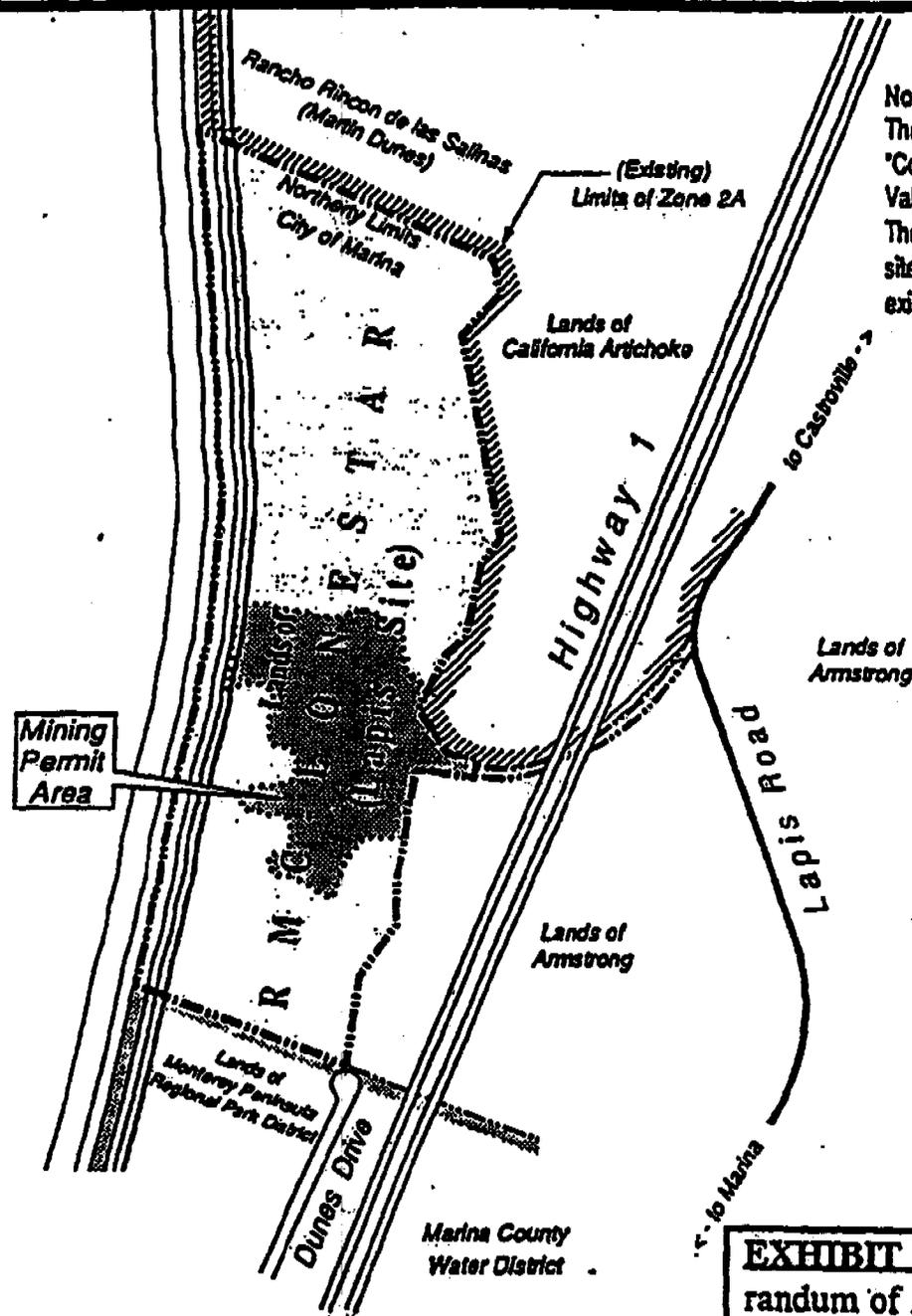
By _____

Thomas P. O'Donnell
Legal Counsel for RMC LONESTAR



DATE: 11/6/95 DRAWN BY: LJK/JHL

Monterey Bay



Note:
 The Lapis Site lies within the "Coastal Margin of the Salinas Valley Groundwater Basin". The northern boundary of the site is coterminous with the existing boundary of Zone 2A.

VICINITY MAP

EXHIBIT "D" to Memorandum of Agreement: "Lonestar Property to be Annexed."

Grant Deed

Grant deed dated April 22, 1929
 recorded August 29, 1929
 Volume 204 Official Records, at page 127.
 (See Exhibit D1 for Legal Description)

Assessor's Parcel Numbers

- 203-011-01
- 203-011-16
- 203-011-17
- 203-011-19
- 203-011-20

michael d. ashley
 CIVIL ENGINEER
 (415) 343-2669

EXHIBIT "D1"

Page 2 of 3

station; thence North 13° 40' East Two and 72/100 chains to an old fence corner; thence North 9° 35' West One and 83/100 chains to station 17; thence North 9° 35' West Twenty-seven and 60/100 chains to station 18; thence North 32° 40' East Five and 21/100 chains to station 19; thence North 70° East Two and 27/100 chains to station 20; thence North 46° 50' East Two and 16/100 chains to station 21; thence North 12° 45' West Three and 05/100 chains to station 22; thence North 26° 30' East One and 92/100 chains to a Four inch by Four inch post marked E. B. & A. L. S. Cor. No. 23" standing in the fence on the line between the Monterey City Lands and the Rancho Rincon de las Salinas, thence leaving foot of sand hills and following said line fence across same North 63° 20' West Forty-two and 02/100 chains to the place of beginning.

PARCEL 2

All those certain lots, pieces or parcels of land situate, lying and being in the County of Monterey, State of California, described as follows:

A PART of Monterey City Lands Tract No. 1, described as follows:

A strip of land one hundred feet wide measured at right angles to and lying fifty feet on each side of a line located and described as follows:

BEGINNING at a point on the Eastern boundary of the piece of land here-in-before described as Parcel 1, said point bearing North 6° 45' West from station numbered 9 on said boundary line and distant Two hundred fifty-two and 5/10 feet therefrom thence by a straight line bearing South 77° 29' East Five hundred seventy-nine and 38/100 feet; thence by a 6° 00' curve to the left (radius 955.04 feet), Five hundred seventy-six and 81/100 feet; thence by a straight line bearing North 67° 54-1/2' East Six hundred forty-eight and 08/100 feet; thence by a 5° 00' curve to the left (radius 1146.01 feet) Eleven hundred thirty-nine and 2/10 feet, more or less, to the Western line of the Southern Pacific Company's Railroad right of way.

EXCEPTING THEREFROM that portion conveyed to the State of California by deed dated May 31, 1974 and recorded August 19, 1974, on Reel 930, Official Records, at page 909, Monterey County Records.

PARCEL 3

All those certain lots, pieces or parcels of land situate, lying and being in the County of Monterey, State of California, described as follows:

EXHIBIT E
ELEMENTS OF YEARLY INCREMENTAL COSTS
FOR ADD-ON OF RECLAIMED WATER FOR M & I PUROSES OVER AND ABOVE
THAT COMMITTED TO THE CASTROVILLE SEAWATER IRRIGATION PROJECT

- 1) Operation and Maintenance (O&M) Element of costs to provide tertiary treatment (in \$/acre-foot for the year of ?). Costs for the previous year will be used to estimate the next year costs. An adjustment will be included in the following year to reflect actual costs. The next year flow volume demand for MCWD will be based on a projection submitted by the MCWD to the MCWRA by June 30, three months before delivery of next year reclaimed water to the MCWD reservoir.

• Chemical costs • Power costs • Sludge management costs • Labor costs • Repair and replacement costs

$$\text{O\&M ELEMENT (in \$/acre-foot)} = \frac{\sum \text{chemicals} + \text{power} + \text{sludge mgmt.} + \text{labor} + \text{repair \& replacement costs} \pm \text{adjustment for previous year}}{\text{Projected Next Year Flow Volume Demand [CSIP(afy) + MCWD(afy)]}}$$

- 2) Bureau of Reclamation Loan Element (BRLE). Includes Reimbursible Interest During Construction (RIDC) and Emergency Reserve Fund Contribution (ERFC) in \$ / acre-foot for the year of ?.

$$\text{APPLICABLE ANNUAL PERCENTAGE for M\&I (AAPM\&I)} = \frac{\text{Projected next year flow volume demand for MCWD (afy)}}{\text{Projected Next Year Flow Volume Demand [CSIP(afy) + MCWD(afy)]}}$$

$$\text{BRLE(\$) FOR YEAR (?)} = \frac{\text{AAPM\&I} \times [\text{PRINCIPAL} + \text{INTEREST}(7.625\%) \text{ ON OUTSTANDING PRINCIPAL} + \text{RIDC} + \text{ERFC FOR YEAR(?)}]}{\text{Projected next year flow volume demand for MCWD (afy)}}$$

- 3) Increased capital cost element to cover M&I for the MCWD.

No additional capital costs.

- 4) Capital Risk Share Element (CRSE) in \$ / acre-foot for the year of ?.

$$\text{CRSE (\$)} = \frac{\text{AAPM\&I} \times [\text{SVRP Debt Service for State Revolving Fund (Schedule A Line 18)} + \text{1/3 of Bonds (Schedule A, Line 25) FOR YEAR(?)}]}{\text{Projected next year flow volume demand for MCWD (afy)}}$$

exclusively as a buffer zone between the existing Regional Treatment Plant and the Armstrong Ranch. Any additional use is subject to the written approval of Armstrong first had and obtained, and any conveyance from Armstrong to MRWPCA shall contain appropriate restrictions on such additional use in the form of a condition subsequent and a power of termination in favor of Armstrong. Any attempt to condemn the power of termination shall be subject to the provisions of paragraph 6.10.3 as if it were a condemnation of fee title.

4.3. Expiration of Reservation. Armstrong's obligation to reserve the MRWPCA Reserved Area shall expire at midnight on June 30, 2003, or upon delivery to Armstrong of written notice from MRWPCA cancelling MRWPCA's right to receive conveyance of the MRWPCA Reserved Area.

4.4. Payment. Upon conveyance of the MRWPCA Reserved Area to MRWPCA, MRWPCA shall pay to Armstrong a sum calculated by multiplying the number of acres in such conveyance by Twenty-Five Thousand Dollars (\$25,000.00).

4.5. Title. Upon receipt by Armstrong of written request from MCWD, Armstrong will forthwith convey all or part of the MRWPCA Reserved Area to MRWPCA by grant deed, free of any financial encumbrances except taxes and assessments not delinquent, but subject to all other encumbrances, and further subject to all laws, ordinances, regulations and rights of all governmental bodies having jurisdiction in, on or over the subject real property as they may from time to time exist.

5. ATTACHMENT TO AGREEMENT AND FRAMEWORK; INCORPORATION BY REFERENCE. When this Addendum is fully executed, it shall be attached to the Agreement and Framework as an integral part of the Agreement and Framework, and the provisions of Sections 1, 2, 3, 8, and 9 through 20, inclusive, and paragraphs 4.5, 5.6, 5.7 and 6.10.3 of the Agreement and Framework are specifically incorporated into this Addendum by this reference and shall apply to the terms of this Addendum and as fully to MRWPCA as though MRWPCA had signed the Agreement and Framework. A person duly authorized by MRWPCA places his or her initials here to indicate MRWPCA's specific agreement to the provisions of paragraph 6.10.3:

Signature: _____

Printed Name and Title: _____

6. **NOTICES.** Notices to MRWPCA under this Addendum and the Agreement and Framework shall be addressed as follows:

General Manager
5 Harris Court, Building D
Monterey, CA 93940
Phone No.: (408) 372-3367
Fax No.: (408) 372-6178

The address or fax number to which any notice or other writing may be given or made or sent may be changed upon written notice given as provided in paragraph 12 of the Agreement and Framework.

7. **ADMINISTRATOR.** MRWPCA hereby designates MRWPCA's General Manager as its Administrator for this Agreement and Framework.

IN WITNESS WHEREOF, the Parties execute this Addendum as follows:

Dated: _____, 1996 MRWPCA

By _____
Keith Israel, Agency Director

Dated: March 26, 1996 MONTEREY COUNTY WATER RESOURCES
AGENCY

By Edith Johnson
Edith Johnson
Chair, Board of Supervisors

Dated: _____, 1996 MARINA COAST WATER DISTRICT

By _____
Thomas P. Moore
President, Board of Directors

By _____
Malcolm D. Crawford
Secretary, Board of Directors

Dated: _____, 1996

JAY MAX ARMSTRONG

6. **NOTICES.** Notices to MRWPCA under this Addendum and the Agreement and Framework shall be addressed as follows:

General Manager
5 Harris Court, Building D
Monterey, CA 93940
Phone No.: (408) 372-3367
Fax No.: (408) 372-6178

The address or fax number to which any notice or other writing may be given or made or sent may be changed upon written notice given as provided in paragraph 12 of the Agreement and Framework.

7. **ADMINISTRATOR.** MRWPCA hereby designates MRWPCA's General Manager as its Administrator for this Agreement and Framework.

IN WITNESS WHEREOF, the Parties execute this Addendum as follows:

Dated: _____, 1996 MRWPCA

By _____
Keith Israel, Agency Director

Dated: _____, 1996 MONTEREY COUNTY WATER RESOURCES AGENCY

By _____
Edith Johnsen
Chair, Board of Supervisors

Dated: _____, 1996 MARINA COAST WATER DISTRICT

By _____
Thomas P. Moore
President, Board of Directors

By _____
Malcolm D. Crawford
Secretary, Board of Directors

Dated: Apr 18, 1996

Jay M. Armstrong
JAY MAX ARMSTRONG

Dated: _____, 1996

THE SANDRA ARMSTRONG MURRAY
REVOCABLE TRUST UTA dated March 7,
1989

By DARRELL L. MURRAY, Trustee

Dated: 4-4, 1996

THE LOIS AND CLYDE JOHNSON, JR.,
1989 IRREVOCABLE TRUST

BY Clyde W. Johnson III Trustee
CLYDE W. JOHNSON III, Trustee

Dated: 4-4, 1996

THE JOHNSON FAMILY REVOCABLE LIVING
TRUST UTA dated November 29, 1989

BY Clyde W. Johnson III Trustee
CLYDE W. JOHNSON III, Trustee

Dated: 4-4, 1996

Clyde W. Johnson III
CLYDE W. JOHNSON III

Dated: 4-4, 1996

Edwin A. Johnson
EDWIN A. JOHNSON

Dated: Mar 29, 1996

John A. Armstrong II
JOHN A. ARMSTRONG II

Dated: _____, 1996

Susanne Irvine Armstrong
SUSANNE IRVINE ARMSTRONG

Dated: Mar 29, 1996

James Irvine Armstrong, Jr.
JAMES IRVINE ARMSTRONG, JR.

SUSANNE IRVINE ARMSTRONG, JAMES IRVINE ARMSTRONG, JR., and JOHN A. ARMSTRONG II, as Trustees of the Trust for the benefit of MARY JANET ARMSTRONG WEBER as set forth in the Order Settling Report of Trustees due to the death of Lois Armstrong, etc., in the Estate of Irvine Armstrong, also known as James Irvine Armstrong, Deceased, recorded January 4, 1988, in Reel 2191, Official Records of Monterey County at page 643 therein (hereinafter referred to as the "Mary Janet Armstrong Weber Trust")

Dated: Apr 4, 1996

By Susanne Irvine Armstrong
SUSANNE IRVINE ARMSTRONG, Trustee

Dated: Mar 29, 1996

By John A. Armstrong II
JOHN A. ARMSTRONG II, Trustee

Dated: Mar 29, 1996

By James Irvine Armstrong, Jr.
JAMES IRVINE ARMSTRONG, JR., Trustee

Dated: _____, 1996

THE 1990 ARMSTRONG FAMILY TRUST established by Declaration dated July 2, 1990

By _____
Walter J. McCullough

By _____
Elizabeth S. Armstrong

Dated: _____, 1996

RMC LONESTAR, a California general partnership

By _____

Dated: _____, 1996

CITY OF MARINA

By _____
James L. Vocelka, Mayor

SUSANNE IRVINE ARMSTRONG, JAMES IRVINE ARMSTRONG, JR., and JOHN A. ARMSTRONG II, as Trustees of the Trust for the benefit of MARY JANET ARMSTRONG WEBER as set forth in the Order Settling Report of Trustees due to the death of Lois Armstrong, etc., in the Estate of Irvine Armstrong, also known as James Irvine Armstrong, Deceased, recorded January 4, 1988, in Reel 2191, Official Records of Monterey County at page 643 therein (hereinafter referred to as the "Mary Janet Armstrong Weber Trust")

Dated: _____, 1996

By _____
SUSANNE IRVINE ARMSTRONG, Trustee

Dated: Mar 29, 1996

By [Signature]
JOHN A. ARMSTRONG II, Trustee

Dated: Mar. 29, 1996

By [Signature]
JAMES IRVINE ARMSTRONG, JR., Trustee

Dated: _____, 1996

THE 1990 ARMSTRONG FAMILY TRUST
established by Declaration dated
July 2, 1990

By [Signature]
Walter J. McCullough

By [Signature]
Elizabeth S. Armstrong

Dated: _____, 1996

RMC LONESTAR, a California general
partnership

By _____

Dated: _____, 1996

CITY OF MARINA

By _____
James L. Vocelka, Mayor

Dated: _____, 1996

SUSANNE IRVINE ARMSTRONG, JAMES IRVINE ARMSTRONG, JR., and JOHN A. ARMSTRONG II, as Trustees of the Trust for the benefit of MARY JANET ARMSTRONG WEBER as set forth in the Order Settling Report of Trustees due to the death of Lois Armstrong, etc., in the Estate of Irvine Armstrong, also known as James Irvine Armstrong, Deceased, recorded January 4, 1988, in Reel 2191, Official Records of Monterey County at page 643 therein (hereinafter referred to as the "Mary Janet Armstrong Weber Trust")

By _____, Trustee

Dated: _____, 1996

JAMES IRVINE ARMSTRONG, JR.

Dated: _____, 1996

THE 1990 ARMSTRONG FAMILY TRUST established by Declaration dated July 2, 1990

By _____
Walter J. McCullough

By _____
Elizabeth S. Armstrong

Dated: _____, 1996

RMC LONESTAR, a California general partnership

Dated: 4/8/96, 1996

By _____
CITY OF MARINA

By _____
James L. Vocelka, Mayor

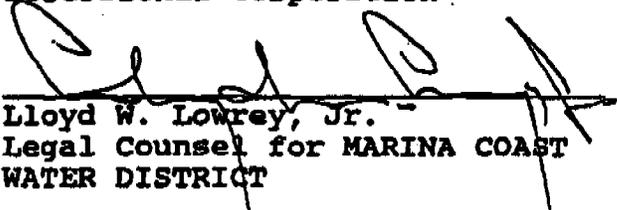
APPROVED AS TO FORM:

Dated: _____, 1996

WILLIAM K. RENTZ
Deputy County Counsel, Monterey
County

Dated: March 26, 1996

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

By 
Lloyd W. Lowrey, Jr.
Legal Counsel for MARINA COAST
WATER DISTRICT

Dated: _____, 1996

ROBERT R. WELLINGTON
Legal Counsel for CITY OF MARINA

Dated: _____, 1996

ROBERT R. WELLINGTON
Legal Counsel for MRWPCA

Dated: _____, 1996

THOMPSON, HUBBARD AND OMETER
A Law Corporation

By _____
Donald G. Hubbard
Legal Counsel for J.G. ARMSTRONG
FAMILY MEMBERS

Dated: _____, 1996

PILLSBURY, MADISON AND SUTRO

By _____
Thomas P. O'Donnell
Legal Counsel for RMC LONESTAR

APPROVED AS TO FORM:

Dated: _____, 1996

WILLIAM K. RENTZ
Deputy County Counsel, Monterey
County

Dated: _____, 1996

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

By _____
Lloyd W. Lowrey, Jr.
Legal Counsel for MARINA COAST
WATER DISTRICT

Dated: _____, 1996

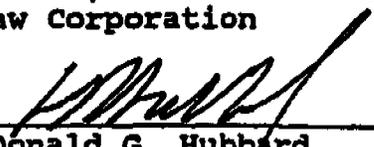
ROBERT R. WELLINGTON
Legal Counsel for CITY OF MARINA

Dated: _____, 1996

ROBERT R. WELLINGTON
Legal Counsel for MRWPCA

Dated: MARCH 29, 1996

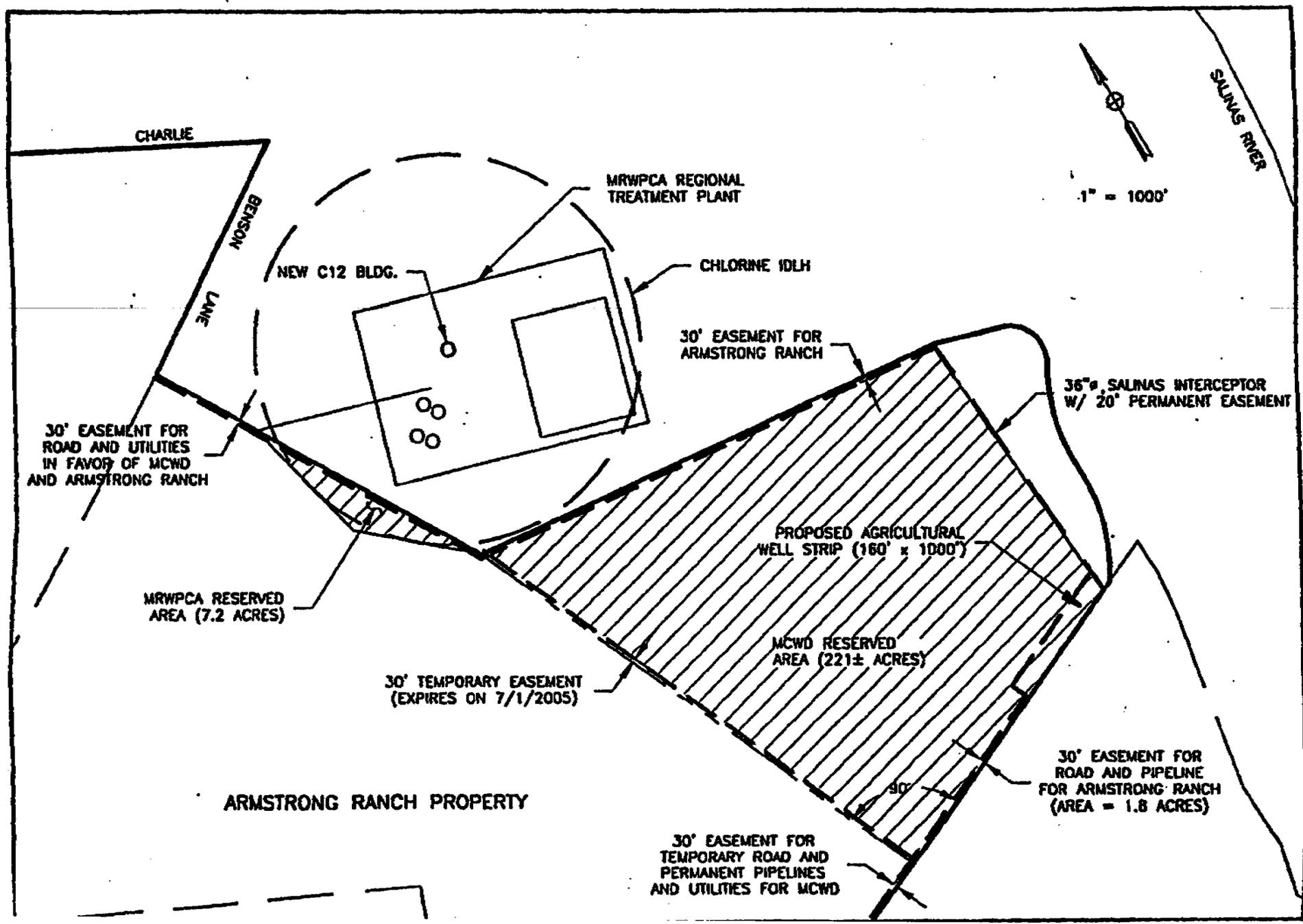
THOMPSON, HUBBARD AND OMETER
A Law Corporation

By 
Donald G. Hubbard
Legal Counsel for J.G. ARMSTRONG
FAMILY MEMBERS

Dated: _____, 1996

PILLSBURY, MADISON AND SUTRO

By _____
Thomas P. O'Donnell
Legal Counsel for RMC LONESTAR



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of MONTEREY

On APRIL 17, 1996 before me, * **SONIA L. ANGELO, NOTARY PUBLIC** *

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared * **MALCOLM D. CRAWFORD** * * * * *

Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sonia L. Angelo

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: ANNEXATION AGREEMENT AND GROUNDWATER MITIGATION FRAMEWORK FOR MARINA AREA LANDS

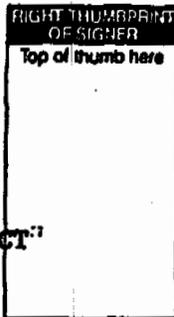
Document Date: APRIL 17, 1996 Number of Pages: 27 w/EXH A-F

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: MALCOLM D. CRAWFORD

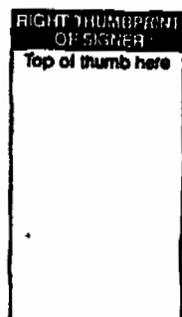
- Individual
- Corporate Officer
Title(s): SECRETARY, BOARD OF DIRECTORS
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:
MARINA WATER COAST DISTRICT

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of MONTEREY

On 04-17-96 before me, *SONIA L. ANGELO, NOTARY PUBLIC* * *
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared * * *MALCOLM D. CRAWFORD* * * * *
Name(s) of Signer(s)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/his/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sonia L. Angelo
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

EXHIBIT G

Title or Type of Document: MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY ADDENDUM TO ANNEXATION AGREEMENT AND GROUNDWATER MITIGATION FRAMEWORK FOR MARINA AREA LANDS

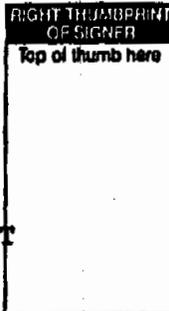
Document Date: APRIL 17, 1996 Number of Pages: 6

Signer(s) Other Than Named Above: NONE

Capacity(ies) Claimed by Signer(s)

Signer's Name: MALCOLM D. CRAWFORD

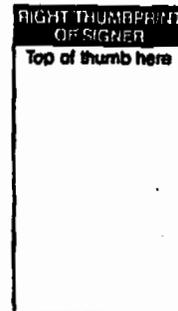
- Individual
- Corporate Officer
Title(s): SECRETARY, BOARD OF DIRECTORS
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:
MARINA COAST WATER DISTRICT

Signer's Name: _____

- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing:

ACKNOWLEDGMENT

STATE OF WASH)
COUNTY OF KING) : ss.

On 4/4, 1996, before me, SANDRA G. HARVEY,
a Notary Public, duly commissioned and sworn, personally appeared
DARRELL L. MURRAY

- personally known to me, or
 proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument, the person, or
the entity upon behalf of which the person acted, executed the same.

WITNESS my hand and official seal.

Sandra G. Harvey
Signature



{Seal}

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
): ss.
COUNTY OF Fresno)

On April 4, 1996, before me, Lupe M. Perez,
a Notary Public, duly commissioned and sworn, personally appeared
EDWIN A. JOHNSON

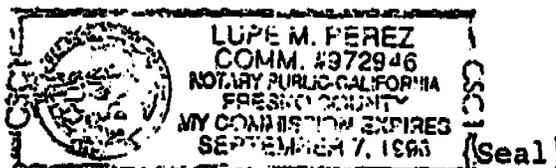
personally known to me, or

proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument, the person, or
the entity upon behalf of which the person acted, executed the same.

WITNESS my hand and official seal.

Lupe M. Perez
Signature



ACKNOWLEDGMENT

STATE OF CALIFORNIA)
): ss.
COUNTY OF MONTEREY)

On March 29, 1996, before me, Jeannine L. Kreider,
a Notary Public, duly commissioned and sworn, personally appeared JAMES
IRVINE ARMSTRONG, JR.

personally known to me, or

proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument, the person, or
the entity upon behalf of which the person acted, executed the same.

WITNESS my hand and official seal.



Signature

{Seal}



ACKNOWLEDGMENT

STATE OF CALIFORNIA)
): ss.
COUNTY OF Monterey)

On MAY 6, 1996, before me, Paul M. Hamerly,
a Notary Public, duly commissioned and sworn, personally appeared
WALTER J. McCULLOUGH

- personally known to me, or
- proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument, the person, or
the entity upon behalf of which the person acted, executed the same.

WITNESS my hand and official seal.

Paul M. Hamerly
Signature

{Seal}



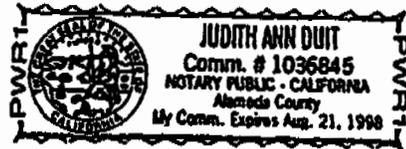
State of California

County of Alameda

On April 1, 1996, before me, Judith Ann Duit/Notary Public, personally appeared Ronald L. Blick, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Judith Ann Duit
Judith Ann Duit, Notary Public



OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- INDIVIDUAL
- CORPORATE OFFICER

President RMC LONESTAR
TITLE(S)

- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
Name of person(s) or entity(ies)
RMC LONESTAR

DESCRIPTION OF ATTACHED DOCUMENT

Annexation Agreement and Groundwater Mitigation Framework for Madra Area Lands
TITLE OR TYPE OF DOCUMENT

27 plus exhibit A - I
NUMBER OF PAGES

3/26/96
DATE OF DOCUMENT

OTHER

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
 : ss.
COUNTY OF MONTEREY.)

On March 29, 1996, before me, Jeannine L. Kreider,
a Notary Public, duly commissioned and sworn, personally appeared
DONALD G. HUBBARD

- personally known to me, or
 proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized
capacity, and that by his signature on the instrument, the person, or
the entity upon behalf of which the person acted, executed the same.

WITNESS my hand and official seal.

Jeannine L. Kreider
Signature

{Seal}



Luster, Tom@Coastal

From: Debbie Downing <d Downing@wittwerparkin.com>
Sent: Wednesday, October 29, 2014 7:09 PM
To: Watson, Michael@Coastal; Luster, Tom@Coastal; Carl, Dan@Coastal; Dettmer, Alison@Coastal; Luster, Tom@Coastal
Cc: William Parkin
Subject: Appeal No. A-3-MRA-14-0050 (California-American Water Company, Marina)
Attachments: 2014 10 29 Letter to California Coastal Commission.pdf

Dear Chair Kinsey and Commissioners:

Attached please find our letter regarding Appeal No. A-3-MRA-14-0050 (California-American Water Company, Marina) for the November 12, 2014, Agenda Item 14. If you have questions, please contact our office.

Very Sincerely,

DEBBIE DOWNING



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**NOVEMBER 12, 2014
AGENDA ITEM 14**

October 29, 2014

Steve Kinsey, Chair
California Coastal Commission
45 Fremont St. Suite 2000
San Francisco, CA 94105

Re: Appeal No. A-3-MRA-14-0050 (California-American Water Company, Marina)
Please Deny Appeal and Support City of Marina

Dear Chair Kinsey and Commissioners:

This office represents the Ag Land Trust, an agricultural land conservancy that has protected 25,000 acres in Monterey, Santa Cruz, and San Benito Counties. The Ag Land Trust owns prime farmland protected by the North Monterey County Local Coastal Plan. Ag Land Trust's prime farmland is immediately adjacent to the proposed project site currently owned by CEMEX. The proposal by California-American Water Company (Cal-Am) to pump groundwater at the CEMEX site will have severe impacts on groundwater supply and consequently on surrounding farmland, including productive land owned by the Ag Land Trust.

The Ag Land Trust urges you to not accept the appeal of Cal-Am. As a preliminary matter, the Commission should not assume that because Cal-Am's project is a "test well" that it is minor in nature and will not have significant environmental impacts. The so-called test well will operate for two years and pump more than 8,000 AF. In the future, the test well will be put into service as part of the overall desalination project rather than truly decommissioned. It is not disputed that the universally identified remedy for salt water intrusion is to reduce or stop pumping at the coast. Cal-Am's test well would do exactly the opposite: pump large amounts of water at the coast. Cal-Am's graphics show that the test well would create a large "cone of depression" that would impact Ag Land Trust farmland and water rights.

Cal-Am's appeal stems from a reasonable and correct decision by the Marina City Council to deny *without prejudice* a Coastal Development Permit (CDP) for Cal-Am's proposed test well. The reasons the Commission should deny this appeal are as follows:

1. The appeal is premature. The Marina City Council denied the CDP on the basis that environmental review was inadequate. A Mitigated Negative Declaration was prepared for the project. The City Council was presented with substantial evidence by the public of significant environmental impacts. That being the case, the City had no choice but to deny the CDP and to require an Environmental Impact Report (EIR). The CDP was denied without prejudice, and the City

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Council will reconsider the CDP once an EIR has been completed in compliance with the California Environmental Quality Act (CEQA).

2. The grounds for appeal under Public Resources Code § 30306(b)(2) are not met. The project does not meet the development standards of the Marina LCP. The LCP requires “thorough environmental analysis of the site by qualified professionals” (LCP, p. 23, emphasis added) and “proper environmental assessment by qualified professionals” (LCP, p. 40, emphasis added). The Marina City Council heard eight hours of testimony and carefully reviewed the record and the legal standards. The Council majority – three lawyers – found that the environmental review was not adequate and that an EIR was required
3. Cal-Am's project would violate a 1996 Agreement by Local Agencies to protect the Groundwater Basin from environmental harm. In any event, Cal-Am does not have water rights to pump groundwater from the site and the Coastal Commission does not have authority to grant Cal-Am such water rights.
4. The project would have impacts in the North Monterey County LCP area and the impacts would violate that LCP's policies that protect groundwater from degradation, and that prioritize farmland (for water).

The Appeal is Premature Because the City Council Did Not Have Before it Adequate Environmental Review pursuant to CEQA. If the Commission Were to Take Jurisdiction of this Appeal, it Sends the Wrong Message to Local Agencies that Require Adequate Environmental Review for Projects in the Coastal Zone

The hearings before the Marina City Council were extensive. Expert Testimony before the Council included substantial evidence of impacts associated with the project, including impacts to groundwater supply and quality, impacts to agriculture, and impacts to existing water rights. The environmental review for the CDP was a Mitigated Negative Declaration, instead of an EIR.

CEQA is designed to favor the preparation of an EIR. Specifically, preparation of an EIR rather than a negative declaration is required if there is “substantial evidence” in the record of proceedings that supports a “fair argument” that a project “may” have a significant impact on the environment. *See*, Pub. Resources Code §§ 21082.2(a), 21100, 21151; CEQA Guidelines § 15064(f)(1); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Communities for a Better Environment v. California Resources Agency* (2002)103 Cal.App.4th 98, 111-112.

Coastal Commission
Re: Appeal No. A-3-MRA-14-0050
October 29, 2014
Page 3

Courts have repeatedly affirmed that the fair argument standard is a “low threshold test.” *The Pocket Protectors v. City of Sacramento (Pocket Protectors)* (2004) 124 Cal.App.4th 903, 928. Evidence supporting a fair argument of any single potentially significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence in support of an agency’s decision. *See, League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland* (1997) (*City of Oakland*) 52 Cal.App.4th 896; *Sundstrom v. County of Mendocino* (1988), *supra*, 202 Cal.App.3d at 310. Indeed, an EIR is the preferred vehicle for reviewing environmental impacts of a proposed project.

One major purpose of an EIR is to inform other governmental agencies, and the public generally, of the environmental impact of a proposed project and to demonstrate to an apprehensive public that the agency has, in fact analyzed and considered the ecological implications of its action [in approving a project].

No Oil Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 86.

With certain limited exceptions [not applicable here], a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project will have a significant effect on the environment. Significant effect on the environment means a substantial, or potentially substantial adverse change in the environment.

Laurel Heights Improvement Association v. Regents of the University of California (1993) 6 Cal.4th 1112, 1123-1126.

The California Supreme Court has “repeatedly recognized that the EIR is the ‘heart of CEQA.’ [Citations.]” *Id.* at 1123. As the court observed some three decades ago,

since the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.

No Oil, Inc., supra, 13 Cal.3d at 75. Indeed, all doubt should be resolved in favor of preparing an EIR particularly in close cases. *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 703; *City of Oakland, supra*, 52 Cal.App.4th at 905. Evidence supporting a fair argument need not be overwhelming, overpowering or uncontradicted. *Friends of the Old Trees v. Dep’t of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1402. Instead, substantial evidence to support a fair argument simply means “information and reasonable

inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” 14 CCR § 15384; *Pocket Protectors, supra* 124 Cal.App.4th at 927-928; *City of Oakland, supra*, 52 Cal.App.4th at 905.

The Marina City Council heard hours of public testimony concerning the impacts of the proposed project, considered an opinion from its CEQA attorney that there is a low standard used for preparation of an EIR, and worked diligently to understand applicable laws and the testimony before them. All three lawyers on the City Council then voted to require an EIR for the project.

Based upon the substantial evidence in light of the whole record before the City of Marina, the City Council is unable to find that the project will not have a significant effect on the environment. The City Council has read and considered the IS/MND and the comments thereon and has determined that it does not reflect the independent judgment of the City and that it has not been prepared in accordance with CEQA. (Transcript, p. 307, Ex. D.)

[As to the] Coastal Development Permit, based on the above conclusions regarding CEQA, the City is unable to approve the project and therefore denies the project without prejudice to reconsideration at such time as the appropriate CEQA review is completed. (Transcript, p. 308, Ex. D.)

The final resolution of the Council incorporated these findings.

If the Commission were to assume jurisdiction of this appeal, the Commission would have to perform the analysis that the City of Marina was contemplating when it denied the application without prejudice. The Commission’s process must meet the “functional equivalent” standards regarding CEQA’s substantive requirements. 14 CCR 152519(c). Despite Cal-Am’s assertions to the contrary, groundwater supply and impacts to adjacent wells are required to be examined pursuant to CEQA. The CEQA Environmental Checklist found in the CEQA Guidelines at Appendix G asks whether a project would:

deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of preexisting nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?

Coastal Commission
Re: Appeal No. A-3-MRA-14-0050
October 29, 2014
Page 5

Issuance of a CDP to Cal-Am would have severe impacts to the groundwater supply in the area. Transcript, Ex. D, pp. 99-102, 275-293 (Marc del Piero, former vice chair, State Water Resources Control Board); pp. 244-245, 262-266, 271-272, 301 (Brian Lee, engineer, general manager of Marina Coast Water District).

Cal-Am's Project Would Violate a 1996 Agreement by Local Agencies to Protect the Groundwater Basin from Environmental Harm

The CEMEX property, where the project is located, is not permitted to pump more than 500 AFY pursuant to a 1996 Agreement between Monterey County Water Resources Agency, the City of Marina, the Marina Coast Water District, and CEMEX's Predecessor in Interest Lonestar. (Agreement, § 7.2, Ex. A to this letter.) Notwithstanding Cal-Am's assertions to the contrary, the Agreement is binding on successors in interest, including Cal-Am as a successor of CEMEX (Ex. A p.23). The Cal Am well would pump 1600-4000 AFY. This is a radical violation of an Agreement designed to protect the groundwater basin.

Cal-Am's appeal argues that the 1996 Agreement is not effective because annexations pursuant to the Agreement have not been completed. That is completely false. The Agreement states that it is effective upon execution of all the parties. (Agreement, § 2.9, Ex. A to this letter.) It is not dependent on completion of the annexations. The fully executed Agreement has been recorded and is binding on Lonestar and its successor in interest CEMEX, and thus Cal-Am. Any argument that other users of the site can avoid the legally binding requirements of the Agreement is a ruse. Cal-Am's use of the property is subject to the same restrictions as any owner or user of the property. The purpose of the 1996 Agreement was to "help reduce seawater intrusion and protect the groundwater resource and preserve the environment of the Salinas River Groundwater Basin" (Agreement, § 1.1, "Purpose"; Ex. A to this letter). The purpose is reflected in the title of the Agreement: "ANNEXATION AGREEMENT AND GROUNDWATER MITIGATION FRAMEWORK." (Ex. A to this letter.)

Furthermore, the City Council's CEQA determination is consistent with the implementation of the Marina LCP. The LCP provides:

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. . . . 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.

Coastal Commission
Re: Appeal No. A-3-MRA-14-0050
October 29, 2014
Page 6

(Marina LCP, p. 40, Ex. B to this letter, emphasis added). The Commission's assumption of jurisdiction does nothing more than usurp Marina's consideration of the CDP on its merits.

The City of Marina's determination was legally correct. Thus, Cal-Am's appeal is only ripe once the City of Marina has had a chance to perform adequate environmental review and decide the application for the CDP on the merits. The Supreme Court has observed, "[t]he Legislature left wide discretion to local governments to formulate land use plans for the coastal zone and it also left wide discretion to local governments to determine how to implement certified LCPs." *Yost v. Thomas* (1984) 36 Cal.3d 561, 574. Thus, after certification of a local coastal program, issuance of coastal development permits is the purview of the local government, not the Coastal Commission. The Commission should let the City of Marina complete its review and consideration of the CDP. Thus, the Commission should refuse to take jurisdiction pursuant to the appeal.

Cal-Am Does Not Have Water Rights to Pump Groundwater from the Site as Proposed; the Coastal Commission Does Not Have Authority to Grant Water Rights; and in Any Event, If the Commission Were to Accept this Appeal for Consideration, it Could Not Act Given the Absence of a Thorough and Detailed Environmental Analysis of the Impact of Granting Cal-Am Such Water Rights.

Cal-Am has no right to pump groundwater in the Salinas Valley as proposed. Pursuant to California groundwater rights law, Cal-Am is prohibited from acquiring such rights in the overdrafted Salinas Valley basin. The Doctrine of Correlative Overlying Water Rights, as created and interpreted by the California Supreme Court in *Katz v. Walkinshaw* (1903) 141 Cal.116, and as re-iterated for the last 110 years (most recently in *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224), prohibits any land owner in an over-drafted basin from pumping more than that land owner's correlative share of groundwater from the aquifer as against all other overlying water rights holders and senior appropriators. Even if Cal-Am is successful in acquiring the well site, Cal-Am has produced no evidence that the CEMEX site is entitled to enough groundwater based on the Doctrine of Correlative Overlying Rights to satisfy Cal-Am's pumping demands.

Cal-Am has indicated that it intends to not use, but, instead, to "dump" the water pumped by its test well -- including potable groundwater -- effectively into the ocean. That action would be a prohibited "waste of water" in violation of Article X, section 2 of the Constitution of California and the Doctrine of Reasonable Use. *Peabody v. Vallejo* (1935) 2 Cal.2d 351-371.

The Project Would Impact Resources Protected by the North Monterey County LCP

The North Monterey County LCP protects groundwater supplies. Cal-Am's proposal will have a severe negative effect on the groundwater resources protected by the North Monterey County LCP, including groundwater resources that serve agricultural land protected by the Ag Land Trust. The North Monterey County LCP provides as follows:

2.5.3 Specific Policies

A. Water Supply

1. The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.
2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.
3. The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources.

(North Monterey County LCP, p. 37, Ex. C to this letter.) The North Monterey County aquifers are severely over drafted. The limited remaining groundwater supply should be fully and carefully protected for the priority uses identified in the LCP, and should not be compromised by Cal Am's well. The Commission should not take jurisdiction of this appeal until the City has had the opportunity to consider these impacts in an EIR. If the Commission were to assume jurisdiction, it must also consider the impacts to resources in areas under the jurisdiction of the North Monterey County LCP.

Coastal Commission
Re: Appeal No. A-3-MRA-14-0050
October 29, 2014
Page 8

Conclusion

For the foregoing reasons, the Ag Land Trust requests that the Commission not accept the Cal-Am's appeal. If the Commission were to assume jurisdiction of this CDP, it would be sending a message to local agencies that their adherence to the requirements of CEQA can result in them losing jurisdiction to the Commission before they have had an opportunity to consider the environmental ramifications of their actions. Such a result rewards jurisdictions that avoid CEQA compliance by relying on Negative Declarations (or even CEQA exemptions), and penalizes jurisdictions that comply with CEQA by requiring an EIR.

Furthermore, the Ag Land Trust urges the Commission to either continue its consideration of a related application, Application No. 9-14-1735 (California-American Water Company, Marina), for a permit to construct, operate, and decommission test slant well at CEMEX sand mining facility on Monterey Bay shoreline, Marina, Monterey County until the City of Marina has considered Cal-Am's application, or deny the application because of its severe effect on groundwater supplies and the protection of agriculture in the groundwater basin.

Thank you for your consideration of these comments.

Very truly yours,
WITTWER PARKIN LLP

William P. Parkin

Attachments:

- Exhibit A - 1996 Agreement between Monterey County Water Resources Agency, the City of Marina, the Marina Coast Water District, and Lonestar (excerpts)
- Exhibit B - City of Marina LCP (excerpts)
- Exhibit C - North Monterey County LCP (excerpts)
- Exhibit D - Transcripts of Marina City Council Meetings of 9/3 and 4/2014 (excerpts)

cc: California Coastal Commission staff

EXHIBIT A

**ANNEXATION AGREEMENT AND GROUNDWATER MITIGATION FRAMEWORK
FOR
MARINA AREA LANDS**

**SUBJECT: ~~Annexation of Marina Area Lands to Zones 2 and 2A of the Monterey County Water Resources Agency~~
Annexation of Marina Area Lands To Zones 2 and 2A of the Monterey County Water Resources Agency**

1. PURPOSE AND AUTHORITY.

1.1. Purpose. The purpose of this Agreement and Framework is to provide for the annexation and protect the environment of the Salinas River Groundwater Basin through voluntary commitments by the Parties to limit, conserve and manage the use of groundwater from the Salinas River groundwater basin, and to provide the terms and conditions for the annexation of certain territory in the Marina area to the Monterey County Water Resources Agency's benefit assessment Zones 2 and 2A as a financing mechanism providing additional revenues to the Monterey County Water Resources Agency to manage and protect the groundwater resources in the Salinas River Groundwater Basin and to reduce seawater intrusion.

1.2. Authority. This Agreement and Framework is entered into under the authority of the Agency Act, the California Water Code, and the California Government Code.

2. DEFINITIONS AND DESIGNATIONS. The following definitions and designations apply to this Agreement and Framework:

2.1. Parties.

2.1.1. Marina Coast Water District ("MCWD"). A political subdivision of the State of California, located in Monterey County, governed by MCWD's Board of Directors.

2.1.2. Monterey County Water Resources Agency ("MCWRA"). A water and flood control agency created by the State of California, with jurisdiction coextensive with Monterey County, governed by the Monterey County Water Resources Agency Board of Supervisors.

2.1.3. J. G. Armstrong Family Members ("Armstrong"). The owners of the Armstrong Ranch in the Marina area of Monterey County.

2.1.4. Salinas River Groundwater Basin ("Basin"). A California general partnership and owner of the beneficial property in the Marina area of Monterey County.

2.1.5. City of Marina ("City"). An incorporated municipality within Monterey County, organized and operating under the laws of the State of California, governed by its City Council.

2.2. AFY. Acre-feet per year.

2.3. Agency Act. MCWRA's enabling legislation adopted by Chapter 1159 of the Statutes of 1990, and Chapter 1130 of the Statutes of 1991, set forth in full in West's California Water Code Appendix, Chapter 52.

2.4. Armstrong Ranch. About 1850 acres of land in the Marina area, as shown on Exhibit "C," about 322 acres of which is within the City of Marina, plus an additional 150 acres not shown on Exhibit "C" which is already in the Zones.

2.5. Basin. The Salinas River Groundwater Basin.

2.6. BMP. The MCWRA's Basin Management Plan for the Salinas River Groundwater Basin.

2.7. CEQA. The California Environmental Quality Act, Public Resources Code sections 21000 and following.

2.8. CSIP. The Castroville Seawater Intrusion Project, a distribution system project already approved and being implemented by MCWRA to provide reclaimed water for irrigation in the Castroville Area of Monterey County.

~~2.9. Agreement and Framework. Subject to paragraph 4, this Agreement and Framework shall be fully effective when executed by all the Parties.~~

2.10. Exhibits.

"A" The general geographic relationship of MCWD, Armstrong and Lonestar to the Basin and to the Zones is shown on the diagram attached to this Agreement and Framework as Exhibit "A."

"B" MCWD service area to be annexed

"C" Armstrong Ranch land to be annexed

"D" Lonestar property to be annexed

"E" Calculation of Incremental Cost for Tertiary Treated Water

"F" Armstrong Areas Reserved For Transfer to MCWD

"G" MRWPCA Addendum

ARMSTRONG

James Louis Anderson J.
John Anderson
Edwin A. Spurr
Chas. W. Johnson III

MCWD

MCWD

MCWD

6.11. Annexation of portions of Armstrong Ranch used by
MCWD. Notwithstanding any other provision of this Section 6,
portions of the Armstrong Ranch owned and/or used by MCWD may be
annexed to the Zones at any time, upon MCWD's written request for
such annexation, and in compliance with all then-applicable
laws. Any annexation fees or charges by MCWD for such annexed
lands shall be paid by MCWD.

7. TERMS AND CONDITIONS - LONESTAR

7.1. Compliance with Agency Act Section 22. The MCWD
acknowledges that it may not object to any withdrawal by Lonestar
permitted by this section 7, except in compliance with section 22
of the Agency Act. All groundwater withdrawn from the Basin by
Lonestar may be used only within the Basin.

7.2. Groundwater Withdrawals. Commencing on the effective
date of this Agreement, Lonestar shall limit
withdrawal and use of groundwater from the Basin to Lonestar's
historical use of 500 cfs of groundwater.

7.3. Annexation of Lonestar Property to the Zones.
Approval of this Agreement and Annexation by the MCWD Board of
Directors shall constitute approval for annexation of the
Lonestar Property. In accordance with the terms of this Agreement
and Annexation, The actual annexation will occur as follows: The
Lonestar Property annexation to the Zones will not take effect
until the Lonestar Property has been approved for prior or
concurrent annexation into MCWD. When such approval has been

To City: City Manager
211 Hillcrest Avenue
Marina, CA 93933
Phone No.: (408) 384-3715
Fax No.: (408) 384-0425

To Armstrong: John A. Armstrong
270 River Road
Salinas, CA 93908
Phone No.: (408) 455-1907
Fax No.: (408) 455-2817

To Lonestar: RMC LONESTAR
Attention: Mr. John Rubiales
P.O. Box 5252
Pleasanton, CA 94566
Phone No.: (510) 426-8787
Fax No.: (510) 426-2225

The address or fax number to which any notice or other writing may be given or made or sent to any party may be changed upon written notice given by such party as above provided.

13. SEVERABILITY. If any one or more of the covenants or agreements set forth in this Agreement and Framework on the part of MCWRA, MCWD, City, Armstrong or Lonestar, or any of them, to be performed should be contrary to any provision of law or contrary to the policy of law to such extent as to be unenforceable in any court of competent jurisdiction, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements and shall in no way affect the validity of this Agreement and Framework; provided, that if voiding of such individual covenants or agreements without voiding the whole agreement would frustrate a material purpose of Lonestar in entering into this Agreement and Framework, then this whole Agreement and Framework shall be null and void ab initio as to Lonestar only.

14. PARAGRAPH HEADINGS. Paragraph headings in this Agreement and Framework are for convenience only and are not to be construed as a part of this Agreement and Framework or in any way limiting or amplifying the provisions hereof.

15. SUCCESSORS AND ASSIGNS. This Agreement and Framework and all the terms, covenants, agreements and conditions herein contained shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

16. ADMINISTRATORS. MCWD and MCWRA hereby designate their respective General Managers as their Administrators for this Agreement and Framework. City designates its City Manager as City's Agreement and Framework Administrator. Armstrong designates Mr. John A. Armstrong as its Agreement and Framework Administrator. Lonestar designates Mr. John Rubiales as its Agreement and

Framework Administrator. All matters concerning this Agreement and Framework shall be submitted to the Agreement and Framework Administrators or such other representatives as the Agreement and Framework Administrators may designate for their respective agencies. Any party may, in its sole discretion, change its designation of the Agreement and Framework administrator and shall promptly give written notice to the other Parties of any such change.

17. NEGOTIATED AGREEMENT AND FRAMEWORK. This Agreement and Framework has been arrived at through negotiation between the Parties. Neither party is to be deemed the party which prepared this Agreement and Framework within the meaning of Civil Code section 1654.

18. AMENDMENT. This Agreement and Framework may be amended only by a writing signed by the Parties affected by the amendment.

19. COUNTERPARTS. This Agreement and Framework may be executed in counterparts. Each fully executed counterpart shall be deemed a duplicate original, and all counterparts which together contain the signatures of all the Parties shall be deemed, when attached together, one complete and integrated original document.

20. ADDENDUM. A form of Addendum for the MRWPCA is attached hereto as Exhibit "G." When the Addendum is fully executed in its present form or in an amended form, it shall be attached to this Agreement and Framework as an integral part of this Agreement and Framework, and the provisions of the Addendum shall be deemed specifically and fully incorporated into this Agreement and Framework by this reference.

IN WITNESS WHEREOF, the Parties execute this Agreement and Framework as follows:

Dated: March 26, 1996

MONTEREY COUNTY WATER RESOURCES AGENCY

By

Edith Johnson

Edith Johnson
Chair, Board of Supervisors

Dated: _____, 1996

MARINA COAST WATER DISTRICT

By

Thomas P. Moore
President, Board of Directors

By

Malcolm D. Crawford
Secretary, Board of Directors

Dated: _____, 1996

SUSANNE IRVINE ARMSTRONG, JAMES IRVINE ARMSTRONG, JR., and JOHN A. ARMSTRONG II, as Trustees of the Trust for the benefit of MARY JANET ARMSTRONG WEBER as set forth in the Order Settling Report of Trustees due to the death of Lois Armstrong, etc., in the Estate of Irvine Armstrong, also known as James Irvine Armstrong, Deceased, recorded January 4, 1988, in Reel 2191, Official Records of Monterey County at page 643 therein (hereinafter referred to as the "Mary Janet Armstrong Weber Trust")

By _____, Trustee

Dated: _____, 1996

JAMES IRVINE ARMSTRONG, JR.

Dated: _____, 1996

THE 1990 ARMSTRONG FAMILY TRUST established by Declaration dated July 2, 1990

By _____
Walter J. McCullough

By _____
Elizabeth S. Armstrong

Dated: Mar 26, 1996

RMC LONESTAR, a California general partnership

By Ronald Z. Blick

Dated: _____, 1996

CITY OF MARINA

By _____
James L. Vocelka, Mayor

APPROVED AS TO FORM:

REEL 3404 PAGE 796

Dated: _____, 1996

WILLIAM K. RENTZ
Deputy County Counsel, Monterey
County

Dated: _____, 1996

NOLAND, HAMERLY, ETIENNE & HOSS
A Professional Corporation

By _____
Lloyd W. Lowrey, Jr.
Legal Counsel for MARINA COAST
WATER DISTRICT

Dated: _____, 1996

ROBERT R. WELLINGTON
Legal Counsel for CITY OF MARINA

Dated: _____, 1996

THOMPSON, HUBBARD & OMETER
A Law Corporation

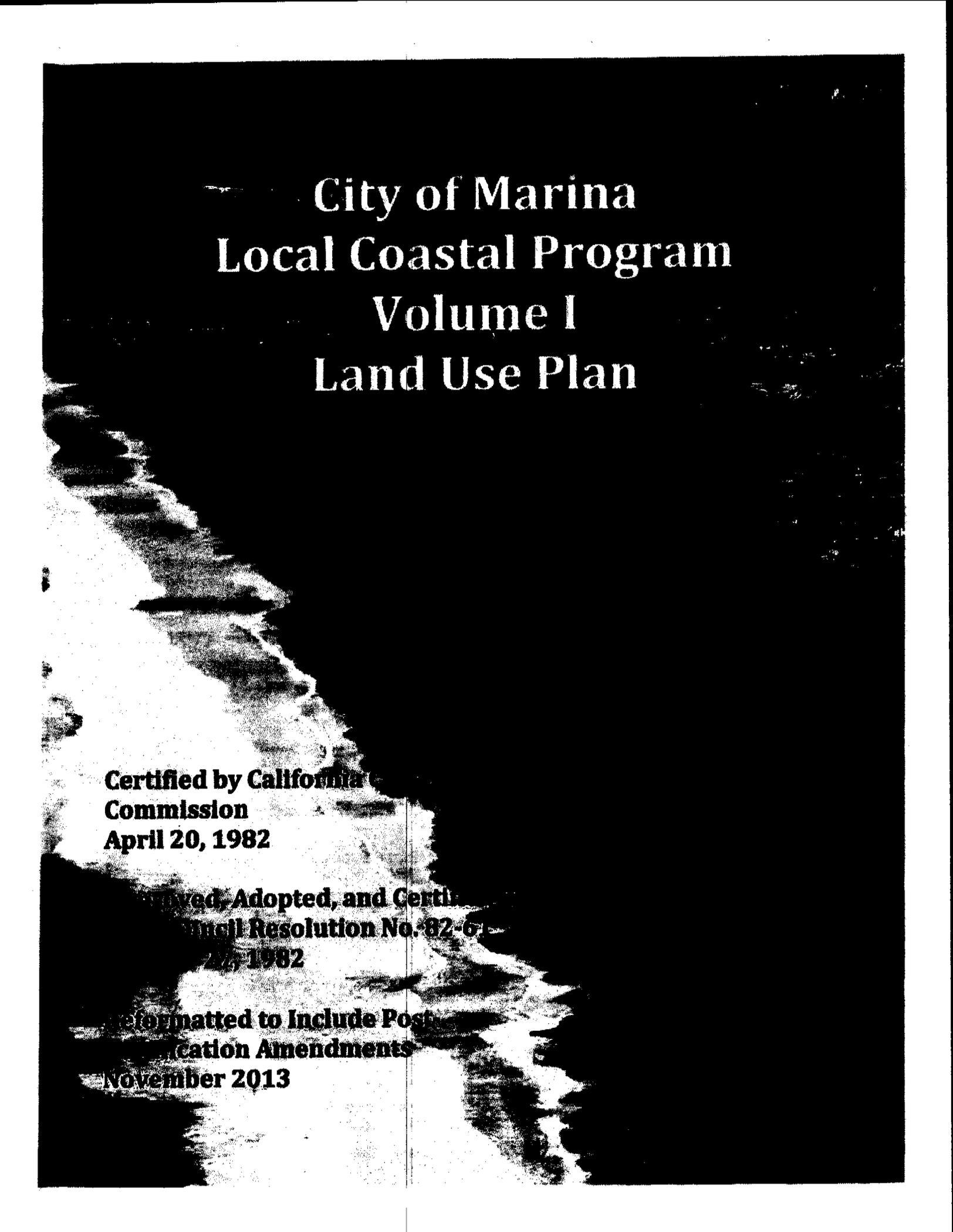
By _____
Donald G. Hubbard
Legal Counsel for J.G. ARMSTRONG
FAMILY MEMBERS

Dated: March 26, 1996

Thomas P. O'Donnell
~~PHILBURY, MADISON AND SUPRO~~

By _____
Thomas P. O'Donnell
Legal Counsel for RMC LONESTAR

EXHIBIT B



**City of Marina
Local Coastal Program
Volume I
Land Use Plan**

**Certified by California Coastal
Commission
April 20, 1982**

**Approved, Adopted, and Certified
by Council Resolution No. 82-6
April 27, 1982**

**Reformatted to Include Post
Certification Amendments
November 2013**

- No new development shall be permitted which will require the construction of shoreline protection structures unless such development is in accordance with the provisions of the "Small Boat Harbor" section of this Land Use Plan, or when such structures are necessary to serve coastal dependent uses (as defined in the Coastal Act) or to protect publicly owned beaches from erosion.

Coastal Conservation and Development Uses

Existing coastal-dependent industrial and public works facilities include the surf zone mining operations and the Marina County Water District outfall. Proposed new coastal-dependent uses include a commercial kelp-growing facility west of Dunes Drive. While the surf zone and dredge pond sand mining operations may be coastal-dependent, recent excavations of the Flandrian dunes at Lapis and west of Dunes Drive may not be coastally dependent.

Reclamation should be considered as a part of the coastal dependent use in areas where sand mining occurs in the future. Reclamation should address the combined process of land treatment which minimizes adverse effects of mining operations so that the mined areas are reclaimed to a useable condition which is readily adaptable for alternative land uses consistent with the policies and recommendation of the coastal land use and implementation plans and which create no danger to public health and safety. Recreational beach use in Marina is extensive with activity focused on beachcombing, fishing, hang-gliding and horseback riding. Swimming is not suitable because of treacherous currents. The weather in Marina is also less conducive to beach activities than elsewhere in the Monterey Bay. Strong on-shore winds and fog are typical of the weather patterns.

- 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. Coastal dependent development in this area will be allowed in already disturbed areas (see Sensitive Habitat section).
- Coastal Conservation and Development uses shall not be allowed without thorough environmental analysis of the site by qualified professionals. Recommended mitigations from this analysis shall be included in any permitted project.
- Existing Coastal Conservation and Development uses shall comply with all State regulations governing operation and use of the site. Revegetation of areas disturbed by development, including sand mining, is a City priority for these uses (see Hazards section).

coastal dependent land use is feasible. In the event of such a conflict, the decision making body shall consider all evidence submitted and make a final decision regarding feasibility based upon the evidence.

Coastal Conservation and Development shall include such uses as are dependent upon salt water, the unique coastal-marine 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 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.

Most of the dune area north of Dunes Drive to the City limits is undeveloped. The Lone Star Lapis Sand Plant is operating near the center of this area. A dwelling, several large structures and dredge ponds are associated with the sand mining operation. Lapis Road provides access to the Sand Plant. Between the north side of the area disturbed by the sand mining operation and the City boundary is a large area of virtually undisturbed dunes. This dune area is the best preserved of the Marina Dune native habitat. Its preservation is due, in part, to its inaccessibility. Between the Lone Star Lapis Sand Plant and the properties fronting on Dunes Drive is another undeveloped stretch of dune. The native environment of this area has been more disturbed by unauthorized use than the northernmost dunes, but still retains much of its original character. The future use of this entire area has environmental significance because of the dwindling amount of the unique, undisturbed Marina Dune plant and animal habitat. In addition there are, at the south end of this property adjacent to the Standard Resource parcel several smaller areas which are virtually undisturbed (see Exhibit "B"). These areas shown on Exhibit "B" shall be surveyed and protected.

Since the current sand mining operation is dependent on access to Coastal sands, it will continue to operate on this site. However, it is important to recognize the relationship of the sand mining operation to its surroundings. In terms of land use, the highest priority is placed on preserving the vegetated dunes to the north of the Lapis Sand Plant by public acquisition. Future development should be focused on this property on the more disturbed area south of the Sand Plant. If use of the southern area is necessary to preserve the area to the north of the sand plant, it should be carefully sited and designed to be as protective as possible of the fragile plant and animal habitats and visual amenities from Highway 1. Designated land use should be Coastal Conservation and Development. Any extension of Dunes Drive to provide access to the area should be limited to local access needs, so that it does not become a frontage road to Highway 1.

A recent coastal permit allowed an outfall line from the regional sewer treatment plant to be extended through the existing disturbed area at the sand plant. This pipe will carry treated effluent for the entire Monterey Bay Area a mile or more off shore. The line will be buried through the sand plant site.

EXHIBIT C



NORTH COUNTY

LAND USE PLAN

**LOCAL COASTAL PROGRAM CERTIFIED JUNE 1982
MONTEREY COUNTY, CALIFORNIA**

2. RESOURCE MANAGEMENT

2.1 INTRODUCTION

North County has a variety of valuable natural resources which present a need for effective resource management. Elkhorn Slough, one of California's principal remaining estuaries, is the most significant natural feature of the area. Other valuable wetlands such as Bennett Slough, Struve Pond, Old Salinas River Channel, and the Salinas Lagoon also contain biologically important habitats. The broad beaches and dunes which line the coast of Monterey Bay present another valuable resource. The area east of Elkhorn Slough with its oak and chaparral-covered hills and numerous small canyons and valleys is a resource that has been affected by extensive land clearing and erosion. The need for effective management of these areas is important to protect the abundance and diversity of their natural resources, many of which are sensitive to disturbance and have been degraded in the past due to erosion and land use practices.

Effective resource management will be increasingly vital in protecting the coast's natural resources as stressed in the California Coastal Act of 1976. Areas of scenic value, environmentally sensitive habitats, prime agricultural value, unique communities, and areas of high geologic or fire hazard will require special attention in order to protect the public welfare and preserve the delicate natural balance upon which many of the resources depend. Accordingly, any allowed development in or near these resource areas must be properly located and designed.

In past years, some development and land use practices have been insensitive to the resources of this area. The intensity of residential development in areas with no community sewer or water service has in some cases lead to public health hazards and contaminated groundwater. Saltwater intrusion from Monterey Bay into the groundwater due to overdrafting the aquifers has become a major concern. The interaction of tidal waters and surface water in the sloughs has been severely altered in some cases through construction of tidegates, levees, and fills. Some areas have suffered visual degradation due to alteration of attractive natural landforms and, in some cases, poor siting and screening of intensive land uses.

Although there is no urban center in the North County Coastal Zone, development has been fairly steady because the area is attractive to families desiring homes in a rural atmosphere. Development pressures persist. Some areas, those with existing or proposed public services, will be appropriate for intensive development in future years. However, much of North County is not appropriate for such development due to the sensitivity of its natural resources which may not tolerate continued encroachment of residential development. Policies set forth in this plan are intended to protect the vast resources of this area through sensitive and responsive land use, development, and conservation.

2.2 VISUAL RESOURCES

Appreciation of the scenic aspects of North County is growing. Some roads in the area have been designated as scenic highways; scenic easements and scenic lands have been acquired by the state and local governments; design review and scenic conservation and special treatment zoning classifications have been implemented. These actions, and others, demonstrate a concern for the future of the visual qualities of the North County area.

Requirements of the Coastal Act of 1976 focus on the protection of scenic resources, particularly those along the coastline. It stresses that any development permitted in scenic areas should be sited and designed to be visually compatible and subordinate to the natural setting. Alteration of natural landforms and degradation of the special communities which serve as popular recreation areas should be minimized.

long-term operation. Septic systems shall be sited to minimize adverse effects to public health, sensitive habitat areas, and natural resources.

6. The use of appropriate technology on-site wastewater management systems that reduce the risk of failure or groundwater contamination and are approved by the Health Department should be encouraged.

2.5.3 Specific Policies

A. Water Supply

1. The County's Policy shall be to protect groundwater supplies for coastal priority agricultural uses with emphasis on agricultural lands located in areas designated in the plan for exclusive agricultural use.
2. The County's long-term policy shall be to limit ground water use to the safe-yield level. The first phase of new development shall be limited to a level not exceeding 50% of the remaining buildout as specified in the LUP. This maximum may be further reduced by the County if such reductions appear necessary based on new information or if required in order to protect agricultural water supplies. Additional development beyond the first phase shall be permitted only after safe-yields have been established or other water supplies are determined to be available by an approved LCP amendment. Any amendment request shall be based upon definitive water studies, and shall include appropriate water management programs.
3. The County shall regulate construction of new wells or intensification of use of existing water supplies by permit. Applications shall be regulated to prevent adverse individual and cumulative impacts upon groundwater resources.
4. Water conservation measures should be required in all new development and should also be included in Agricultural Management Plans. These measures should address siting, construction, and landscaping of new development, should emphasize retention of water on site in order to maximize groundwater recharge, and should encourage water reclamation.
5. The moratorium imposed by the County on lot divisions in the Granite Ridge area should be maintained until the water supply issues are resolved.

B. Water Quality

1. All dumping of spoils (dirt, garbage, refuse, etc.) into riparian corridors and other drainage courses should be prohibited.
2. Agricultural runoff should be monitored and techniques established through the proposed North cultural Management Program to reduce pesticide and nitrate contents.
3. In order to minimize cumulative impacts on groundwater and surface water reservoirs, two and one-half acres shall be considered the maximum density for parcels resulting from a subdivision of property that will require septic systems. In areas where there is evidence that groundwater quality is being degraded due to contamination by on-site systems, and sewer service is not available, development shall be allowed only on parcels with adequate area and soil characteristics to treat and absorb the wastewater without causing further degradation of local ground and surface waters.
4. Adequate maintenance and repair of septic systems shall be required to limit pollution of surface waters and protect the public health.

EXHIBIT D

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CITY OF MARINA
CITY COUNTY REGULAR MEETING

COUNCIL CHAMBERS
211 HILLCREST AVENUE
MARINA, CALIFORNIA

WEDNESDAY, SEPTEMBER 3, 2014 - 6:00 P.M.

TRANSCRIPTION OF AUDIO RECORDING

AGENDA ITEM NO. 9:

Consider appeal of Planning Commission action of July 20, 2014, regarding adoption of Resolution No. 2014-__:
(1) certifying a Mitigated Negative Declaration and adopting a Mitigation and Monitoring Program; and, (2) approving Coastal Development Permit CDP 2012-05 for the California-American Water Slant Test Well Project located at CEMEX's Lapis Road property (APNs 203-011-001 & 203-011-019).

CITY COUNCIL:

- MAYOR/CHAIR BRUCE DELGADO
- MAYOR PRO-TEM/VICE CHAIR FRANK O'CONNELL
- COUNCILMEMBER NANCY AMADEO (via teleconference)
- COUNCILMEMBER DAVID BROWN
- COUNCILMEMBER GAIL MORTON

1 political consensus that there is for this Cal-Am
2 project. From the peninsula mayors to four of the five
3 supervisors, Representative Sam Farr, it's really rare
4 that we get to see a coalition of all of the politicians
5 that are in favor of this project.

6 The clock is ticking. The California State
7 Water Resource Board is not just a threat, it's a very
8 strong possibility.

9 This, as others have said tonight, is simply a
10 test. I understand the need for all of your due
11 diligence, but this is a test. So we would urge that on
12 behalf of over 1,100 Marina residents that work in
13 hospitality whose jobs are dependent on a dependable
14 water source, that you please pass this resolution
15 tonight.

16 Thank you.

17 MAYOR DELGADO: Thank you very much, Gary.

18 MARC DEL PIERO: Mr. Mayor, my name is Marc Del
19 Piero. I'm here tonight on behalf of the Ag Land Trust
20 of Monterey County. With me in the audience is Sherwood
21 Derrington, who is our executive director.

22 For the record, both of us have served on the
23 board of directors of the Ag Land Trust since 1984. We
24 currently have, under permanent conservation easement or
25 outright ownership, over 25,000 acres of prime and

1 productive farm land in the County of Monterey.

2 We provided to you this evening a letter that
3 you all have before you. I want to thank Ms. Mall for
4 being kind enough to distribute it.

5 Mr. O'Connell, you asked earlier about letters
6 dated earlier than the last two years. Many of those
7 came from us, because one of the seminal questions that
8 has not been answered as part of this process is where
9 or whose water rights Cal-Am is supposedly relying upon.
10 The reason those letters were provided to you, along
11 with current correspondence, is because since 2006,
12 there is no answer to that question. Okay. We keep
13 asking, but no one -- no one returns our phone call.

14 The water rights issue has been addressed
15 pretty much ad nauseum. We have provided to your
16 Councilmembers and to your staff probably two and a half
17 inches of correspondence addressing a whole variety of
18 environmental issues.

19 We want to point out a couple of things this
20 evening. First of all, there is no identified
21 mitigation for the issue that we have raised
22 consistently, which is the fact that we believe that the
23 pumping of the test well will cause direct contamination
24 of our groundwater supply.

25 Would you mind very much putting that up, the

1 concentric map?

2 Rather than -- rather than rely on me as an
3 expert, even though I have been qualified as an expert
4 on at least six different occasions during the course of
5 my career, I will use your map to point something out.

6 While they are getting the map that shows the
7 concentric circles of the impact of the testing wells,
8 you will see, when the map comes up, that those
9 concentric circles don't just cover the CEMEX property.
10 In fact, they cover over 40 acres of our property and
11 our groundwater and our groundwater rights.

12 And the remedy that's identified in the
13 Mitigated Negative Declaration is not a mitigation. The
14 remedy that's supposedly identified is, well, Cal-Am
15 will just stop pumping if it shows up that our
16 groundwater supply is being contaminated. That's a
17 problem. That doesn't comply with the requirements of
18 CEQA. Okay?

19 Additionally, I wanted to just point out one
20 other thing. It's not reasonable for your Council to
21 conclude that no fair arguments have been made, because
22 our Ag Land Trust, in spite of all the correspondence
23 that has been provided to your consultants and your
24 staff and to you over the course of the last two and a
25 half years has never received a return phone call from

1 the consultants and staff that you employ expressly for
2 the purposes of the evaluation of Cal-Am's application.
3 You can't hear a fair argument if no one listens.

4 Thank you so much.

5 MAYOR DELGADO: Thank you very much, Marc.

6 MELODY KRISLOCK: My name is Melody Krislock;
7 I'm a resident of Carmel.

8 I think you can see that hospitality is very
9 excited about this project, and I think there's a good
10 reason for that. The difference in the commercial rates
11 and the residential rates for us on the Monterey
12 Peninsula are quite substantial.

13 I was at the Monterey City Council meeting
14 where Cal-Am recently presented those comparison of the
15 rates. And before that, I took my bills, my last three
16 summer bills. I'm on an acre with three people using --
17 I'm in tier 4. I figured out their commercial costs,
18 \$1.51 per 100 gallons, flat rate, and this is about 80
19 percent of all the commercial hookups, it's most of the
20 commercial users. \$1.51 per 100 gallons.

21 My last three summer bills, 3.55 to 4.11 per
22 100 gallons. I'm including all the surcharges, because
23 their \$1.51 includes all the surcharges.

24 So I think it's pretty easy to see why
25 hospitality wants this project to go forward. They are

1 I, Kelli A. Rinaudo, a certified shorthand
2 reporter in and for the state of California do hereby
3 certify:

4 That the foregoing transcript was prepared by
5 me, to the best of my ability, via an audio recording;

6 That I was not present to ascertain speaker
7 identities, and some misidentified or nonidentified
8 speakers may appear in the transcript;

9 That I was not present to clarify certain
10 words, and some unintelligible or inaudible phrases may
11 appear in the transcript;

12 I further certify that I am not related to any
13 party to said action, nor in any way interested in the
14 outcome thereof.

15
16 DATED: October 24, 2014

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20 _____
21 KELLI A. RINAUDO, CSR NO. 6411

22 RMR, CRR, CCRR
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CITY OF MARINA
CITY COUNTY REGULAR MEETING

COUNCIL CHAMBERS
211 HILLCREST AVENUE
MARINA, CALIFORNIA

THURSDAY, SEPTEMBER 4, 2014 - 6:00 P.M.

TRANSCRIPTION OF AUDIO RECORDING

AGENDA ITEM NO. 9:

Consider appeal of Planning Commission action of July 20, 2014, regarding adoption of Resolution No. 2014-__:
(1) certifying a Mitigated Negative Declaration and adopting a Mitigation and Monitoring Program; and, (2) approving Coastal Development Permit CDP 2012-05 for the California-American Water Slant Test Well Project located at CEMEX's Lapis Road property (APNs 203-011-001 & 203-011-019).

CITY COUNCIL:

- MAYOR/CHAIR BRUCE DELGADO
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- COUNCILMEMBER DAVID BROWN
- COUNCILMEMBER GAIL MORTON

1 that decision.

2 I am a civil engineer. I have been practicing
3 for almost 20 years now in the water industry. I have
4 experience with a number of water wells, having been on
5 the design team and the construction team for no less
6 than six. So I have experience in groundwater in the
7 San Lorenzo Valley, which is down in San Diego County,
8 City of Oceanside, looking at aquifer storage and
9 recovery down there. I was on a team that prepared a
10 report for that.

11 And the concerns I have that maybe go into a
12 little bit more layman's terms in that regard is that
13 desalination is not an all-or-nothing prospect.
14 Everybody would rather desalination brackish water away
15 than seawater.

16 MAYOR DELGADO: Brian, I want to interrupt
17 you --

18 BRIAN LEE: No problem.

19 MAYOR DELGADO: -- because we wanted your
20 qualifications to find out if you qualified as an
21 expert.

22 BRIAN LEE: Fair enough.

23 MAYOR DELGADO: And I'm sorry to put you
24 through this.

25 BRIAN LEE: No problem.

1 MAYOR DELGADO: And then we're going to look at
2 these comments. And you can stay standing because we
3 might have more questions.

4 But, Emily, is Brian Lee an expert in his
5 field?

6 KATHY JENSEN: Kathy, you mean?

7 MAYOR DELGADO: I'm sorry, Kathy.

8 KATHY JENSEN: Yes, he is.

9 MAYOR DELGADO: Okay. So in his June 17th
10 letter on page 81 and 82, he argues some points. So do
11 those --

12 KATHY JENSEN: I was looking at the comment
13 that was related to those other pages that you were
14 referring to, which was comment number 4. So on 81 --

15 MAYOR DELGADO: It's also comment number 3 that
16 slant test well pumping itself could have a significant
17 impact on Salinas Valley Groundwater Basin.

18 KATHY JENSEN: I think we've addressed that
19 issue.

20 MAYOR DELGADO: But when experts disagree and
21 they have a fair argument that meets the fair argument
22 standard, I heard last night that we're to take this to
23 a full EIR.

24 KATHY JENSEN: Why don't you -- if you want to
25 respond on number 3?

1 MAYOR DELGADO: All right. I don't see him.

2 So I'll ask our CEQA attorney, Kathy. Mayor
3 Pro-tem O'Connell was reading paragraph G on the bottom
4 of page 3, and it says:

5 "If there is disagreement among expert
6 opinion supported by facts over the
7 significance of an effect on the environment,
8 the lead agency shall basically prepare an
9 EIR."

10 And I wasn't sure that Mayor Pro-tem O'Connell
11 was focused on the "supported by facts" part or just the
12 "disagreement among expert opinion." Because we
13 definitely have disagreement among expert opinion. But
14 where we have disagreement, I'm not sure if it's
15 supported by facts.

16 And so I'd like to ask Brian Lee to come back
17 up and sort of let me know if you think that your
18 assertions in your letter, which is a good letter, if
19 they are supported by facts.

20 BRIAN LEE: I do believe that the assertions in
21 my letter are supported by facts, and I think that the
22 discussion is what is the impact to the groundwater,
23 it's not is there an impact to the groundwater. So I
24 think the whole discussion itself supports my concerns
25 that there will be an impact to the groundwater.

1 MAYOR DELGADO: Okay. So in the staff report
2 on page 82, 83, I think, we had your letter. And on
3 page 82 it says in your letter:

4 "The slant test well pumping could
5 have a significant impact on Salinas
6 Valley Groundwater Basin."

7 So I don't expect you to be superhuman and
8 remember everything that was in that letter. But if we
9 need to take the time, we will, I hope. My question is
10 are there facts to support that, and what are those
11 facts?

12 BRIAN LEE: The facts are the history of the
13 Salinas Valley Groundwater Basin and the amount of
14 studying that's has gone into that basin, I think there
15 are probably volumes in some offices in Salinas
16 regarding the condition of the basin.

17 It is overdrawn. There is significant seawater
18 intrusion occurring. And anymore wells in that basin
19 will impact seawater intrusion. I don't think that's
20 disputed.

21 So the question becomes is it significant. I
22 don't think the MND has adequately addressed is it
23 significant or not.

24 MAYOR DELGADO: Okay. So I hear some of your
25 facts being that there is a long history of analyzing

1 this. There's probably volumes.

2 The fact is there's probably volumes addressing
3 this. The fact is the basin is overdrawn now, and I
4 guess you meant that there is another fact that more
5 wells will further impact the seawater intrusion?

6 BRIAN LEE: Correct.

7 MAYOR DELGADO: Now, Kathy and Emily, I thought
8 I heard Emily say last night that the fact is in the
9 MND's opinion, that seawater intrusion, if there was an
10 impact, it would be a positive one to lessen seawater
11 intrusion, but it's so minuscule of an impact that it's
12 not really disclosed and that you don't believe that
13 there's an impact in the negative. If there was an
14 impact, it would be minusculely in the positive. Is
15 that true?

16 EMILY CREEL: That is true. And our evidence
17 was studies conducted by the Hydrogeologic Working Group
18 and also the State Water Board's report.

19 MAYOR DELGADO: Okay. So when Brian Lee, an
20 expert, espouses a fact being that the more wells that
21 are drilled, any well that's drilled, basically, will
22 exacerbate the overdrawn seawater intrusion, or the
23 overdrawn draft, the overdrafting of our groundwater
24 aquifers.

25 So you heard the facts that he mentioned. What

1 do you think, do those qualify as facts by CEQA process?

2 KATHY JENSEN: It's really hard to dissect all
3 this and say does it? Is it? My own personal view is
4 that's a conclusion. To say that any additional wells
5 will, you know, injure, significantly injure, that's a
6 broad statement. And the fact that there's -- it's been
7 studied, to me it doesn't add up.

8 Whether a court would find that it's -- you
9 know, that it's -- again, you know we have a low
10 threshold for MNDs, but that's the reality.

11 MAYOR DELGADO: You mean low threshold, you
12 mean we should be very conservative?

13 KATHY JENSEN: No. It is a low threshold of
14 when you can do them.

15 MAYOR DELGADO: I don't understand. I don't
16 understand in which direction you mean to say low
17 threshold.

18 KATHY JENSEN: There's a low threshold to
19 challenge them. The fair argument test is the --

20 MAYOR DELGADO: So it's easy to challenge.

21 KATHY JENSEN: The easiest of all the
22 challenges to make.

23 MAYOR DELGADO: Okay.

24 KATHY JENSEN: And the question of whether the
25 statements just made is substantial evidence, I don't

1 know the reports that he's relying upon. Maybe there's
2 a report that says that any additional wells will create
3 an impact. You know, without having that documentation,
4 it's not -- those aren't in the record. To me, it
5 doesn't really stack up to substantial evidence. Not
6 what we're used to seeing.

7 MAYOR DELGADO: Okay. Thanks. Brian, did you
8 have anything more you wanted to say? And especially,
9 Brian, those facts that you just mentioned when I asked
10 you, were those facts included in your letter?

11 BRIAN LEE: The facts were behind the letter.
12 They weren't necessarily included in the letter.

13 MAYOR DELGADO: Okay.

14 BRIAN LEE: And it's important to note that,
15 you know, the test well is proposing to extract 8,000
16 acre feet of water, plus or minus, from the groundwater
17 basin. And I mean the City of Marina right now, central
18 Marina uses approximately less than half of that in a
19 year, so it is substantial.

20 MAYOR DELGADO: But that's potable water that
21 we use, and you're talking about 8,000 acre feet that
22 everyone agrees is non-potable.

23 BRIAN LEE: Oh, I disagree that it's not
24 valuable.

25 MAYOR DELGADO: No. Potable.

1 If another site is already there extracting
2 groundwater, they are going to be pulling in seawater,
3 raising the salinity, which is going to increase our
4 cost, which that is a significant impact to MCWD and the
5 residents of Marina. So there is an environmental
6 impact --

7 MAYOR DELGADO: Wait, wait. That's a
8 significant impact, but it's not an environmental
9 impact.

10 BRIAN LEE: It damages the groundwater. It
11 increases seawater further in, and it impacts the
12 environment for MCWD.

13 MAYOR DELGADO: Okay. By decreasing the
14 quality of the groundwater that you may need to be
15 pumping?

16 BRIAN LEE: Increasing the quality of the
17 groundwater that we have a right to.

18 MAYOR DELGADO: Okay. Kathy, does that sound
19 like -- or, Emily, does that sound like a significant
20 impact? Thank you, Brian.

21 EMILY CREEL: I would just add that what he is
22 referring to is the larger project in operation. So
23 what we're talking about here is the short-term pumping
24 project.

25 MAYOR DELGADO: So, Brian, that's a good

1 question. I'm sorry to keep -- you need to say "Mother
2 may I" next time.

3 But, Brian, do you think that what you just
4 said as a significant impact, do you think that that
5 occurs with the two years of proposed test slant well
6 testing?

7 BRIAN LEE: The proposed test well extracts,
8 again, almost twice as much as water as the central
9 Marina residents are using right now and the Ord
10 community. So, yeah, I think it does have a substantial
11 impact in the short term, considering the fact that we
12 are in the worst drought in the state's history.

13 MAYOR DELGADO: Okay.

14 BRIAN LEE: And Sacramento is giving a real big
15 stink-eye to groundwater and groundwater rights right
16 now, so we need to be very careful to protect our
17 rights.

18 MAYOR DELGADO: Okay. Don't go away, because
19 David Brown might have something.

20 COUNCILMEMBER BROWN: Actually, I would like to
21 make a motion.

22 MAYOR DELGADO: Okay. Thank you, Brian.

23 COUNCILMEMBER BROWN: All right. Well,
24 Mr. Lombardo is standing up, do you want to recognize
25 him?

1 requires that if water levels drop one foot, pumping is
2 curtailed. So it's an impossibility. His opinion is
3 not substantiated by facts. Thank you.

4 MAYOR DELGADO: All right. Thank you,
5 Mr. Lombardo.

6 Mayor Pro-tem O'Connell?

7 MAYOR PRO-TEM O'CONNELL: Mr. Mayor, I'd like
8 to give Mr. Del Piero the opportunity to respond to the
9 same question.

10 MAYOR DELGADO: So, Marc, what facts do you
11 think have been presented by experts?

12 MARC DEL PIERO: Mr. Mayor, before I begin to
13 answer that question, let's just get on the record what
14 my background is, okay? In 1978 I got appointed to the
15 County Planning Commission. I graduated from law school
16 at Santa Clara University, passed the bar exam. I was
17 the primary author of the North Monterey County Local
18 Coastal Plan that remains in full force and effect, and
19 that Land Use Plan actually applies to the Ag Land Trust
20 property that we've been subject -- that has been the
21 subject of your discussion.

22 From 1981 until 1992, besides being a member of
23 the Monterey County Board of Supervisors and also a
24 supervisor for the City of Marina for the first four
25 years of that term, I served on the board of directors

1 of the Central Valley Project Improvement Act San Felipe
2 Division, which is the agency that is responsible for
3 distribution of all federal waters through the San
4 Felipe Division for Northern California, including the
5 counties of Santa Clara, San Francisco and the Bay Area,
6 San Benito as well. Monterey County and Santa Cruz
7 County at the time were members during the entirety of
8 the term of my membership on that committee, and that
9 membership ended in '92 when I was appointed to be the
10 attorney member of the State Water Resources Control
11 Board from 1992 until -- pardon me, from 1992 until 1999
12 I served as the vice chair of the board.

13 Last night was sort of an interesting
14 situation, because also from 1992 until 1999, I served
15 as the chair of the statewide task force on desalination
16 projects. And I'm the only guy who ever served in that
17 capacity who actually has built other water projects as
18 opposed to just serving as a chair of that board.

19 MAYOR DELGADO: Okay. Marc, are you done with
20 your qualifications?

21 MARC DEL PIERO: Not yet.

22 MAYOR DELGADO: Okay. Please continue.

23 MARC DEL PIERO: I'm not. And, Mr. Chairman, I
24 apologize, but your counsel has made a big point about
25 whether or not someone is fit to testify here, and so I

1 need to make sure that you understand that from the
2 standpoint of many people, including the State Water
3 Resources Control Board, the Department of Water
4 Resources, the Mendocino County Russian River Flood
5 Control Water Conservation District, I've been qualified
6 as an expert witness on many occasions.

7 From 1999 until last summer, I was the chief
8 counsel for the Mendocino County Russian River Flood
9 Control Water Conservation District. They administer
10 all water rights on the Russian River as well as all
11 environmental restoration programs within Mendocino
12 County and the Ukiah valley.

13 I have served as the chief counsel for a number
14 of water agencies here in Monterey County all the way
15 from the Big Sur coast to Pajaro.

16 So -- oh, one last thing. From '92 until 2011,
17 I taught water rights law and water quality policy at
18 Santa Clara University School of Law.

19 MAYOR DELGADO: Marc, would you --

20 MARC DEL PIERO: Now ask your question.

21 MAYOR DELGADO: -- would you consider yourself
22 a policy expert and a legal expert and an engineering or
23 technical expert?

24 MARC DEL PIERO: I will tell you, I am a legal
25 expert. Okay. I am not a civil engineer; however, I

1 have been responsible for ensuring the proper
2 engineering and administration of multitudinous capital
3 development projects. And I'll be happy to give you a
4 list of all of those if you have got another 20 minutes.

5 Additionally, I've been responsible for the
6 development of the desalination and wastewater
7 reclamation criteria that were subsequently adopted both
8 by the State Water Resources Control Board and by the
9 then California Department of Health Services, and most
10 of those policies remain in full force and effect.

11 MAYOR DELGADO: All right. Thank you very
12 much, Marc. And do you remember the question?

13 MARC DEL PIERO: No.

14 MAYOR DELGADO: What are some of the facts that
15 you think were supporting this disagreement among
16 experts?

17 MARC DEL PIERO: And please understand, I am
18 relying on the facts that are embodied in your Mitigated
19 Negative Declaration. Although I have to be candid with
20 you, Mr. Mayor, and members of the Council, I have heard
21 some sort of tortured interpretations of various
22 policies in the CEQA guidelines tonight.

23 First of all, oil and gas law has no
24 applicability to water rights law in the State of
25 California. They are two separate codes. There is no

1 similarity whatsoever. And any CEQA considerations in
2 terms of oil and gas wells may not under any
3 circumstances --

4 MAYOR DELGADO: Excuse me, Marc, I was asking
5 you what facts --

6 MARC DEL PIERO: That's what --

7 MAYOR DELGADO: What facts have been presented
8 by expert disagreement tonight.

9 MARC DEL PIERO: I really am. I'm getting to
10 it.

11 MAYOR DELGADO: You are adding something I
12 hadn't heard before, which is fine, but let's get to
13 that next perhaps.

14 MARC DEL PIERO: Well, actually I have heard it
15 three times from your counsel talking about how you
16 should ignore the mandates.

17 MAYOR DELGADO: No, no. But we haven't heard
18 anyone -- we haven't heard an expert such as yourself --

19 MARC DEL PIERO: Okay.

20 MAYOR DELGADO: -- until now, assert the fact
21 that oil and gas law has no applicability to water law.

22 MARC DEL PIERO: That's correct.

23 MAYOR DELGADO: And my question to you was
24 before you stood up tonight if you had heard facts of
25 disagreement by experts.

Audio Transcript Marina City Council 9/4/14

1 MARC DEL PIERO: On what issue?

2 MAYOR DELGADO: The MND.

3 MARC DEL PIERO: Okay.

4 MAYOR DELGADO: So before coming to the podium
5 five minutes ago, what are some of the facts that you
6 heard of disagreement between experts.

7 MARC DEL PIERO: The fact that additional wells
8 in a groundwater basin that has been overdrafted
9 since --

10 COUNCILMEMBER BROWN: Mr. Mayor, point of
11 personal privilege.

12 MAYOR DELGADO: Yeah.

13 COUNCILMEMBER BROWN: I would like to
14 interrupt, because I feel I need to respond to this. I
15 feel that when Mr. Del Piero stands there and glares at
16 me and tells -- and lectures me that there's no
17 difference -- I mean that there's a lot of difference
18 between oil and gas law, and that he basically came to
19 the podium earlier during the break and got in my face
20 and said the same thing, I feel it's necessary to
21 respond.

22 MARC DEL PIERO: Sure.

23 COUNCILMEMBER BROWN: I understand that oil and
24 gas law are two separate fields. What you are doing is
25 assuming that I equated them when I asked one question

1 to our counsel, which was whether oil wells and gas
2 wells were analogous as to one tiny sliver of CEQA
3 relating to --

4 COUNCILMEMBER MORTON: Piecemealing.

5 COUNCILMEMBER BROWN: Yeah, piecemealing. So I
6 never said there was a similarity in oil and gas law,
7 and I'm sorry that you take it so personally.

8 MARC DEL PIERO: No, Mr. Brown. I'm not taking
9 it personally. My point is this --

10 MAYOR DELGADO: Okay. Okay. Excuse me, Marc.
11 Excuse me, Marc.

12 MARC DEL PIERO: Sure.

13 MAYOR DELGADO: It was pointed out on a couple
14 of occasions at least by our consultants that because
15 oil and gas allows testing and feasibility studies and
16 drilling, that was something that was -- at least they
17 were suggesting that we keep that in mind.

18 MARC DEL PIERO: Sure.

19 MAYOR DELGADO: But I was asking you now for
20 the facts that were presented in disagreement by other
21 experts.

22 MARC DEL PIERO: The basin has been in
23 overdraft since 1946, '47. Okay. The basin is in
24 overdraft because of the multitudinous number of wells
25 that exist within the basin. Every study that has --

Audio Transcript Marina City Council 9/4/14

1 MAYOR DELGADO: Okay. That's a fact that Brian
2 Lee pointed out. So you are agreeing with him that's a
3 fact.

4 MARC DEL PIERO: I would -- let me cut this
5 short in regards to Mr. Lee's comments. It is the
6 position of the Ag Land Trust at this point that
7 everything that Mr. Lee said tonight is exactly correct,
8 and we disagree with the recommendations of your
9 consultant and your contract counsel because --

10 MAYOR DELGADO: I'm asking for facts. You are
11 straying from what I asked. I asked you for the facts
12 that have been presented. Do you have any more facts
13 that you recall being disclosed --

14 MARC DEL PIERO: Yes.

15 MAYOR DELGADO: -- by experts?

16 MARC DEL PIERO: Yes.

17 MAYOR DELGADO: What are those?

18 MARC DEL PIERO: First of all, you have a basin
19 that's in overdraft. Adding an additional well that
20 proposes to pump 8,000 acre feet will exacerbate
21 seawater intrusion.

22 Every hydrogeologic study that has been
23 produced in this county since 1976, and I can represent
24 to you --

25 MAYOR DELGADO: That's not a fact that was

1 brought up before you came to the podium.

2 MARC DEL PIERO: But it's incorporated in your
3 negative declaration. The reference to the overdraft in
4 the basin is in your Mitigated Negative Declaration.

5 MAYOR DELGADO: Right. But I'm asking you for
6 additional facts that have been brought up by expert
7 opinion.

8 MARC DEL PIERO: Which expert would you like me
9 to refer to?

10 MAYOR DELGADO: Those who are disagreeing with
11 the MND's record -- recommendation to be adopted.

12 MARC DEL PIERO: If you point out which one --

13 MAYOR PRO-TEM O'CONNELL: Point of order,
14 Mr. Mayor.

15 MAYOR DELGADO: Point of order, Marc. Excuse
16 me.

17 MAYOR PRO-TEM O'CONNELL: I don't think that
18 it's a requirement that we limit the expert as to facts
19 that may be in disagreement with another expert. He has
20 found himself -- he is found to the point of being an
21 expert. Why cannot we allow him to reference documents
22 that are presently in front of us to point out where the
23 facts differ? I know that expands your question a
24 little bit.

25 MAYOR DELGADO: That will be appropriate in a

Audio Transcript Marina City Council 9/4/14

1 few minutes. But the whole point of getting Brian and
2 Marc up again was to answer that question about what
3 facts have been presented in the record by experts that
4 show disagreement between experts.

5 MAYOR PRO-TEM O'CONNELL: But you are not -

6 MAYOR DELGADO: Then we can ask him other
7 questions like please give us new facts, because that's
8 what he's doing now.

9 MAYOR PRO-TEM O'CONNELL: That will be your
10 next question?

11 MAYOR DELGADO: Right.

12 MAYOR PRO-TEM O'CONNELL: Okay.

13 MARC DEL PIERO: Okay.

14 MAYOR DELGADO: So we'll ask you about new
15 facts in a moment. But for right now do you have any
16 other -- do you have any other facts or disagreement
17 that you are aware have been part of the record?

18 MARC DEL PIERO: Yes.

19 MAYOR DELGADO: Okay.

20 MARC DEL PIERO: Let me start by identifying
21 who I'm talking about, okay? Because, Mr. Mayor, you
22 are the one who asked your contract counsel whether or
23 not Mr. Lee was an expert, and it was predicated upon
24 her opinion that collectively the counsel determined or
25 agreed that he was an expert.

1 MAYOR DELGADO: No. It was predicated upon him
2 coming forward and explaining why he was an expert, and
3 he did a good job and we all agree he's an expert. It
4 wasn't predicated upon anything the consultant said.

5 MARC DEL PIERO: You forgive me, because I
6 heard you ask the question as to whether or not she
7 thought he was an expert.

8 MAYOR DELGADO: Right, but that was subsequent,
9 that was before he spoke for himself, sir.

10 MARC DEL PIERO: So if that's not -- if you
11 don't believe your contract attorney is an expert, which
12 expert would you like me to address, because I have sat
13 through both the hearings yesterday and today, I've
14 listened to every comment made. Which expert would you
15 like me to address in terms of the comments?

16 MAYOR DELGADO: Any facts that you believe any
17 experts made in disagreeing with the MND's
18 recommendation for approval.

19 MARC DEL PIERO: Well, let me -- Martin Feeney
20 got up. I think Martin Feeney qualifies as an expert.
21 Martin Feeney told you he didn't know what the results
22 were going to be. That's not an expert opinion. That's
23 an indication that --

24 MAYOR DELGADO: That's not a fact. He didn't
25 tell us --

1 MARC DEL PIERO: No. It is a fact that he made
2 that statement. He's's made the statement that he
3 didn't know what the consequences were going to be.

4 And I guess my point is this -- let me share
5 with everyone. Yesterday the State Board opinion was
6 presented to you. What was glossed over in the State
7 Board opinion was the statement that the State Board was
8 looking forward to getting a proposal that didn't
9 compromise adjacent property owners' water rights.
10 That's in the State Board opinion.

11 And so the first premise that anyone relying
12 upon that State Board letter should be -- should be
13 concerned about --

14 MAYOR DELGADO: Okay. Marc -- Council, I
15 believe that the -- that the commenter is straying from
16 the question.

17 MARC DEL PIERO: Tell me who you would like me
18 to address and I would be happy to.

19 MAYOR DELGADO: I already mentioned to you
20 after you asked that question last time, any expert that
21 you have heard provide any facts on the record in
22 disagreement with the MND being approved, please let us
23 know what those facts are.

24 MARC DEL PIERO: Mr. Delgado, the only person
25 that got qualified as an expert tonight before me was

1 Mr. Lee. No one -- no one was identified as an expert
2 prior to that in the course of the presentation.

3 MAYOR DELGADO: But I'm asking you if anyone
4 that you think is an expert, and if there's any facts
5 that you heard them provide --

6 MARC DEL PIERO: Yes.

7 MAYOR DELGADO: -- please let me know what
8 those facts are.

9 MARC DEL PIERO: Yes. I will tell you this:
10 The conjecture that a well that is located on the CEMEX
11 property that will extract 8,000 acre feet and won't
12 have an impact on inland groundwater resources is --
13 denies the history and hydrology --

14 MAYOR DELGADO: Okay. I'm not hearing a fact
15 by an expert.

16 MARC DEL PIERO: That is a fact. That was a
17 statement made by your folks. Cal-Am's position is it's
18 not going to have an effect on groundwater. That is a
19 fact that is embodied in your Mitigated Negative
20 Declaration.

21 MAYOR DELGADO: Right, but it is a fact in
22 support. I'm looking for disagreements between experts
23 that are disagreeing with the approval of the MND.

24 MARC DEL PIERO: Give me a name, Mr. Mayor, and
25 I will be happy to tell you what I think of their

1 opinion.

2 MAYOR DELGADO: Okay. I'm satisfied. I'm
3 satisfied with your response. Okay. I'm satisfied with
4 your response to the question.

5 Council, are you satisfied with Marc's response
6 to the question? Does Council have any other questions
7 you would like to ask Marc?

8 MAYOR PRO-TEM O'CONNELL: You were going to
9 follow up with another question asking him in general as
10 an expert what facts he considers to be in dispute or
11 facts that he thinks are significant.

12 MAYOR DELGADO: Okay.

13 MARC DEL PIERO: Is that a question from you,
14 Mr. Mayor, or a question from Mr. --

15 MAYOR DELGADO: It's a question from Mayor
16 Pro-tem.

17 MARC DEL PIERO: From the Mayor Pro-tem. I
18 think the facts --

19 MAYOR DELGADO: Try to be as brief as you can.

20 MARC DEL PIERO: I will -- I will do my very
21 best.

22 The facts that are in contention is that this
23 test well will not have an adverse effect on people with
24 existing overlying groundwater rights in an overdraft
25 basin.

1 The law in regards to overdrafted groundwater
2 basins in the state is very clear. It's been
3 established since 1906. There are multitudinous cases
4 that indicate what the law is.

5 And the assertion by non-engineers that this
6 well is not going to have an adverse effect, not going
7 to create a cone of depression that's going to take
8 water is just factually wrong. It's factually wrong
9 based on all of the historic documents that have been
10 produced not only by the County but also by the Monterey
11 County Water Resources Agency, the State Department of
12 Health Services, the State Water Resources Control
13 Board, and the Army Corps of Engineers.

14 In those letters that we submitted to your
15 Council, Mr. Mayor and Mr. O'Connell, those studies are
16 referenced. They are in the letters that we submitted
17 to you. There are citations of each one of those
18 studies.

19 And we asked in our last correspondence that
20 all of our prior correspondence be incorporated by
21 reference into our comments. So if you are looking for
22 facts that can be used to contest the assertions being
23 made by the Cal-Am proponents of this project, every
24 study, and I say that without limitation, every study
25 done by regulatory agency in regards to the Salinas

Audio Transcript Marina City Council 9/4/14

1 Valley Groundwater Basin since 1967 says that the more
2 you pump the more seawater intrusion you are going to
3 have and the greater amount of contamination that is
4 going to affect the overlying property -- the overlying
5 landowners' property rights. Okay?

6 MAYOR DELGADO: Okay.

7 MARC DEL PIERO: Marc, that's the first thing.

8 MAYOR DELGADO: Okay. I really want to stop
9 you. Does the Council want to hear --

10 MARC DEL PIERO: I haven't answered --

11 COUNCILMEMBER BROWN: I would like to ask him a
12 question.

13 MAYOR DELGADO: Councilmember Brown.

14 COUNCILMEMBER BROWN: Well, now correct me if I
15 am wrong, I'm paraphrasing, but you just said that every
16 study shows the more groundwater you pump, the more
17 seawater intrusion there is.

18 MARC DEL PIERO: That's correct.

19 COUNCILMEMBER BROWN: But that's inland
20 groundwater pumping, not pumping hundreds of feet out
21 into the ocean, correct?

22 MARC DEL PIERO: No, that is not correct. And
23 the point of fact is there are a number of studies that
24 were prepared by the County starting in 1976 that showed
25 that there was a direct correlation, threat, and

1 compromise of existing potable groundwater supplies in
2 the Salinas Valley based on the proximity of wells and
3 how they were drilled next to the coast.

4 COUNCILMEMBER BROWN: Okay. But my but my
5 point is --

6 MARC DEL PIERO: May I point something out?

7 COUNCILMEMBER BROWN: My point --

8 MAYOR DELGADO: Marc, Marc, please let David
9 Brown speak.

10 COUNCILMEMBER BROWN: All those studies are
11 based on wells, you know, on the ground. I mean, on the
12 earth, not in the sea, correct?

13 MARC DEL PIERO: All of those studies are based
14 on wells that are drilled, in some instances, expressly
15 designed to monitor seawater intrusion into a potable
16 aquifer. The fact that these slant wells have not even
17 been engineered yet -- this one slant well that is
18 proposed is less than a thousand feet off shore. The
19 fact that this slant well proposes to pump, in the next
20 24 months, more water than it takes to go from the well
21 location to Castroville covering the entire area of that
22 valley in a foot deep of water, those issues have all
23 been addressed before. Those issues have all been
24 addressed before.

25 And it is not new that there is a seawater

1 intrusion problem in the Salinas Valley. There are
2 multitudinous studies and a number of major capital
3 facilities projects that people are currently paying for
4 expressly for the purposes of reversing the seawater
5 intrusion.

6 And, Mr. Brown, I know you are familiar with
7 the River Dam, you are familiar with the Seaside
8 project, all of those projects are being paid for not
9 only by farmers, but by the residents of your city
10 expressly to reverse the proposal that Cal-Am wants to
11 do here.

12 One last thing. In the Salinas Valley, potable
13 groundwater supplies -- under the laws of the State of
14 California, potable groundwater supplies are identified
15 by one agency. One agency has responsibility for
16 determining water quality and whether or not a
17 groundwater supply is potable.

18 Under the Porter-Colone Act, 1967, that
19 responsibility falls to the State Water Resources
20 Control Board. The State Water Resources Control Board
21 has delegated that responsibility specifically to the
22 Central Coast Regional Water Quality Control Board. The
23 Central Coast Regional Water Quality Control Board has
24 adopted a basin plan that is in full force and effect.

25 The groundwater that Cal-Am is proposing to

1 eventually contaminate with this project is designated
2 as a potable supply. And so you asked what experts have
3 said here tonight, the only experts whose opinion
4 matters are not here tonight, that's the legal
5 determination by the Central Coast Regional Water
6 Quality Control Board that's a potable water supply.

7 MAYOR DELGADO: That's not true, Marc. There
8 are other experts that matter tonight. If they have
9 commented with facts, for the record --

10 MARC DEL PIERO: Mr. Mayor, that's why you need
11 an EIR, because we are disagreeing.

12 MAYOR DELGADO: Okay. Thank you, Marc.

13 MARC DEL PIERO: Thank you.

14 MAYOR DELGADO: Okay. This kind of got away
15 from me, but we want to make this decision right
16 tonight, and it's an important enough decision to err on
17 letting it get away from us than I believe err on being
18 too short and not hearing everyone out.

19 So in the name of hearing everyone out, I'd
20 like to hear, if there's any, five minutes of rebuttal
21 that Cal-Am would like to speak.

22 And, Chip, we'll let you come up after so that
23 we can exhaust the main points that people want to make.

24 IAN CROOKS: Mr. Mayor, I would rather wait
25 till after Chip's, since we're the applicant.

1 BRIAN LEE: If I could, if the Council would
2 allow, I would like maybe a 30-second ability option to
3 provide an engineer's answer to Councilmember Brown's
4 question?

5 MAYOR DELGADO: We haven't heard anything in 30
6 seconds, so let's see if you can do it.

7 BRIAN LEE: Any well that is operated creates a
8 cone of depression. So that cone of depression is
9 exactly that, it's a cone. It expands outward at 360
10 degrees. And we saw a map last night that showed that
11 cone of depression extending past Highway 1. So it does
12 impact the groundwater basin. It is not just impacting
13 westward. Thank you.

14 MAYOR DELGADO: Thank you, Brian.
15 Emily and Kathy, do you want to comment on
16 anything that you've just heard?

17 KATHY JENSEN: No.

18 MAYOR DELGADO: Okay. Mayor Pro-tem O'Connell?

19 MAYOR PRO-TEM O'CONNELL: Yes, Mr. Mayor. I
20 have inquired of the City Attorney what steps could be
21 taken, if any, to reconsider the motion that
22 Councilwoman Morton made. I am asking her to research
23 that point, because the mayor did indicate that you were
24 reluctant because you still had more questions, and I
25 think there's been a lot more information given. So if

1 hearing, after the Planning Commission public hearing
2 and during the City Council public hearing on September
3 3, 2004 [sic]; and -- I'm going to go over this part
4 slowly because it's new writing.

5 Whereas, based on all the above considerations,
6 comma, the council finds there is disagreement among
7 expert opinion supported by facts over the significance
8 of an effect on the environment, comma, the City of
9 Marina must treat the effect as significant and shall
10 prepare -- and shall require preparation of an
11 Environmental Impact Report.

12 Findings: One, CEQA findings. The first CEQA
13 finding on the resolution Councilmember Morton presented
14 will be deleted, and the remaining three will be
15 submitted without changes.

16 Let me read them.

17 Based upon the substantial evidence in light of
18 the whole record before the City of Marina, the City
19 Council is unable to find that the project will not have
20 a significant effect on the environment.

21 The City Council has read and considered the
22 IS/MND and the comments thereon and has determined that
23 it -- not "is" -- it does not reflect the independent
24 judgment of the City and that it has not been prepared
25 in accordance with CEQA.

Audio Transcript Marina City Council 9/4/14

1 The documents comprising the record of
2 proceeding can be located at the Planning Services
3 Division of the Community Development Department at 209
4 Cypress Avenue, Marina, California 93933.

5 And as to item two, Coastal Development Permit,
6 based on the above conclusions regarding CEQA, the City
7 is unable to approve the project and therefore denies
8 the project without prejudice to reconsideration at such
9 time as the appropriate CEQA review is completed.

10 MAYOR DELGADO: Councilmember Morton?

11 COUNCILMEMBER MORTON: I just wanted to suggest
12 just a friendly amendment that the record is also
13 created on September 4th in the bottom of page 2.
14 Information presented in the staff report for the
15 September 3 hearing, comment letters received during the
16 public comment period response or comments, proposed
17 staff initiated amendments, it goes on. Public
18 commission -- public hearing, after the Planning
19 Commission and during the City Council public hearing on
20 September 3 and 4.

21 COUNCILMEMBER BROWN: Okay. That's fine.

22 COUNCILMEMBER MORTON: Because that's the
23 totality of the record.

24 COUNCILMEMBER BROWN: That's fine.

25 COUNCILMEMBER MORTON: Thanks.

Audio Transcript Marina City Council 9/4/14

1 I, Kelli A. Rinaudo, a certified shorthand
2 reporter in and for the state of California do hereby
3 certify:

4 That the foregoing transcript was prepared by
5 me, to the best of my ability, via an audio recording;

6 That I was not present to ascertain speaker
7 identities, and some misidentified or nonidentified
8 speakers may appear in the transcript;

9 That I was not present to clarify certain
10 words, and some unintelligible or inaudible phrases may
11 appear in the transcript;

12 I further certify that I am not related to any
13 party to said action, nor in any way interested in the
14 outcome thereof.

15
16 DATED: OCTOBER 24, 2014

17

18

19



20

KELLI A. RINAUDO, CSR NO. 6411

21

RMR, CRR, CCRR

22

23

24

25

Luster, Tom@Coastal

From: Val Wood <VWood@rmmenvirolaw.com>
Sent: Thursday, October 30, 2014 4:10 PM
To: Craig, Susan@Coastal
Cc: Luster, Tom@Coastal
Subject: Appeal by California-American Water Company - comment letter
Attachments: Letter to Susan Craig California Coastal Commission (00273724xB0A85).pdf

Dear Ms. Craig,

Attached is a comment letter of Cal-Am Test Slant Well Project. We understand that this matter is on the Commission's agenda for November 12, 2013, and is listed under NEW APPEALS Item 14am which states: Appeal No. A-3-MRA-14-0050 (California-American Water Company, Marina) Appeal by California-American Water Co. of City of Marina decision denying permit for construction, operation, and decommissioning of slant test well, up to 4 monitoring well clusters, and related infrastructure at CEMEX sand mining plant, Lapis Road, Marina, Monterey County. A related item, Application No. 9-14-1735 (California-American Water Company, Marina) Application of California-American Water Co. for permit to construct, operate, and decommission test slant well at CEMEX sand mining facility on Monterey Bay shoreline, Marina, Monterey County, is also on the agenda.

The transcript referenced in the attached letter is too large to email. It is available for download at <http://www.ci.marina.ca.us/ArchiveCenter/ViewFile/Item/6227>. A copy of the transcript is included with a hard copy of the letter.

Regards,

Valorie Wood

Legal Assistant

Jennifer S. Holman and Elizabeth Sarine

Robert M. Sawyer, of Counsel

RMM

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LLP

Howard "Chip" Wilkins III
cwilkins@rmmenvirolaw.com

October 30, 2014

VIA ELECTRONIC MAIL & US MAIL

Susan Craig
Central Coast District Manager
California Coastal Commission
725 Front Street, #300
Copperhouse Shopping Center
Santa Cruz, CA 95060
scraig@coastal.ca.gov

Re: Appeal by California-American Water Company from September 4, 2014 City of
Marina Action on Coastal Development Permit 2012-05

Dear Ms. Craig,

I am writing on behalf of our client, the Marina Coast Water District, in regards to California-American Water Company's (Cal-Am's) attempt to appeal from the City of Marina's California Environmental Quality Act (CEQA) determination. The City of Marina denied "without prejudice" Cal-Am's proposed project because it concluded that the Initial Study and Mitigated Negative Declaration for the California-American Slant Well Project prepared pursuant to the CEQA was not adequate. Cal-Am appeals from that decision.

There are no grounds for appeal at this time. (*Kaczorowski v. Mendocino Cnty. Bd. of Supervisors* (2001) 88 Cal. App. 4th 564, 569 ["The only grounds for appeal are that the locally approved development does not conform to the standards of a certified LCP or the Coastal Act's access policies. (§ 30603, subd. (b)(1))"]; see also *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 272 ["Once the Coastal Commission has certified the local coastal plan 'as conforming to the policies of the Coastal Act, review authority for development within that portion of the coastal zone passes to the local government.'"]) The City has not acted on Cal-Am's proposed slant test well pursuant to its certified local coastal program (LCP). The City merely denied a permit for the well "without prejudice" pending adequate environmental review. The City ought to be given an opportunity to act on the proposal once an adequate environmental document has been prepared and certified or adopted.

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 2

For this reason, the Coastal Commission ought not to countenance Cal-Am's attempts to leap frog over the City. Such leap-frogging is an anathema to the entire design of the Coastal Act, which contemplates that the City has primary jurisdiction to implement its LCP once the program has been certified by the Commission. (See *Sierra Club v. California Coastal Commission* (2005) 35 Cal.4th 839, 855 fn. 11 ["Coastal Act contains "[p]rovisions for ... the transfer of coastal management responsibilities back to local government [that would] alleviate [] previous problems regarding local control in the planning process".].)

In fact, as I explain below, absent the City's "denial" of the permit under the LCP, the Commission has *no jurisdiction* to hear Cal-Am's appeal. There is simply nothing to appeal. In the parlance of the Commission's regulations, there is no "significant question" as to the proposal's "conformity" with the City's "certified local coastal program" at this time. (Cal. Code Regs., tit. 14, § 13115; accord Pub. Res. Code, § 30625, subd. (b)(2); see also *Hines v. California Coastal Commission* (2010) 186 Cal.App.4th 830, 849 ["A substantial issue is defined as one that presents a 'significant question' as to conformity with the certified local coastal program."].)

A. There Is No "Denial" of the Permit Under the LCP to Support Jurisdiction for an Appeal.

On September 4, 2014, the City declined to issue a coastal development permit to Cal-Am for its proposed facilities. In Resolution No. 2014-103, the City explained that it could not issue a coastal development permit to Cal-Am at that time because environmental review for the project was inadequate:

Based upon the substantial evidence in light of the whole record before the City of Marina, the City Council is unable to find that the project will not have significant effect on the environment.

[¶]

Based upon the above conclusions regarding [the California Environmental Quality Act (CEQA)], the City is unable to approve the Project and therefore denies the Project without prejudice to reconsideration as such time as the appropriate CEQA review is completed.

(Resolution No. 2014-103, dated September 4, 2014, pp. 2-3.) Thus, the City denied the application for a coastal development permit *without prejudice* on the grounds that further environmental review was required *under CEQA*. The Commission's appellate jurisdiction does not extend to a review of a local lead agency's CEQA determinations:

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 3

were it determined that the Commission's finding of no substantial issue constituted an approval of the project within the meaning of CEQA, the Commission still would have been limited to reviewing the conformity of the local government's actions to the certified Local Coastal Program or to the public access policies of the Coastal Act. (§ 30603, subd. (b)(1).) The Coastal Commission lacks jurisdiction to review a local government's compliance with CEQA.

(*Hines, supra*, 186 Cal.App.4th at p. 852, emphasis added.)

Thus, the City should be afforded the opportunity to consider the project on the merits once adequate environmental review has been completed—in as much as the City is the agency with primary authority to issue coastal development permits within the jurisdiction of its land use plan.¹

Through its appeal, Cal-Am asks the Commission to trespass into the City's primary jurisdiction, in effect leapfrogging over it; the Commission should decline to do so. As the Commission acknowledged in *Sierra Club, supra*, 35 Cal.4th at p. 855, it has specific, defined jurisdiction under the Coastal Act. (See also *Burke v. California Coastal Commission* (2008) 168 Cal. App. 4th 1098, 1106 ["courts do not defer to an agency's determination when deciding whether the agency's action lies within the scope of authority delegated to it by the Legislature"].) At issue here is the City's authority to implement its land use plan.

The Coastal Act contemplates that local agencies will be charged with the primary responsibility for implementing the Coastal Act. (Pub. Resources Code, § 30519, subd. (a) ["after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review ... shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program ... applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof."]; see also *Kaczorowski, supra*, 88 Cal.App.4th at p. 569, ["[a]uthority for ensuring compliance with a certified LCP is delegated by the

¹ In its appeal, Cal-Am makes much of the fact that the City's staff recommended that the City find conformity with the Local Coastal Program. (See Cal-Am Appeal, Attachment 2, pp. 4-5.) Staff's recommendation is not a final action supporting appellate review. The City Council has not yet reached the matter, having found the CEQA document inadequate. Cal-Am simply has not exhausted all of its remedies before seeking appeal to the Commission. (Cal. Code Regs. tit. 14, § 13114 [appellate review is proper only after the "appellant has exhausted local appeals" and then only "after the local decision has become final"].) Here, again, there was no final action taken on the permit under the City's certified LCP. The only final decision, if any, was taken on the environmental document, which was deemed inadequate.

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 4

Commission to the unit of local government responsible for implementing the LCP”]; *Sierra Club, supra*, 35 Cal.4th at p. 855, fn. 11 [“Coastal Act contains “[p]rovisions for ... the transfer of coastal management responsibilities back to local government [that would] alleviate [] previous problems regarding local control in the planning process”].) Thus, once the Commission certifies an LCP, “[d]evelopment review authority can no longer be exercised by the Coastal Commission” and is “delegated to the local government that is implementing the local coastal program,” with limited rights of appeal to the Coastal Commission. (*City of Malibu v. California Coastal Commission* (2012) 206 Cal.App.4th 549, 563.) “Thus, after certification of a local coastal program, issuance of coastal development permits is the purview of the local government, not the Coastal Commission. And, after certification of an LCP, the Coastal Act mandates—with the singular, narrow exception delineated in the section 30515 override provision—local control over changes to a local government’s land use policies and development standards.” (*Id.* at p. 556.)

Here, Cal-Am has sought to appeal the City’s denial of its coastal development permit under Public Resources Code section 30603, subdivision (b)(5). That provision does not authorize the Commission to wholesale review a local agency’s exercise of its land-use authority or its implementation of CEQA. Rather, it is expressly limited to appeals from determinations under the Coastal Act:

- (a) After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments: [¶]
- (5) Any development which constitutes a major public works project or a major energy facility.
- (b) [¶] (2) The grounds for an appeal of a denial of a permit pursuant to paragraph (5) of subdivision (a) shall be limited to an allegation that the development conforms to the standards set forth in the certified local coastal program and the public access policies set forth in this division.

(Pub. Res. Code, § 30603, subds. (a)(5), (b)(2), emphasis added; see also *Kaczorowski, supra*, 88 Cal.App.4th at p. 569 [“The only grounds for appeal are that the locally approved development does not conform to the standards of a certified LCP or the Coastal Act’s access policies. (§ 30603, subd. (b)(1))”]; *McAllister, supra*, 147 Cal.App.4th at p. 272 [“Once the Coastal Commission has certified the local coastal plan “as conforming to the policies of the Coastal Act, review authority for development within that portion of the coastal zone passes to the local government.”].)

Section 30603 can only be read as a limitation on the Commission’s appellate jurisdiction to appeals from implementation of the LCP. Any other reading would allow the Commission to trump a local agency’s land use and regulatory actions simply by

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 5

finding that the proposed activity “conforms” with the LCP. The Commission should decline to set such a precedent.

The court’s holding in *Security Nat. Guar., Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 419, affirms this narrow reading of the Commission’s appellate jurisdiction. The court explained that just because “an agency has been granted some authority to act within a given area does not mean that it enjoys *plenary* authority to act in that area.” Thus, “if the Commission takes action that is inconsistent with, or that simply is not authorized by, the Coastal Act, then its action is void.” (*Ibid.*) In the context of appeals under the Coastal Act, the court explained:

Once the LCP is certified, “the Commission’s role in the permit process for coastal development [is] to hear appeals from decisions by [the local government] to grant or deny permits.” (*Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1354, fn. 5, 56 Cal.Rptr.3d 591, citing § 30603.) The Commission’s jurisdiction in such appeals, however, is limited. (*City of Half Moon Bay v. Superior Court* (2003) 106 Cal.App.4th 795, 804, 131 Cal.Rptr.2d 213.) As relevant here, the Coastal Act limits the grounds for a CDP appeal “to an allegation that the development does not conform to the standards set forth *in the certified local coastal program*” (§ 30603, subd. (b)(1), italics added.)

(*Id.* at p. 421.)

In sum, the City has not “denied” the permit for a slant test well under the provisions of the LCP. It simply found that the Initial Study and Mitigated Negative Declaration for the California-American Slant Well Project to be inadequate under CEQA. There is therefore no denial upon which to support jurisdiction to support the Commission’s hearing of an appeal.

B. Jurisdiction Over Part of the Project Does Not Convey Jurisdiction Over the Entire Project.

Cal-Am may argue before the Coastal Commission, as it has elsewhere, that because the Commission has primary jurisdiction over elements of the slant test well that are sited below the mean high tide line, it can simply exercise jurisdiction over the entire project. Under this theory, the Commission can remedy any problems that might have occurred during the City’s environmental review during the implementation of its certified regulatory program. In other proceedings, Cal-am has cited *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 271-272, for this proposition.

But the fact the Commission has primary jurisdiction over part of the project’s water side elements under Public Resources Code section 30519, subdivision (b), in no way confers jurisdiction to the landside elements of the project under subdivision (a).

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 6

The Legislature expressly conferred the former on the Commission and the latter on local agencies. (See also *Sierra Club, supra*, 35 Cal.4th at p. 843 [recognizing that a grant of jurisdiction over part of a project does not confer jurisdiction to the Commission over the remainder of the project].) The only way in which the Coastal Act authorizes the Commission to act in such a manner is when both the local agency and the Commission expressly agree to such a consolidated procedure and determine that public participation would not be impaired by such a process:

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.

(Pub. Resources Code, § 30601.3.) That has not occurred here.

McAllister, supra, 147 Cal.App.4th 253, does not enlarge the jurisdictional reach of the Coastal Commission. In that case, *McAllister* objected to Monterey County's approval of a project, arguing that the project was inconsistent with the LCP and that the environmental review was inadequate. *McAllister* appealed the County's decision to the Commission. As provided by law, the Commission heard the appeal de novo (Cal. Code Regs., tit. 14, § 13115, subd. (b)), undertaking its own environmental review under CEQA, and ultimately denying the appeal. At trial, *McAllister* maintained his objections to the county's environmental review. The court concluded, however, that the county's environmental review was not subject to challenge because under de novo review the "County's CEQA decisions ... have been superseded by the Coastal Commission's environmental review." (*McAllister, supra*, 147 Cal.App.4th at p. 294.) The fact that the Commission can exercise de novo review once it has proper jurisdiction does not somehow give it plenary power to make the decision for the local agency in the first instance. (See, e.g., *Hines, supra*, 186 Cal.App.4th at p. 852 [explaining that the Commission may not hear an appeal of a local agency's CEQA determination; once the Commission has appellate jurisdiction, however, the Commission may undertake "de novo review" and prepare "the functional equivalent of an EIR under CEQA"].)

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 7

C. Cal-Am Proposes No Major Public Works Project; Accordingly, the Commission Lacks Jurisdiction.

Not only is there no final agency action sufficient to appeal at this time, the Commission lacks subject matter jurisdiction. Cal-Am proposes *no* "major public works project," and thus cannot seek an appeal with the Commission under Public Resources Code section 30603, subdivisions (a)(5) and (b)(2).

Cal-Am argues that this "test well" is a major public works project simply by virtue of the fact that it would cost more than \$100,000 to complete. (Cal. Code Regs. tit. 14, § 13012, subd. (a).) That provision requires more than the mere expenditure of funds or else it would encompass virtually all projects. It requires that the expenditure be for a "public works project." Under the Coastal Act, "Public Works" means "All production, storage, transmission, and recovery facilities for water, sewerage, telephone, and other similar utilities owned or operated by any public agency or by any utility subject to the jurisdiction of the Public Utilities Commission, except for energy facilities." (Pub. Resources Code, § 30114, subd. (a).) The project here proposes none of those things.

The alleged sole purpose of the test slant well is to pump between 1,614 and 4,035 acre/feet of water from the ground per year, test it, and then discharge the water into the ocean. (See, e.g., IS/MND, p. 23.) Discharging groundwater in the ocean is not—in any evident way—a reasonable public use. The well is not proposed to serve anyone. Given this, there is no evidence that the test slant well is a public works project within the meaning of Public Resources Code section 30603, subdivisions (a)(5) and (b)(2).²

In an effort to attempt to "rig" the system, and subvert appropriate local environmental review, Cal-Am has always maintained that the "test slant well" is separate from its proposal to build a Water Supply Project in the future. In this way, it has argued that it need not disclose, even at the most basic levels, the foreseeable environmental impacts of the entire Water Supply Project as part of the environmental review for the test slant well. (See, e.g., IS/MND, p. 6 ["Because no long-term operations are proposed, the potential environmental effects of any long-term operations are not considered in this document."].) Here, Cal-Am maintains precisely the opposite, urging that the test slant well is an essential first phase for the overall Water Supply Project. On this basis, Cal-Am argues that its proposed test slant well—which in itself offers absolutely no public benefits—is in fact a "major public works project." Thus, according to Cal-Am, for the purposes of CEQA review at the City, the test slant well and the Water Supply Project

² In addition, the activity appears to be contrary to Monterey County Water Resources Act, which prohibits water from being exported outside the Salinas Valley Groundwater Basin. (Stats. 1990, ch. 52, § 21, West's Ann. Cal. Wat.-Appen. (1990 ed.) ch. 1159 ["no groundwater from that basin may be exported for any use outside the basin"].)

Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 8

are entirely separate actions;³ but for the purposes of appellate review here they are one in the same. Cal-Am cannot have it both ways: it should not be allowed to assert contrary positions in this manner in order to manipulate agencies and circumvent the law.

For all of these reasons, the Commission should find that, at this time, “no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.” (Pub. Res. Code, § 30625, subd. (b)(2); see also *Alberstone v. California Coastal Commission* (2008)169 Cal. App. 4th 859, 863-864 [“It must first be noted that the question here is not whether appellants’ appeal raises *any* issue but whether it raises *a substantial one*. A substantial issue is defined as one that presents a “significant question” as to conformity with the certified local coastal program”], citing Cal. Code Regs., tit. 14, § 13115.) Of course, once adequate environmental review has been undertaken, and the City acts on the project and makes findings under its LCP, Cal-Am will have an opportunity to appeal to the Commission—if indeed it is dissatisfied with the manner in which the City has implemented the LCP at that time.

We therefore urge the Commission to conclude that there is no “significant question” as to the proposal’s “conformity” with the City’s “certified local coastal program” at this time. In this way, the City of Marina can complete its environmental review for the project and exercise its jurisdiction under the LCP.

³ Such a position is contrary to CEQA, which precludes segmentation of single project for the purposes of analysis. As the Supreme Court explained in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376 (*Laurel Heights*), under CEQA an agency must analyze the effects of potential future development in its EIR if such development is: (1) “a reasonably foreseeable consequence of the initial project,” and (2) “will likely change the scope or nature of the initial project or its environmental effects.” (47 Cal.3d at 396.) In that case, the University of California San Francisco (UCSF) had purchased a 354,000 square foot building, but prepared an EIR only for the initial occupation of 100,000 square feet by the School of Pharmacy. (*Id.* at p. 393.) UCSF argued that its future plans to occupy the remainder of the building, not available for ten years, were speculative. (*Id.* at p. 394.) Like the applicant here, UCSF claimed that, because these plans required further approvals that would be evaluated in their own right, the agency could evaluate the impacts of the potential expansion at a later time. (*Ibid.*) The Supreme Court rejected this argument, finding that deferring environmental review to a later point, when “bureaucratic and financial momentum” would make it difficult to deny the expansion, violated CEQA. (*Id.* at pp. 395-96.)

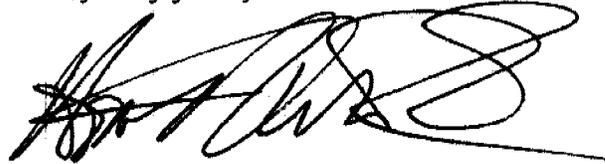
Susan Craig
Central Coast District Manager
California Coastal Commission
October 30, 2014
Page 9

I understand the staff report will be available soon. Please provide me with a copy of the staff report once it is available and a copy of all public notices issued by the Commission related to Cal-Am's proposal.

As a final matter, I note that the record of the City's actions provided by Cal-Am does not include the transcript of proceedings at the City Council on September 4, 2014. A copy of that transcript is attached.

Thank you for your consideration of these matters.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard Wilkins III", written in a cursive style.

Howard "Chip" Wilkins III

cc: Tom Luster, Environmental Scientist, CCC
tluster@coastal.ca.gov

Encl.